IX.2 - Circumstances in which an enrichment is unjustified

An enrichment is unjustified in case of transfers of money, goods or services made

i) on the basis of a contract or obligation or gratuitous disposition which is void or retrospectively avoided pursuant to Principle IV.7.3, or

ii) without legal capacity to make them, or

iii) under an express or implied reservation of a right of recovery, or

iv) for a purpose which is not realized or does not materialize.

Commentary:

1 The Principle provides a list of scenarios in which an enrichment must be considered as unjustified under the basic rule of unjust enrichment. The classical scenario is provided for by No. i) which relates to a contractual relationship that is void ab initio or has been rendered void retrospectively, e.g. through the exercise of a party's right to avoid the contract for mistake in fact or law, so that all transfers made by and between the parties under such contract are devoid of any legal ground and must be restored under the basic rule. A similar scenario is mentioned in No. ii). If a party has no legal capacity to render performance, the other party is unjustifiably enriched with respect to that performance.

2 Even if there is a legal basis for the enrichment under No. i) or ii), e.g. a contract, the enrichment is unjustified and must be restored under the basic rule in case where the party rendering the performance has made an express or implied reservation of a right of recovery or if that party's purpose which it has pursued with its performance has failed or its expectations connected with that performance have been disappointed (No. iv)).