Title:
IX.1 - Basic rule

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(a) If a party is unjustifiably enriched (enriched party) without any legal ground,

i) through performance by another, or

ii) in any other manner,

at the expense of another party (disadvantaged party), the enriched party is bound to render restitution to the disadvantaged party.

(b) Enrichments which are transferable must be restored in natura. Enrichments which are non-transferable must be restored by paying the sum of money equal to the value of the enrichment to be determined according to the contractually agreed price or market price, including full compensation for the use (usufruct) of the subject matter of the enrichment.

Commentary:

1 The Principle provides the basic rule for the restoration of an unjustified enrichment. Such enrichment may arise out of performance by one party, e.g. under an invalid contract (Subsection (a) i)), or the taking or using of an item or value without the consent of the party who is entitled to the taking or using of that item (Subsection (a) ii)). In both cases, the enrichment is unjustified if there is no legal ground which justifies the performance (e.g. a valid contract which obliges the party to perform) or the taking or using (e.g. a legal right to take or use).

2 The enrichment may constitute any kind of benefit by the enriched party. The enrichment of the party against whom the claim is raised must correspond to the disadvantage of the party who claims the restitution of the unjust enrichment. In the scenario envisaged in Subsection (a) i) this will be the parties to the contract. In the scenario envisaged in Subsection (a) ii) the parties need not have a prior legal relationship with each other.

3 Subsection (b) provides for the consequence of an unjust enrichment which meets the requirements established by Subsection (a). These consequences depend on whether the item which constitutes the enrichment is transferable or not. In the first case, the enriched party must re-transfer the item to the disadvantaged party. In the second case, the enriched party must pay to the disadvantaged party the objective value of the item to be calculated according to the criteria listed in Subsection (b).

4 The enriched party is not liable to restore the enrichment if it has a defense or disenrichment.