IX.5 - Disenrichment

The enriched party is not liable to reverse the enrichment to the extent that the enriched party has sustained a disadvantage by disposing of the enrichment or otherwise (disenrichment), unless the enriched party would have had the same disadvantage even if the enrichment had not been obtained. This defense is not available when the enriched party did not act in good faith at the time of the disenrichment.

Commentary:

1 This Principle provides a defense of disenrichment to the enriched party. Such disenrichment may be caused either by the disposal of the enrichment by the enriched party (e.g. by spending the money or giving away the goods received) or, as a more general defense, by sustaining some other disadvantage. The underlying rationale of this Principle is that the enriched party must be allowed not to restore the enrichment in order to prevent it from being worse off as a result of the restitution of the enrichment as compared to its situation without the enrichment. It is for this reason that the defense is not available if the enriched party would have had the same disadvantage if the enrichment had not been obtained.

2 The Principle is subject to good faith and the defense under it is not available to the enriched party if that party did not act in good faith at the time of the disenrichment.