Title:
Lodder, Andrew, Enrichment in the Law of Unjust Enrichment and Restitution

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Introduction

[...] enrichment challenges the prevailing orthodoxy in a fundamental way. It shows that enrichment is not a unitary element satisfied by a single test; rather, the same benefit may be understood in two different ways: (i) by the value of the benefit received (‘factual enrichment’); or (ii) by the change in the legal relations of the defendant effected by the acquisition of a right or the release of an obligation (‘legal enrichment’).

[...]

I. Unjust Enrichment

A. A Theoretical Framework

All legal rights are responses to causative events. These causative events can be divided into the categories of consent, wrongs, unjust enrichment and ‘other events’ in what is often referred to as the ‘Birksian taxonomy’ of private law.

[...]

II. Restitution

This book takes the view that restitution is the reversal of the defendant’s enrichment. Restitution is a ‘gains-based’ response. It takes the form of a right or power to reverse the defendant’s enrichment at the claimant’s expense. Restitution is not restricted to giving that enrichment back to the claimant; it includes remedies that cancel or negate the enrichment received by the defendant.

[...]

7 Eg contracts, declarations of trust, gifts, conveyances and wills.
8 Eg torts, equitable wrongs, breach of contract and breach of statutory duty.
9 Enrichment at the expense of the claimant that is prima facie reversible due to the presence of an unjust factor: Pavey & Matthews v Paul (1987) 162 CLR 221 (HCA) 256–57 (Deane J); Portman BS v Hamlyn Taylor Neck [1998] 4 All ER 202 (CA) 206 (Millett LJ); Banque Financiere de la Cité v Parc (Battersea) Ltd [1999] 1 AC 221 (HL) 227 (Lord Steyn) 234 (Lord Hoffmann); Roxborough v Rothmans of Pall Mall Australia Ltd [2001] HCA 68, (2001) 208 CLR 516, 568 fn 257.

10Eg finder's rights, specification, accession and mixing.


Referring Principles:

- IX.1 - Basic rule
- IX.3 - Enrichment