The Tribunal now turns to deal with the question of whether or not a tender of the benefits received is an integral part of any entitlement to restitution. Y, as has been seen, argues strongly that it is. X argues that it is not; and indeed X's primary contention is that having avoided the Maintenance Agreements, it is entitled ipso facto to restitution of all sums paid.

In considering this issue, the Tribunal starts by distinguishing between contracts that are void ab initio and contracts that are voidable, at the option of one or other of the parties. In South African law, an agreement is void for illegality if the making or the performance of it, or the ultimate purpose of both parties in contracting, is prohibited by statute or common law — that is to say, if it is contrary to public policy or is contra bonos mores. (See Robertson v. Randfontein Estates Gold Mining Company Limited 1925 AD 173 at 203). An example of an agreement being illegal because the making of it is prohibited, is the sale of merchandise prohibited by statute. An example of illegality when performance renders it so is an agreement to commit a crime. An example of both parties intending to further a purpose contrary to law is afforded by the case of a person giving a prosecutor an inducement not to prosecute for a crime. Such contracts are void because they are based on a turpis causa.

There are three situations. First, if a briber sues on a contract tainted by bribery, a court will non-suit the briber by reason of turpis causa. Secondly, if the wrongdoer sues instead on the basis of unjust enrichment, the Court might, depending on the circumstances and the briber's conduct, still non-suit him or grant him some compensation. The third situation is where the innocent party sues for restitution. In general, he must restore the benefits he has received under the contract, and if he cannot, he must make a monetary substitution — otherwise the guilty party will be ‘robbed’. In other words, the innocent party would be unjustly enriched by receiving back what he had parted with and keeping what he had received.
Referring Principles:

- IV.7.1 - Invalidity of contract that violates good morals ("<em>boni mores"</em>)
- IV.7.2 - Invalidity of contract due to bribery
- IX.1 - Basic rule