THE LAW OF RESTITUTION

By Sir Robert Goff and Gareth Jones

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The first edition of this treatise was published in the year 1966. Although the structure of this welcomed second edition does not differ markedly from that of the first, there are a number of changes in the substantive text. Some topics have disappeared. There are two new topics — benefits acquired in breach of another's confidence and benefits acquired by reprehensible means. There is a wider selection of American and Commonwealth cases. Another interpretation of the celebrated *Craven-Ellis*[1] case is offered "in place of the manifestly erroneous one of the first edition."[2] Altogether, few pages have escaped some minor revision.

The book refers to just over 100 Canadian cases and to more than a dozen Canadian law journal articles. But, as the authors point out, and as the reader must keep in mind, this is a treatise on English Law.

One of the first revisions to the text is the suggestion that the law is now sufficiently mature for the Courts to recognize, generally, a right to restitution. The combination of unjust impoverishment and unjust gain, it is posited, presents the strongest case for judicial intervention and relief. The principle of unjust enrichment presupposes three things: firstly, that the defendant has been enriched by the receipt of *a benefit;* secondly, that he has been so enriched *at the plaintiff's expense;* and thirdly, that it would be *unjust* to allow him to retain that benefit.

The treatise proceeds to deal next with three main heads: (1) where the defendant has acquired a benefit from or by the act of the *plaintiff;* (2) where the defendant has acquired from a *third party* a benefit for which he must account to the plaintiff; and (3) where the defendant has acquired a benefit through *his own* wrongful act. The authors conclude with a discussion of the defences to claims for restitution.

The law of restitution stands as part of the *corpus juris,* in its own right, outside the fields of contract, tort, and breach of fiduciary obligation. It transcends the boundaries of Common Law and Equity. Therefore, at this point, I think it is appropriate to suggest that Canadian students might do well to turn back to Dean Wright's reviews of Lord Wright's *Legal Essays and Addresses*[3] and Challies' *The Doctrine of Unjustified Enrichment in the Law of the Province of Quebec.*[4] Friedmann's "The Principle of Unjust Enrichment in English Law"[5] might also be perused. In this way, one would get a better perspective, encompassing, in however brief a form,

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1. *Craven-Ellis* v. *Canons Ltd.*, [1936] 2 All E.R. 1066 (C.A.).
2. Sir Robert Goff and G. Jones, *The Law of Restitution* (1978) vi.
3. (1940), 18 Can. B. Rev. 71.
4. (1940), 18 Can. B. Rev. 509.
5. (1938), 16 Can. B. Rev. 243 and 365.

the American, Quebec, and English views of just what is at stake in this body of law and equity.

Perhaps it is worthwhile to note that, at the other end of the time spectrum, the treatise does not refer to Palmer's *The Law of Restitution*[6] or to Oakley's little book *Constructive Trusts,*[7] for the simple reason that they were both also published in the year 1978. Also, the learned authors note that Finn's *Fiduciary Obligations*[8] came out too late to earn more than a single footnote.[9]

It is quite apparent that, over the course of the past 40 years or so, much progress has been made in rehabilitating and building upon Lord Mansfield's opinions of the 1700's, which were disposed of so abruptly at the turn of this Century.[10] Or, to put it another way, the maxim of the French Civil Law, "Nul ne peut s'enrichir aux depens d'autri", with its roots in the Roman law maxim "No one may enrich himself unjustly at the expense of another" — both stressed in Challies' *The Doctrine of Unjustified Enrichment in the Law of the Province of Quebec*[11] — can now be said to have gained substantial practical recognition in Common Law jurisdictions.[12]

Attention should now be directed to four *new* items: (1) the learned authors' "present understanding, in the light of the development of the case law in the past 12 years, of the scope of the principle of unjust enrichment";[13] (2) benefits acquired in breach of another's confidence;[14] (3) benefits acquired by reprehensible means;[15] and (4) another interpretation of *Craven-Ellis.*[16]

As to (1), the treatise draws attention to Friedmann's,[17] Samek's,[18] Fridman's,[19] and McLean's[20] writings on the principle of unjust enrichment, generally, and to a host of Canadian cases, including the Manitoba cases of *Matheson* v. *Smiley*[21] and *Simplot Chemical Co. Ltd.* v. *Govt. of*

6. This 4-Volume American treatise was reviewed in (1979), 9 Man. L.J. 335.
7. A.J. Oakley, *Constructive Trusts* (1978).
8. P.D. Finn, *Fiduciary Obligations* (1977).
9. *Supra* n. 2, at 490 n. 1.
10. *See e.g.,* W.R. Anson, *Principles of the English Law of Contract and of Agency in its Relation to Contract* (9th ed. 1899) 8 and 375.
11. This book, published in 1940, should be read by all Canadian law students; it is only a little more than 100 pages in length, and is recommended by Dean Wright in (1940), 18 Can. B. Rev. 509.
12. In Quebec, *See Cie Immobiliere Viger Ltee* v. *L. Giguere,* [1977] 2 S.C.R. 67, noted (1979), 9 Man. L.J. 335, at 341.
13. *Supra* n. 2, at 11 ff.
14. *Id.,* at 512 ff.
15. *Id.,* at 523.
16. *Id.,* at 302 ff.
17. *Supra* n. 5.
18. (1969), 47 Can. B. Rev. 1.
19. (1976), 8 Ottawa L. Rev. 156.
20. (1969), 4 U.B.C.L. Rev. 1.
21. [1932] 2 D.L.R. 787 (Man. C.A.) Also under Necessity, *see Davey* v. *Rural Municipality of Cornwallis,* [1931] 2 D.L.R. 80 (Man. C.A.).

Manitoba.[22] The Manitoba case of *MacIver* v. *American Motors (Canada) Ltd.*[23] is referred to later in the treatise.[24]

As to (2), benefits acquired in breach of another's confidence, the Canadian cases of *Polyresins*[25] and *International Tools*[26], both decided since the first edition, are cited.

As to (3), benefits acquired by reprehensible means, while no Canadian authorities are cited under this head, the law relating to privacy is dealt with, Canadian lawyers will want to consider this matter in the light of our legislation and case law on that subject. Helpful American authority is also referred to in this very short Chapter.

As to (4), another interpretation of *Craven-Ellis* (the learned authors having said in their preface that the interpretation in the first edition was "manifestly erroneous"), it is pointed out that this important decision of the English Court of Appeal in the year 1936 illustrates the difficulties which may arise in determining whether services, which have been rendered under a contract void for want of authority, have been freely accepted. Reference is, of course, made to Denning's celebrated law review article.[27] His rationalization is characterized as, "ingenious but it does not find any support from the facts of the judgments of the Court of Appeal."[28] The learned authors say, "What is clear is that the court was not prepared to allow the plaintiff's claim to founder on the technicalities of company law, when it was apparent that the company had incontrovertibly benefited from the services of a plaintiff who had acted unofficiously."[29]

Mr. Justice Goff and Dr. Jones have completely rewritten their commentary on *The Law Reform (Frustrated Contracts) Act* of 1943,[30] in light of *B.P. Exploration Co. (Libya) Ltd.* v. *Hunt,*[31] a decision of Mr. Justice Goff. This appears in the Appendix to the second edition. It is believed to be the first reported case dealing with the interpretation of that *Act.* The case was concerned with a contract for the exploration and development of an oil concession in Libya which was frustrated when the plaintiffs' interest in the concession was expropriated by the Libyan Government. There is much food for thought for Canadian lawyers in this appendixed portion of the book.

22. [1975] 1 W.W.R. 289, (Man. Q.B.); aff'd., [1975] 3 W.W.R. 480 (Man. C.A.).

23. (1976), 70 D.L.R. 473 (Man. C.A.).

24. *Supra* n. 2, at 393.

25. *Polyresins Ltd.* v. *Stain-Hall Ltd.* (1971), 25 D.L.R. (3d) 152 (Ont. H.C.).

26. *International Tools Ltd.* v. *Kollar* (1968), 67 D.L.R. (2d) 386 (Ont. H.C.).

27. (1939), 55 L.Q. Rev. 54.

28. *Supra* n. 2, at 304.

29. *Ibid.* Friedmann, in 1938, pointed out: "The underlying idea in the judgments of Greer and Greene L.JJ. was undoubtedly that of unjust enrichment. The defendant company had accepted the value of the services of the plaintiff and should not be allowed to profit by a technicality to have them for nothing." (1938), 16 Can. B. Rev. 243, at 250. *See also,* G.S. Challies, *The Doctrine of Unjustified Enrichment in the Law of the Province of Quebec* (1940) 112, noting the typographical error therein, where "control" should read "contract."

30. 6 & 7 Geo. 6, c. 40 (U.K.).

31. [1976] 1 W.L.R. 788; [1976] 3 All E.R. 879; [1976] 1 Lloyd's Rep. 471; 120 S.J. 469 (Q.B.). *See also B.P. Exploration* v. *Hunt* (No. 2), [1979] 1 W.L.R. 783 (Q.B.).

The book contains an apparently comprehensive Index (pp. 589-614) and a useful Bibliography of Principal Works Cited (pp. 585-588).

Close attention should be given to Chapter 40 on Statutes of Limitation and Laches. This, of course, must be studied in the context of the Manitoba Statutes and case law on time limitations in particular cases. If the threshold problem is simply to be able to recognize a restitution claim (or defence), close on the heels of that problem is the *legal or equitable time problem.* As restitutionary claims gain momentum in our legal system, it can be predicted (with some degree of confidence) that practitioners are in for more sleepless nights thanks to the specters raised by the unhappy state of the authorities in this largely unmarked mine-field.

One can say with confidence that the second edition of this treatise is a must for every working law library. If, in its use, it is coupled with the American treatise, *Palmer on Restitution* (having due regard to Lord Wright's and Dean Wright's favourable suggestions and observations 40 years ago on American works), the second edition of Goff and Jones will be of even greater value to Canadian judges, lawyers and students.

Perhaps a few words are in order to support this conclusion. Friedmann, 40 years ago, said, "the categories of unjust enrichment are never closed."[32] Challis, 40 years ago, concluded his book on the Quebec law with the statement, "It would be a great mistake to codify the law on this subject, for the doctrine of unjustified enrichment would lose the flexibility which is today [1940] its most important characteristic."[33]

The observations made by Mr. Justice Cartwright (as he then was) in the year 1954 that, "any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit"[34] was reinforced by the Supreme Court of Canada in the year 1965.[35] What are some of these cases? The following check-list may prove useful to students and practitioners alike:

1. Actions for money had and received;
2. Actions for money paid;
3. *Quantum meruit* claims;
4. *Quantum valebat* claims;
5. Claims in equity analagous to quasi-contractual claims to recover money paid under mistake;
6. Claims for breach of trust;
7. Equitable relief from undue influence as a rational extension of the limited relief which the common law provides in cases of duress;

32. *Supra* n. 5.

33. Challies, *Supra* n. 29, at 116.

34. *Deglman* v. *Guaranty Trust Co. of Canada and Constantineau,* [1954] 3 D.L.R. 785 (S.C.C.).

35. *County of Carleton* v. *City of Ottawa* (1965), 52 D.L.R. (2d) 220 (S.C.C.).

8. Catching bargains which may be set aside in equity as unconscionable;
9. Proprietary claims granted in equity to prevent unjust enrichment and to allow the plaintiff the additional advantages which spring from the recognition of a right of property;
10. Contribution;
11. Subrogation;
12. General average and salvage;
13. Relief from penalties and forfeitures;
14. Recovery of benefits under judgments subsequently set aside;
15. Conditional gifts;
16. Restitution of stolen property;
17. Secret trusts;
18. Aspects of rescission;
19. Aspects of rectification;
20. Frustrated contracts.

This is not, however, an exhaustive list — "the categories are never closed."

Including elements of the law of restitution, this article's remedial analysis will examine smart contracts considering 'traditional' contract law to understand and, where possible, test the legal legitimacy of this post-human technology, and explore the potential of smart contracts to supplement or, in time, supersede traditional contract law.Â In the article relation of claims of vindication and restitution is described. Based on the analysis of practice of law enforcement, foreign legislation and theoretical views, the author formulates general principle, according to which, more. In the article relation of claims of vindication and restitution is described. The law of restitution is the law of gains-based recovery. It is to be contrasted with the law of compensation, which is the law of loss-based recovery. When a court orders restitution it orders the defendant to give up his/her gains to the claimant. When a court orders compensation it orders the defendant to pay the claimant for his or her loss. American Jurisprudence 2d edition notes: Restitution â€" The law of restitution is the law of gains based recovery. It is to be contrasted with the law of compensation, which is the law of loss based recovery. Obligations to make restitution and obligations to pay compensation are each a type of legalâ€¦ â€¦ Wikipedia. Restitution â€" â€¢ An act of commutative justice by which exact reparation as far as possible is made for an injury that has been done to another Catholic Encyclopedia. Kevin Knight. 2006. Restitution Restitution â€¦ Catholic encyclopedia. restitution â€" resâ€§tiâ€§tuâ€§tion [ËŒrestî€ƒËˆtjuËÊ†î€…n Ç ËˆtuËÊ†î€…n] noun [uncountable] formal LAW the a In international law, however, the notion of restitution is linked with the issue of state responsibility. In this sense, restitution is one of the forms through which a state may discharge its obligation to provide reparation for the harm caused by its wrongful acts. More precisely, the term is used, in international practice, in at least two senses.Â The principles of restitution have been developed in the context of interstate relations. With the development of international human rights law and humanitarian law, however, some have come to believe that if individuals are the direct and ultimate holders of substantive rights under international law, they must also enjoy international remedial rights for obtaining redress when their rights have been infringed.