UNJUST ENRICHMENT AND THE REMEDIES OF CONSTRUCTIVE TRUST AND QUANTUM MERUIT

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I. INTRODUCTION

What does the term "unjust enrichment" mean in Canadian law? Two theories have been touted, each with its advocates. The first, the conservative theory is to the effect that "unjust enrichment" is not a cause of action in itself. It is an "umbrella term" linking various causes of action (such as the claim for services rendered and that for money had and received). One could say that the *purpose* of the action for services rendered, etc. is to prevent unjust enrichment. However, unjust enrichment is simply the rationale behind the various causes of action, it is not a cause of action in itself. An alternative view is that unjust enrichment is a cause of action in its own right and a claim for services rendered is simply a factual example of when a plaintiff may be entitled to recover.[1]

In this paper, it is not intended to enter into this debate. Suffice it to say that whether one embraces the first or the second theory of unjust enrichment, it is clear that the concept plays an important part in the resolution of domestic disputes over property and services. A finding of unjust enrichment may entitle a party to the equitable remedy of constructive trust or the common law remedy of quantum meruit.

Below we shall explore the constructive trust remedy and that of quantum meruit. We shall initially examine them separately and then see how the two work together in the context of domestic law.

II. THE CONSTRUCTIVE TRUST

A. THE CASES

In *Rathwell* v. *Rathwell*,[2] Dickson J. articulated the two schools of thought that have in turn held sway over the resolution of matrimonial (or quasi matrimonial) disputes during the last half century. The first of these schools is denoted politely the "justice and equity" school, less politely it is dubbed "the palm tree justice approach". The second school is the "intent" school. This school is denounced by its critics as arbitrary and artificial, as involving a meaningless ritual in searching for a phantom intent. We shall see how the courts have seemingly turned a complete circle, justice and equity (or palm tree justice) has won, lost, and apparently won again.

In the 1950s, perhaps the most vocal proponent of the law and equity school was Lord Denning in a line of cases of which *Rimmer* v. *Rimmer*[3] serves as a prime example. In *Rimmer* v. *Rimmer*, Lord Denning articulated the view that the courts had a wide discretion to allocate

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1. *See* G. Klippert, *Unjust Enrichment* (1983) who espouses the second theory.
2. (1978) 1 R.F.L. (2d) 1 at 4 (S.C.C.).
3. [1953] 1 Q.B. 63.

property between spouses. This discretion was said to derive from section 17 of the Married Women's Property Act.[4] Section 17 provided that in any question between husband and wife as to the title to or possession of property, either party might apply . . . in a summary way to a judge, "and the judge may make such order with respect to the property in dispute . . . as he thinks fit". Not only did Lord Denning feel that the courts had a wide discretion to award property, he also believed that in making an allocation the maxim "equity is equality" should be applied unless a clear contrary intention was manifest.

The "justice and equity" school suffered a serious setback in 1961 with the Supreme Court of Canada decision of *Thompson* v. *Thompson*.[5] The Supreme Court held that section 12(1) of the Married Women's Property Act of Ontario[6] (a provision virtually identical to section 17 of the English statute) was procedural only and did not give the courts power to vary the existing proprietary rights of the parties. It certainly did *not* entitle the court to allocate property between spouses in any manner that it thought fit.[7] Further, the Supreme Court of Canada held that if property may properly be allocated between spouses on the basis of the law of trusts, then equity is not always equality. Regard must be had to the respective contributions of spouses and allocation between them should reflect that contribution.

Thompson v. *Thompson* laid the foundation for a strong articulation of the "intent doctrine" by the Supreme Court 12 years later in *Murdoch* v. *Murdoch*.[8] The facts of this case are simple. A farm property was taken in the name of the husband. The property was acquired and made profitable by virtue of the labour and financial contributions of both spouses (probably less in the case of the wife than in the case of the husband). The wife claimed an interest in the property both on the basis of partnership and of trust. Both claims were denied. The judgment of the majority was written by Martland J. The reason for rejecting the wife's claims was stated as follows:[9]

> . . . [I]t cannot be said that there was any common intention that the beneficial interest in the property in issue was not to belong solely to the respondent in whom the legal estate was vested.

Could there be a clearer articulation of the intent doctrine?

Mr. Justice Laskin (as he then was) voiced a powerful dissent in *Murdoch* v. *Murdoch*. He would have given the wife an interest in the farm property on the basis of there being a constructive trust in her favour. Quoting from *Scott's Law of Trusts* [10] with approval he said:[11]

> A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the grounds that he would be unjustly enriched if

4. 1882 Imp. c. 75.
5. [1961] S.C.R. 3.
6. R.S.O. 1950, c. 223.
7. This interpretation of section 17 was reaffirmed by the House of Lords in *Pettitt* v. *Pettitt* [1970] A.C. 777.
8. (1973) 13 R.F.L. 185 (S.C.C.).
9. *Id.* at 196.
10. 5 *Scott's Law of Trusts* (3rd ed. 1967) 3215.
11. *Supra* n. 8 at 207.

> he were permitted to retain it . . . The basis of the constructive trust is the unjust enrichment which would result if the person having the property was permitted to retain it. Ordinarily, a constructive trust arises without regard to the intention of the person who transferred the property.

The words "unjust enrichment" have the ring of the law and equity school. The fact that the constructive trust can arise without regard to intent does not bode well for the longevity of the "intent" school.

In *Murdoch* v. *Murdoch*, Laskin J. was a lone dissenter. Five years later, in *Rathwell* v. *Rathwell*, Laskin, then Chief Justice of Canada, was in the majority, but only just! The facts of *Rathwell* v. *Rathwell* were similar to those in *Murdoch* v. *Murdoch*. Again, a married couple acquired and built up a farming business. Again, title was taken in the name of the husband and again there had been a contribution in both financial and labour terms by husband and wife. The majority of the court felt that the wife was entitled to a half interest in the properties. Three of the justices[12] felt the wife's claim could succeed under either resulting or constructive trust doctrine. There was sufficient proof of common intention to sustain a resulting trust. Mrs. Rathwell's contributions in labour alone, her "team work", made it unjust to allow her husband to retain the benefits of her labour. The two other judges who made up the majority in the Supreme Court[13] made it clear that their decisions turned on the finding of a resulting trust (i.e. common intent that the wife should benefit). They did not find any determination as to the application of the doctrine of constructive trust or unjust enrichment necessary to the resolution of the case.

Four judges dissented.[14] They would have given Mrs. Rathwell a certain share of the property on the basis of common intent (resulting trust) but not 50 percent. They strongly repudiated the use, in cases of this kind, of a doctrine of constructive trust as a means of preventing unjust enrichment. Martland J. (who delivered the dissenting judgment) analogized the use of the constructive trust with that of section 12 of the Ontario Married Women's Property Act. Just as the pre *Thompson* cases had sought to use section 12 as a means of allocating property between spouses on a broad and equitable basis, so the proponents of the constructive trust were trying to the do same. The Supreme Court in *Thompson* had said "no" to broad allocation. The Supreme Court in *Murdoch* had echoed this. If public policy demanded allocation of property in this way, then it was for the legislature to implement such a change. It was not up to the courts.

In *Rathwell* v. *Rathwell* therefore the majority of the Supreme Court held to the "intent" doctrine and repudiated that of "law and equity". Only three of the nine justices would have found for the wife on the basis of constructive trust. The remaining six would give her recovery only on the basis of proven intent.

Martland J.'s statement that if change there must be, it must come from the legislature was pragmatic (if not prophetic). 1970s legislation did in fact do what the courts had been hesitant to do. Public outcry over the *Murdoch* decision accelerated passage of provincial matrimonial property laws allowing for division of assets between spouses. With property

12. Dickson J., Laskin C.J.C. and Spence J.
13. Ritchie and Pigeon JJ.
14. Martland, Judson, Beetz and de Grandpré JJ.

disputes between spouses now largely handled under matrimonial property legislation the battle between the "intent" school and the "law and equity" school lost much of its force. However, the Matrimonial Property Acts only apply to married people. What of cohabitees? The battle of the doctrines recommenced in a new context, that of common law relationships.

The first such case to come before the courts was that of *Pettkus* v. *Becker*.[15] Here the plaintiff and defendant had worked together to acquire and aggrandize a bee keeping business. The business was taken in Mr. Pettkus' name. Miss Becker was granted a 50 percent interest in the business by the Ontario Court of Appeal and this decision was upheld by the Supreme Court of Canada. The majority of the Court[16] found for Miss Becker solely on the ground of a constructive trust. A minority of the court[17] reached the same result but by the route of the resulting trust. That is they found "a common intention that the beneficial interest was not to belong solely to the spouse in whom the legal estate was vested (Mr. Pettkus) but was to be shared between them in some proportion or another."[18] Once again, strong warnings were voiced against the use the majority had made of the constructive trust. Martland J. said:[19]

> In my opinion, the adoption of this concept involves an extension of the law as so far determined in this court. Such an extension is, in my view, undesirable, it would clothe judges with a very wide power to apply what has been described as "palm tree justice" without the benefit of any guidelines. By what test is a judge to determine what constitutes unjust enrichment? The only test would be his individual perception of what he considered to be unjust.

However, Martland J.'s cry was a cry in the wilderness. The battle was lost. For the first time since *Thompson*, a clear majority of the Supreme Court of Canada had embraced "law and equity" at the expense of "intent" doctrine. The next case in the sequence saw no dissent. Law and equity is here to stay, at least for the interim!

Sorochan v. *Sorochan* [20] is the most recent Supreme Court decision on this point. In that case the parties cohabited for 42 years. The male partner owned a farm on which both he and the female partner worked. The work of the female cohabitant was found to have aided in preserving and maintaining the property. Unlike the earlier cases, there was no question of her contributing to the acquisition of the property, the property here was owned by the male partner before cohabitation began. The Supreme Court upheld the trial judge's decision to award Ms. Sorochan title to ⅓ of the property by way of constructive trust. The Supreme Court also upheld a lump sum award to her in the amount of $20,000. Dickson C.J.C., who delivered the judgment to the Court, again referred to the broad and general equitable principle upon which the constructive trust rests, the purpose of which is to prevent unjust enrichment in whatever circumstances it occurs.[21]

15. (1980) 19 R.F.L. (2d) 165.
16. Dickson J., Laskin C.J.C., Estey, McIntyre, Chouinard and Lamer J.J.
17. Ritchie, Martland and Beetz JJ.
18. *Supra* n. 15 at 189, 190.
19. *Id.* at 193.
20. (1986) 2 R.F.L. (3d) 225.
21. *Id.* at 239.

B. THE PRINCIPLES

Having reviewed the leading cases, let us now explore this "broad and general equitable principle" upon which the constructive trust rests. Is it, as Martland J. has said, simply a power to apply 'palm tree justice' without guidelines, or are there, in fact, guidelines which will allow us to predict when a constructive trust will or will not be found?

It is submitted that the following guidelines can be extracted from the cases:

1. Where the parties have agreed to hold the property in distinct shares on the basis of their contribution to the purchase price or on some other basis, the plain duty of the court is to give effect to this agreement.[22]
2. In the absence of legislative enactment, there is no doctrine of "family assets". The effect of marriage does not give the court the power to apportion property between spouses.[23]
3. There must be some contribution by the plaintiff to the assets standing in the name of the defendant. The contribution may be in money or it may be in the form of physical labour.[24]
4. The constructive trust is the appropriate vehicle for one who has contributed in physical labour but can prove neither common intention that she should share nor a financial contribution.[25]
5. It is not every contribution which will entitle a party to a one-half interest in his spouse or cohabitant's assets. The extent of the interest will be proportionate to the contribution direct or indirect of the party. Where the contributions are unequal, the shares will be unequal.[26]
6. For a constructive trust to be imposed, there must be a causal link between the contribution and the disputed asset.[27]
7. The asset need not be a family home, it can be a business.[28] Contribution may be to its acquisition or to its maintenance and preservation.[29]
8. Three requirements must be satisfied before an unjust enrichment can be said to exist:
   a. an enrichment
   b. a corresponding deprivation
   c. absence of any juristic reason for the enrichment such as a contract or disposition of law.[30]
9. Satisfaction of the three requirements set out in 8 above will not of itself entitle a plaintiff to an interest in the disputed asset. The court must be satisfied also that retention of the benefit by the defendant would be "unjust" in the circumstances of the case.[31]
10. An example of "injustice" in the sense in which that term is used in 9 above is where one person in a relationship, tantamount to spousal, prejudices herself in the reasonable expectation of receiving an interest in property and the other person in

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22. *Rathwell* v. *Rathwell*, *supra* n. 2 at 9 per Dickson J.
23. *Thompson* v. *Thompson*, *supra* n. 5; *Rathwell* v. *Rathwell*, *supra* n. 2 at 9 per Dickson J.
24. *Rathwell*, *supra* n. 2 at 9 per Dickson J.
25. *Murdoch*, *supra* n. 8 at 207 per Laskin J.
26. *Rathwell* v. *Rathwell*, *supra* n. 2 at 9 per Dickson J.; *Murdoch* v. *Murdoch*, *supra* n. 8 at 203 per Laskin J.; *Pettkus* v. *Becker*, *supra* n. 15 at 183 per Dickson J.
27. *Rathwell* v. *Rathwell*, *supra* n. 2 at 14 per Dickson J.; *Pettkus* v. *Becker*, *supra* n. 15 at 183 per Dickson J.; *Sorochan* v. *Sorochan*, *supra* n. 20 at 236, 239 per Dickson C.J.C.
28. *Rathwell*, *supra* n. 2 at 8, 23 per Dickson J.
29. *Sorochan*, *supra* n. 20.
30. *Rathwell* v. *Rathwell*, *supra* n. 2 at 15 per Dickson J.; *Pettkus* v. *Becker*, *supra* n. 15 at 180 per Dickson J.; *Sorochan* v. *Sorochan*, *supra* n. 20 at 234 per Dickson C.J.C.
31. *Pettkus*, *supra* n. 15 at 180 per Dickson J.

> the relationship freely accepts benefits conferred by the first person in circumstances where he knows or ought to have known of that reasonable expectation. It would be unjust to allow the recipient of the benefit to retain it.[32]

III. QUANTUM MERUIT

Traditional doctrine tells us that the law knows no obligation to pay for a service merely because it is deemed to enrich the recipient. In the words of Pollock C. B.: "One cleans another's shoes; what can the other do but put them on?"[33] However, where the recipient has not only been enriched, but *unjustly* enriched, then he will be required to pay for the services rendered to him. Writers in the field of restitution have formulated two situtions which may give rise to restitutionary claims for services rendered.[34] The first is that where the services in question had been freely accepted by the defendant. The second is that where the defendant has been incontravertably benefitted and the equities of the plaintiff's claim are more compelling than the defence that the defendant had no opportunity to reject the services.

The first situation involves cases where the defendant knew the services were being rendered at the time they were rendered (the owner of the shoes watches the shoe-shine boy clean them). The second situation involves cases where the defendant *did not* know the services were being rendered at the time they were rendered. (Pollock C. B. could doubtless put his shoes on without payment. However, in limited circumstances, recovery is permitted albeit the defendant did not know of the service at the time it was being rendered).[35]

In the present context, it is unnecessary for us to pursue the second situation. In the domestic context, the recipient is generally well aware of the performance of the services. The question here is generally whether those services were performed gratuitously and, if so, whether the case falls within the ambit of the first situation where recovery is allowed. In order for the plaintiff to recover a reasonable amount for services rendered in the first type of situation, he must show: (a) that the recipient requested or acquiesed in the performance of the services, and (b) the recipient must have known when he did so tht the other party did not intend that the services should be gratuitous in the events which have happened.[36]

Where the parties were married to one another when the services were rendered, it is unlikely that a restitutionary action to recover for the value of those services will succeed. The reason for this is that it may well be presumed that the services were performed gratuitously or through natural love and affection. Even a promise to pay for such services is generally not deemed to create a cause of action between spouses.[37]

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32. *Id.* at 181 per Dickson J.
33. *Taylor* v. *Laird* (1856) 25 L.J. Ex. 329 at 332.
34. *See* Jones, "Restitutionary Claims for Services Rendered" (1977) 93 L.Q.R. 273; Birks, "Restitution for Services" (1974) 27 C.L.P. 13; Goff and Jones, *The Law of Restitution* (2nd ed) 106 *et seq.*
35. As in *County of Carlton* v. *City of Ottawa* (1965) 52 D.L.R. (2d) 220 (S.C.C.).
36. *See* Birks, *supra* n. 34 at 15.
37. *Buchmaier* v. *Buchmaier* (1971) 6 R.F.L. 382 (B.C. C.A.).

What of the situation where the parties were living together but not married when the services were rendered? Factors that are relevant here are the nature of the services performed (Did the plaintiff just perform household services or did she also carry out other services such as nursing the defendant when sick, bearing his children, helping with his business affairs?) Were the services performed over a protracted period of time? Did the defendant indicate to the plaintiff that she would be remunerated in some way (e.g. that she would be "looked after" in his will, that he would marry her, etc.) and, to the defendant's knowledge, did the plaintiff rely on such representations? If one or more of these factors are present, it is at least arguable that the defendant knew or should have known that the plaintiff did not perform the services gratuitously, that is that she acted with an expectation of reward.[38] Conversely, if services are no more than housekeeping, the defendant made no representation that the plaintiff would be rewarded and the period over which services were performed was relatively short, a claim for *quantum meruit* might well be denied. Denial would be on the basis that the defendant neither knew nor should have known that payment was expected. He reasonably believed the services were being performed out of love and affection and because of the personal relationship between the parties.[39]

A recent Alberta case appears to have muddied the otherwise clear water. In *Herman* v. *Smith* [40] the parties lived together for approximately seven years. The female plaintiff carried out housekeeping services for the defendant. She did not work in his business. She did not bear his children. She did not rely on any representation of reward made by him. Nonetheless, she was awarded recompense for her services on a *quantum meruit* basis. The court took the average earnings of "female housekeepers, servants and related occupations" over the relevant time period and reduced the resulting sum by 50 percent to reflect the fact that the plaintiff had received free board and lodging. This case was followed in *Crispen* v. *Topham*.[41] In *Crispen* v. *Topham*, the plaintiff lived with the defendant for approximately a year. She was awarded recompense for her services on a *quantum meruit* basis. The court took the minimum wage in Saskatchewan

38. See *Anderson* v. *Schultz* (1975) 62 D.L.R. (3d) 762 (Man. Q.B.). (Plaintiff in addition to housekeeping looked after defendant when he was sick and helped with his rental business. He led her to believe she would benefit in his will. Claim for *quantum meruit* succeeded); *Farrar* v. *Beaton* (1971) 1 Nfld. & P.E.I. R. 341 (P.E.I. C.A.) (plaintiff did housekeeping and helped defendant with his business. Lived with the defendant for over 20 years and bore him seven children. He led her to understand that she would benefit under his will. Claim for *quantum meruit* succeeded.); *Rowe* v. *Public Trustee* [1963] 2 O.R. 71 (S.C.) (plaintiff lived with defendant for 17 years performing household services for him. During this time the defendant led her to believe that he would marry her and give her his house. Claim for *quantum meruit* succeeded.) See also *Sorochan* v. *Sorochan* (1986) 2 R.F.L. (3d) 225 (S.C.C.) where $20,000 was awarded the plaintiff in addition to her trust remedy.

39. *Dwyer* v. *Love* (1976) 9 Nfld. & P.E.I. R. 325 (P.E.I. C.A.) ("Their union was one of two individuals both wanting to live their own lives — wanting a relationship that could end at any time — no marriage — no ties, no problem to enter and none of divorce to end" per Darby J.); *Holli* v. *Kost* (1972) 7 R.F.L. 77 (B.C.S.C.) ("At the time she was performing the services it never occurred to her that she should be paid for those services. The reason she did not . . . was that she was performing them in her role as the wife of the defendant, based upon the personal relationship which then existed between the parties").

40. (1984) 42 R.F.L. (2d) 154 (Alta. Q.B.).

41. (1986) 28 D.L.R. (4th) 754 (Sask. Q.B.).

over the relevant time period and reduced the resulting sum by 50 percent to reflect the fact that the plaintiff was working for her own benefit as well as that of the defendant. The award to the plaintiff in *Crispen* v. *Topham* is explicable on traditional theory. The plaintiff and defendant had a written agreement which provided for the sharing of living expenses. The court also accepted evidence that there was an oral agreement between the parties to the effect that both would share equally household duties and that neither party should be entitled to be unjustly enriched by benefits received from the other. Moreover, not only did the plaintiff carry out all the household duties, she also carried out work on the defendant's rental properties. In light of all this, it seems reasonable to say that the defendant knew or should have known that the plaintiff was not carrying out services gratuitously.

Herman v. *Smith* was disapproved by the Manitoba Court of Appeal in *Kshywieski* v. *Kunka Estate*.[42] Here the female plaintiff lived with the defendant and carried out "unexceptional household services" for him for approximately three years. The Manitoba Court of Appeal denied her claim for restitutionary relief. The Court reiterated traditional doctrine:[43]

> Unjust enrichment may exist where one person accepts services in a situation where he or she know or ought to know that the person giving the services expects to be compensated in some monetary way or by money's worth.

The recent decision of the British Columbia Court of Appeal, *Milne* v. *MacDonald Estate* [44] substantiates the *Kshywieski* case. Again, *quantum meruit* relief was denied the female plaintiff on the basis that:[45]

> Mrs. Milne rendered nursing services to Mr. MacDonald on the same basis as a person cares for a spouse, on the same basis as Mr. MacDonald had supported Mrs. Milne over the years. "Gratuitously", the term used by the trial judge, accurately describes the basis of the services Mr. MacDonald and Mrs. Milne rendered to one another.

Herman v. *Smith* was referred to by Dickson C. J. C. in *Sorochan* v. *Sorochan* [46] but *Sorochan* itself was clearly distinguishable in that there the plaintiff worked on the farm and in the house. She bore the defendant six children. Cohabitation lasted for 42 years. The defendant had indicated he would marry her. It was therefore not difficult for the court to come to the conclusion that "Mary Sorochan had a reasonable expectation of obtaining some share in the land in return for her long term commitment to working the farm and raising the six children."[47]

Has our society reached the stage that when two people choose to live together, it is the reasonable expectation of both that the one who cares for the house will be compensated in some monetary way or by money's worth? I suggest that it has not. I suggest that only where the work performed can be characterized as something more than "unexceptional household service", or where there has been some holding out of reward by the defendant that is relied on by the plaintiff, should a claim for *quantum meruit* succeed. I would suggest that *Herman* v. *Smith* is out of line with established authority and should not be followed.

42. (1986) 21 E.T.R. 229.
43. *Id.* at 233.
44. (1986) 3 R.F.L. (3d) 206.
45. *Id.* at 213 per Seaton J. A.
46. *Supra* n. 20 at 234.
47. *Id.* at 236.

IV. THE INTERRELATIONSHIP OF QUANTUM MERUIT AND CONSTRUCTIVE TRUST

At the outset of this paper, we refer to the two theories of unjust enrichment. The conservative approach is to see unjust enrichment as the rationale underlying various causes of action. The more modern approach is to see it as a cause of action in its own right. Whichever view is taken, unjust enrichment lies at the root of both constructive trust and *quantum meruit*. Unless there has been an unjust enrichment, the claimant for either remedy will fail.

Whether she is seeking a remedy by way of constructive trust or by way of *quantum meruit*, the plaintiff must establish unjust enrichment by proving:[48]

a. an enrichment (benefit of contribution/service)
b. a corresponding deprivation (providing contribution/service)
c. absence of any juristic reason for the enrichment
d. that the enrichment was unjust.

In *Kshywieski* v. *Kunka Estate* (a *quantum meruit* claim) O'Sullivan J. described unjust enrichment as "where one person accepts services in a situation where he or she knows or ought to know that the person giving the services expects to be compensated in some monetary way or by money's worth."[49] In *Pettkus* v. *Becker* (a claim for benefits under a constructive trust) Dickson C. J. C. described unjust enrichment in that context as "where one person . . . prejudices herself in a reasonable expectation of receiving an interest in property and the other person in the relationship freely accepts benefits conferred by the first person in circumstances where he knows or ought to have known of that reasonable expectation, it would be unjust to allow the recipient of the benefit to retain it."[50]

The crucial difference between the two remedies is that in a claim for benefits under a constructive trust, the services performed must be referrable to the property claimed to be the subject matter of the trust. If the services are *not* causally linked to the property claimed, the plaintiff may be recompensed on a *quantum meruit* basis albeit her expectation had not been wages but property.[51]

In *Sorochan* v. *Sorochan* Dickson C. J. C. outlined three factors he considered important in determining whether the plaintiff should be awarded an interest in property or monetary relief:[52]

a. Is there a causal connection between the contribution and the property in question? (This is a *sine qua non*.)
b. Did the claimant reasonably expect to receive an actual interest in property and was the respondent reasonably cognizant of this expectation?
c. Has the relationship between plaintiff and defendant endured for a significant period of time?

48. *Rathwell* v. *Rathwell*, *supra* n. 2; *Kshywieski* v. *Kunka Estate*. *Supra* n. 42.
49. *Supra* n. 42 at 237.
50. *Supra* n. 15 at 181.
51. *Deglman* v. *Guaranty Trust Co.* (1954) S.C.R. 725.
52. *Supra* n. 20 at 241.

The remedies are not exclusive. In *Sorochan* itself, the plaintiff was able to recover both an interest in land under constructive trust and damages by way of *quantum meruit*. It may be, however, that the remedy of constructive trust should not be imposed if *quantum meruit* provides an adequate remedy.[53]

V. CONCLUSION

The status of marriage involves a bundle of rights and obligations. Property rights are given by the Matrimonial Property Act, maintenance rights by the Domestic Relations Act and The Divorce Act and death benefits under Intestacy and Family Relief legislation. When a marriage breaks down, a spouse can claim against the property or income of the other under one or more of these statutes. The common law union, on the other hand, does *not* create status. Parties to such a union are given few rights under provincial or federal statutes. Yet such unions are on the increase. Unable to use the statutory provisions available to their married counterparts, cohabitants have sought other means to assert claims, one against the other, on the breakdown of their relationship. We have seen that the principle of unjust enrichment has risen to that need. It now provides remedies to recompense a cohabitant for both contributions to his or her partner's property and for services rendered.

53. *Ruff* v. *Strobel* (1978) 86 D.L.R. (3d) 284 at 293 (Alta. C.A.).