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# RESTITUTION – UNJUST ENRICHMENT

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## ACKNOWLEDGEMENTS

UBC's Point Grey Campus is located on the traditional, ancestral, and unceded territory of the xwməθkwəyəm (Musqueam) people. The land it is situated on has always been a place of learning for the Musqueam people, who for generations have passed on their culture, history, and traditions on this site.

This Syllabus was prepared with reference to the syllabi of Justice Geoffrey Gomery and Mr Peter Senkpiel (2019) and Professor Lionel Smith (2008 & 2019).

## COURSE AND CONTACT INFORMATION

Course Title	Course Code	Term	Credit Value	Teaching Times & Room
Restitution – Unjust Enrichment	LAW 436	Spring 2021	3	3:30pm–5:00pm, Mondays & Wednesdays Room 123 & <a href="#">Zoom</a>
Course Instructor	Email Address	Office Location	Office Hours	
Assistant Professor Samuel Beswick	<a href="mailto:beswick@allard.ubc.ca">beswick@allard.ubc.ca</a>	Allard Hall 444	1:00pm–1:30pm, Fridays via <a href="#">Zoom</a>	

## COURSE DESCRIPTION

The law of obligations concerns the legal rights and duties owed between people. Three primary categories make up the common law of obligations: tort (wrongs), contract (agreements), and unjust enrichment (unjustified gains). The law of unjust enrichment steps in when transactions go awry—when a defendant gains a benefit to the detriment of a plaintiff, and “there is no reason in law or justice for the defendant’s retention of the benefit conferred by the plaintiff” (*Kerr v. Baranow*, 2011 SCC 10, [2011] 1 SCR 269, [40]). Restitution—reversing the transaction—is the typical response to unjust enrichment.

This third category of the law of obligations is significant to all sorts of civil disputes—especially in the areas of mistaken payments or benefits, the division of family property, and failed commercial transactions. It is rapidly being developed in contemporary case law and scholarship. Yet, the law of unjust enrichment and restitution is often overlooked and misunderstood by lawyers. The objective of this course is to provide students with an understanding of the essential legal doctrine and controversies as they exist both in the classroom and courtroom.

## LEARNING OBJECTIVES

- Understand and apply the fundamental doctrine and concepts that underpin Canada’s modern unjust enrichment framework.
- Understand the core controversies and difficulties within the law of unjust enrichment today.

## MATERIALS

### **Required:**

- Casebook – order from the UBC Bookstore: [ISBN: 281000032365B](#). (Casebook page numbers are referenced in this syllabus with a reverse-pilcrow symbol: ¶).

**Optional reference reading:**Canada

- Geoffrey Gomery, “Unjust Enrichment”, ch.3 of *British Columbia Business Disputes* (CLEBC, 2016) ([CLE Online](#)) (a practitioner-oriented treatment of the subject).
- Peter Maddaugh & John McCamus, *The Law of Restitution* (Canada Law Book, 2004) (looseleaf) ([UBCL](#)) (a contextual “foxy” treatment of the subject).
- John McCamus, *An Introduction to Canadian Law of Restitution and Unjust Enrichment* (Thomson Reuters, 2020) ([TR Canada](#)) (a contextual “foxy” treatment of the subject).
- Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (LexisNexis, 2014) ([UBCL](#)) (a conceptual “hedgehog” treatment of the subject).
- G.H.L. Fridman, *Restitution* (2nd ed., Carswell, 1992) ([UBCL](#)) (out of date).
- George B. Klippert, *Unjust Enrichment* (Butterworths, 1983) ([UBCL](#)) (out of date).

Edited Compilation

- Elise Bant, Kit Barker and Simone Degeling (eds), *Research Handbook on Unjust Enrichment and Restitution* (Edward Elgar Publishing, 2020) ([UBCL](#)).

England & Wales

- Peter Birks, *Unjust Enrichment* (2nd ed., OUP, 2005) ([UBCL](#)).
- Andrew Burrows (ed), *A Restatement of the English Law of Unjust Enrichment* (OUP, 2013) ([UBCL](#)).
- Charles Mitchell, Paul Mitchell & Stephen Watterson (eds), *Goff & Jones: The Law of Unjust Enrichment* (9th ed., Sweet & Maxwell, 2016) ([UBCL](#)).
- Charles Mitchell, “Unjust Enrichment” in Andrew Burrows (ed), *English Private Law* (3rd ed., OUP, 2013) ([UBCL](#)).

United States

- American Law Institute, *Restatement (Third) of Restitution & Unjust Enrichment* (2011) ([UBCL](#)).
- Andrew Kull & Ward Farnsworth, *Restitution and Unjust Enrichment: Cases and Notes* (Wolters Kluwer, 2018) ([WK Legal](#)).
- “Developments in the Law: Unjust Enrichment” (2020) 133 Harv. L. Rev. 2062, 2062-2171 ([HLR](#)).

**TEACHING METHODS & EXPECTATIONS**Course Format

This course is structured around the modern Canadian case law on restitution for unjust enrichment. We will generally read one new case for each class, as indicated in **bold** font on the syllabus below. As we progress through the syllabus we will build up our understanding of the law both by reference to the new cases we encounter and by referring back to previously read cases. Our understanding will be supplemented by reading extracts from secondary sources, as indicated on the syllabus.

Case Briefs

Each student will be responsible for briefing one or two cases from the syllabus, which will be assigned at the start of the course. Case briefs will be stored as live documents in a shared drive accessible only to participants in our class. Students will prepare and upload an initial brief of their case(s) to the shared drive, and will amend and supplement their brief(s) as we progress through the syllabus. Students will also take turns giving a short presentation of their case briefs to the class over the course of the term.

The case brief and presentation are worth 20% of the final grade. (The final exam is worth 80%.) The shared case briefs will be a useful resource for exams. **Students must not share their case brief, or any other student’s case brief, with anyone other than those enrolled this term in LAW 436.**

### Teaching Tools

This course will be taught using:

- [Canvas](#)—where all course materials and announcements will be posted.
- Casebook and materials referenced in this syllabus.
- Case briefs uploaded to the course shared drive.
- [Zoom](#) video conferencing platform.

### Expectations

**Attendance and timeliness:** Students are expected to attend all classes and be present visually and audibly (this means online students should have their cameras on during class). Students should be punctual and should not leave classes early. If you are unable to attend a class, in part or in entirety, please send me a brief email. (I will read it, although I may not always be able to respond promptly.)

**Preparation:** Students should do the assigned readings ahead of class. Classes will be taught on the assumption that students have read the materials.

**Respect:** Students must treat each other with respect. This means treating people as you would like to be treated. Critique ideas, not each other. Be generous when others (are perceived to) make mistakes. Remember that you do not know peoples’ past experiences, so try not to make assumptions about them.

**Communication:** I encourage participation and questioning. If something is unclear, please let me know—either by speaking up during class or attending my office hours. So that everyone has a fair opportunity to receive content about the course, I prefer not to respond to individual questions by email.

**Distractions:** Do not distract yourself or others during class. Cell phones and music devices must be switched off. Web browsing, social media, email, etc, are prohibited during class time. Students who break this rule may be asked to leave the class.

**Help:** Students are encouraged to work together in study groups to prepare for classes and exams, subject to the University’s strict Plagiarism Policy (below). Your first port of call when grappling with questions in this course should be each other. You should also feel free to reach out to me.

Look out for your, and each other’s, wellbeing. If you or someone you know is struggling, there are a wealth of [Wellbeing Services](#) at Allard Law. Your tuition helps to provide these resources, so use them!

### EVALUATION

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80% open book examination.

20% class participation based on briefing a case on the syllabus and presenting it to the class.

The [Examination & Grading Rules](#) are posted on the Allard Law website, as are [past exams](#).

## SCHEDULE OF TOPICS AND READINGS

## Overview of Topics

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10	Separate “Unjust Factors” Frameworks in Canada?.....	9
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## 1 Introduction

- Lord Denning, “Book Review: The Law of Restitution” (1967) 83 L.Q.R. 277: ¶230-231.
- Chaim Saiman, “Restitution in America: Why the US Refuses to Join the Global Restitution Party” (2008) 28 OJLS 99, 99-103: ¶232-236.
- Geoffrey Gomery, “Unjust Enrichment” in CLEBC (ed), *British Columbia Business Disputes* (2016), 3-3: ¶237.

## 2 Making Sense of the Law

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC): ¶1-17.
- Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (LexisNexis, 2014), 225-227: ¶245-247.
- Andrew Burrows, *A Restatement of the English Law of Unjust Enrichment* (OUP, 2013), 9-16 (SKIM): ¶250-257.

## 2.1 Canada’s Unjust Enrichment Framework

1. Benefit (enrichment) of the defendant ( $\Delta$ )
2. Corresponding deprivation of the plaintiff ( $\Pi$ )
3. (Absence of) juristic reason for the enrichment:
  - a. Absence of juristic reason ( $\Pi$ 's burden of proof)
    - [Presence of unjust factor(s)?]
  - b. Absence of residual reason for  $\Delta$ 's retention ( $\Delta$ 's burden of proof)

3 Benefit (enrichment) of  $\Delta$ 

- Peter Birks, *Unjust Enrichment* (2nd ed., OUP, 2005), 49-63, 71: ¶258-273.

### 3.1 Objective benefit? (II's burden of proof)

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB); *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA): ¶18-30.

### 3.2 Subjective value of the benefit to Δ? (Δ's burden of proof)

- Lionel Smith, "Restitution: A New Start?" in Peter Devonshire & Rohan Havelock (eds), *The Impact of Equity and Restitution in Commerce* (Hart, 2018), 101-103: ¶284-286.

#### 3.2.1 Autonomy: Request; free acceptance; readily returnable benefit

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB), [44]-[55]; *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA), [13]-[18]: ¶24, 29-30.

#### 3.2.2 Incontrovertible benefit

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [34]-[52]: ¶9-14.
- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB), [44]-[55]; *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA), [13]: ¶24, 29.
- *Steved Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91: ¶31-42.

#### 3.2.3 Subjective devaluation

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB), [44]-[55]; *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA), [13]: ¶24, 29.
- *Steved Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91, [52]-[64]: ¶38-41.

#### 3.2.4 Primary benefit, not incidental collateral benefit

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [53]-[55], [62]: ¶14-16.

## 4 Corresponding Deprivation of II

- John D. McCamus, "Moore v Sweet: Four Lessons in Unjust Enrichment from the Supreme Court of Canada" (2020) 98 Can. Bar Rev. 109, 123-128: ¶301-307.
- Matthew P. Harrington, "Leapfrogging, Risk and Unjust Enrichment in Canada after *Moore v. Sweet*" (2020) 96 (2d) S.C.L.R. 191, 196-201: ¶320-325.

### 4.1 Correspondence: Standing to sue

#### 4.1.1 Correspondence in the nature of benefit and deprivation

- *Moore v. Sweet*, 2018 SCC 52: ¶43-64.

#### 4.1.2 Cases of direct subtraction of benefit from plaintiff

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB), [2], [52]-[56]; *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA), [13]: ¶26-27, 29.

#### 4.1.3 Cases of interceptive subtraction of benefit

- *Moore v. Sweet*, 2018 SCC 52, [41]-[53], [100]-[113]: ¶47-49, 56-59.

#### 4.1.4 Cases of indirect subtraction (payment through intermediaries)

- *Sun Rype Products Ltd v. Archer Daniels Midland Co.*, 2013 SCC 58: ¶65-73.

#### 4.1.5 Cases of Indirect Benefits

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [34]-[55]: ¶9-15.

#### 4.2 Deprivation: Quantification of restitution

- *Moore v. Sweet*, 2018 SCC 52, [41]-[53], [100]-[113]: ¶47-49, 56-59.
- *Sun Rype Products Ltd v. Archer Daniels Midland Co.*, 2013 SCC 58, [1]-[3], [33]-[38]: ¶66, 71-72.

### 5 (Absence of) Juristic Reason

- *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 SCR 629: ¶240-243.
- Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (LexisNexis, 2014), 210-216: ¶238-244.
- Lionel Smith, "Demystifying Juristic Reasons" (2007) 45 Can. Bus. L.J. 281: ¶326-349.

#### 5.1 Gift (donative intent)

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB), [2], [57]; *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA), [14]: ¶18, 27, 29.
- *Pacific National Investments Ltd. v. Victoria City*, 2004 SCC 75: ¶74-85.
- *Law and Equity Act, R.S.B.C. 1996, c. 253, s. 59(5)*: ¶220.

#### 5.2 Contract

##### 5.2.1 Contract never made

- *Steved Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91, [23], [25], [38]-[46]: ¶34, 36-38.

##### 5.2.2 Contract discharged for breach: services rendered

- *Pacific National Investments Ltd. v. Victoria City*, 2004 SCC 75, [8], [28]-[30]: ¶76, 80-81.

##### 5.2.3 Contract discharged for breach: money paid

- *Kim v. Choi*, 2020 BCCA 98: ¶86-101.

##### 5.2.4 Contract discharged by frustration

- *Frustrated Contract Act, R.S.B.C. 1996, c. 166, ss. 5 and 6*: ¶218-219.

##### 5.2.5 Contract unenforceable; void or voidable; illegal; unconscionable

- *Pacific National Investments Ltd. v. Victoria City*, 2004 SCC 75, [28]-[43]: ¶80-83.
- *Kim v. Choi*, 2020 BCCA 98, [33]-[82]: ¶92-101.
- *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19: ¶102-110.

#### 5.3 Disposition of Law (statute)

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [11]-[13]: ¶3-4.
- *Moore v. Sweet*, 2018 SCC 52, [54]-[82], [114]-[138]: ¶49-53, 59-63.
- *Pacific National Investments Ltd. v. Victoria City*, 2004 SCC 75, [44]-[47]: ¶83-84.
- *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [39]-[48]: ¶106-108.
- *Gladstone v. Canada*, 2005 SCC 21: ¶111-116.

#### 5.4 Other Valid Obligation/Purpose

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB); *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA), [17]-[18]: ¶30.
- *Pacific National Investments Ltd. v. Victoria City*, 2004 SCC 75, [50]-[52]: ¶84.
- *Kerr v. Baranow*, 2011 SCC 10: ¶117-139.
- Family Law Act, S.B.C. 2011, c. 25, s.81: ¶221-225.
- “Restitution at Home: Unjust Compensation for Unmarried Cohabitants’ Domestic Labor” (2020) 133 Harv. L. Rev. 2124, 2124-2128, 2146-2147: ¶381-386.

### 6 (Absence of) Residual Reason for Δ’s Retention (Δ’s burden of proof)

- Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (LexisNexis, 2014), 229: ¶249.

#### 6.1 Parties’ Reasonable Expectations

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [62]-[63]: ¶16.
- *Steved Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91, [38]-[45]: ¶36-37.
- *Pacific National Investments Ltd. v. Victoria City*, 2004 SCC 75, [53]-[58]: ¶85.
- *Kerr v. Baranow*, 2011 SCC 10, [117]-[124], [151]: ¶133-135, 137-138.

#### 6.2 Public Policy

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [56]-[65]: ¶15-16.
- *Moore v. Sweet*, 2018 SCC 52, [83]-[88], [139]-[143]: ¶53-54, 63-64.

### 7 Defences

#### 7.1 Change of Position by Δ (Disenrichment) & Estoppel

- *RBC Dominion Securities Inc. v. Dawson*, 1994 CanLII 4525, (1994) 111 DLR (4th) 230 (Nfld CA): ¶140-147.
- Charles Mitchell, “Unjust Enrichment” in Andrew Burrows (ed), *English Private Law* (3rd ed., OUP, 2013), 1078-1081: ¶387-390.

#### 7.2 Passing On by Π (Disempoverishment)?

- *Sun Rype Products Ltd v. Archer Daniels Midland Co.*, 2013 SCC 58, [10], [16]-[27]: ¶67-70.
- *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57: ¶148-161.
- Charles Mitchell, “Unjust Enrichment” in Andrew Burrows (ed), *English Private Law* (3rd ed., OUP, 2013), 1090-1092: ¶399-401.
- Lionel Smith, “The State of the Law of Unjust Enrichment in Common Law Canada” (2015) 57 Can. Bus. L.J. 39, 51-53: ¶439-441.

#### 7.3 Illegality

- *Kim v. Choi*, 2020 BCCA 98, [33]-[74]: ¶92-98.
- Charles Mitchell, “Unjust Enrichment” in Andrew Burrows (ed), *English Private Law* (3rd ed., OUP, 2013), 1095-1097: ¶404-406.

#### 7.4 Assumption of Risk

- *Stevedoring Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91, [7]-[18]: ¶32-33.
- *Moore v. Sweet*, 2018 SCC 52, [84], [103], [120]-[127]: ¶53, 57, 59-61.
- Lionel Smith, “Demystifying Juristic Reasons” (2007) 45 Can. Bus. L.J. 281, 291, 297-299: ¶342-344.

#### 7.5 Limitation and Laches

- *Louie v. Lastman*, 2001 CanLII 28066, (2001) 199 D.L.R. (4th) 741 (ON SC); *aff'd*, 2002 CanLII 45061, (2002) 217 D.L.R. (4th) 269 (ON CA): ¶162-169.
- Limitation Act, S.B.C. 2012, c. 13, ss.6-8: ¶226-227.
- Charles Mitchell, “Unjust Enrichment” in Andrew Burrows (ed), *English Private Law* (3rd ed., OUP, 2013), 1092-1095: ¶401-404.
- Samuel Beswick, “Retroactive Adjudication” (2020) 130 Yale L.J. 276, 347-353: ¶411-417.

## 8 Remedies

### 8.1 Personal (*in personam*)

- Katy Barnett, “Restitution, Compensation and Disgorgement” in Elise Bant, Kit Barker and Simone Degeling (eds), *Research Handbook on Unjust Enrichment and Restitution* (Edward Elgar Publishing, 2020), 456-464: ¶418-426.

#### 8.1.1 Money

- *Gidney v. Shank*, 1995 CanLII 16455, [1995] 5 WWR 385 (MB QB), [60]-[67]; *rev'd*, 1995 CanLII 16347, [1996] 2 WWR 383 (MB CA): ¶24-28.
- *RBC Dominion Securities Inc. v. Dawson*, 1994 CanLII 4525, (1994) 111 DLR (4th) 230 (Nfld CA), [30]-[43]: ¶145-147.
- *BMP Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15: ¶170-182.

#### 8.1.2 Accounting of profits

- *Kerr v. Baranow*, 2011 SCC 10, [67]-[69]: ¶127.

#### 8.1.3 Interest

- *Gladstone v. Canada*, 2005 SCC 21, [16]-[22]: ¶113-115.
- *RBC Dominion Securities Inc. v. Dawson*, 1994 CanLII 4525, (1994) 111 DLR (4th) 230 (Nfld CA), [45]: ¶147.

#### 8.1.4 Disgorgement

- *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [23]-[30]: ¶104-106.

### 8.2 Proprietary (*in rem*)

#### 8.2.1 Resulting trust

- *Kerr v. Baranow*, 2011 SCC 10, [24]-[29]: ¶119-120.
- Lionel Smith, “The State of the Law of Unjust Enrichment in Common Law Canada” (2015) 57 Can. Bus. L.J. 39, 53-55: ¶441-443.

#### 8.2.2 Constructive trust

- *Stevedoring Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91, [71]-[75]: ¶41-42.
- *Moore v. Sweet*, 2018 SCC 52, [89]-[96], [99]: ¶54-56.
- *Gladstone v. Canada*, 2005 SCC 21, [28]: ¶115.



- *Kerr v. Baranow*, 2011 SCC 10, [50]-[86]: ¶124-130.
- *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57, [90]-[92]: ¶160-161.
- *BNSF Railway v. Teck Metals Ltd.*, 2015 BCSC 1082; *rev'd*, 2016 BCCA 350: ¶183-204.
- John D. McCamus, “*Moore v Sweet: Four Lessons in Unjust Enrichment from the Supreme Court of Canada*” (2020) 98 Can. Bar Rev. 109, 134-139: ¶313-318.
- Bruce H. Ziff *et. al.* (eds), *A Property Law Reader: Cases, Questions and Commentary* (4th ed., Thomson Reuters, 2016), 487-489: ¶446-448.
- Mitchell McInnes, “Interceptive Subtraction, Juristic Reasons and Constructive Trusts: Unjust Enrichment in the Supreme Court of Canada” (2019) 62 Can. Bus. L.J. 277, 301-304: ¶449-452.

### 8.2.3 Tracing

- *BMP Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15, [14]-[19], [75]-[88]: ¶179-181.
- *BNSF Railway v. Teck Metals Ltd.*, 2015 BCSC 1082; *rev'd*, 2016 BCCA 350, [57]-[64]: ¶195-198.
- Lionel Smith *et. al.* (eds), *The Law of Restitution in Canada: Cases, Notes, and Materials* (Emond Montgomery, 2004), 328-331: ¶453-456.

### 8.2.4 Rescission

- *Louie v. Lastman*, 2001 CanLII 28066, (2001) 199 D.L.R. (4th) 741 (ON SC), [6], [44]; *aff'd*, 2002 CanLII 45061, (2002) 217 D.L.R. (4th) 269 (ON CA), [13]-[22]: ¶163, 165, 167-168.

## 9 Restitution in Public Law

- *Peel Municipality v. Canada & Ontario*, 1992 CanLII 21, (1992) 98 DLR (4th) 140 (SCC), [62]-[65]: ¶16.
- *Kingstreet Investments Ltd. v. New Brunswick*, 2007 SCC 1: ¶205-217.
- Crown Proceeding Act, R.S.B.C. 1996, c. 89, s.2: ¶228-229.
- Lionel Smith, “The State of the Law of Unjust Enrichment in Common Law Canada” (2015) 57 Can. Bus. L.J. 39, 46-47: ¶434-435.
- Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution* (3rd ed., MacMillan & Co., London, 1889): ¶457-460.

## 10 Separate “Unjust Factors” Frameworks in Canada?

- *BMP Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15, [10]-[25]: ¶172-176.
- *BNSF Railway v. Teck Metals Ltd.*, 2015 BCSC 1082; *rev'd*, 2016 BCCA 350, [31]-[34], [83]: ¶189-190, 203-204.
- *International Longshore & Warehouse Union Local 502 v. Ford*, 2016 BCCA 226, [CanLII](#).
- Lionel Smith, “The State of the Law of Unjust Enrichment in Common Law Canada” (2015) 57 Can. Bus. L.J. 39, 43-57: ¶431-445.

## 11 Debates and Controversies

- Graham Virgo, “‘All the World’s a Stage’: The Seven Ages of Unjust Enrichment” (Sep. 2016): ¶461-472.
- Steve Hedley, “‘And So the Legal World Goes Round’: The Search for a Meaningful Law of Restitution” (Oct. 2016): ¶473-480.
- Lionel Smith, “Restitution: A New Start?” in Peter Devonshire & Rohan Havelock (eds), *The Impact of Equity and Restitution in Commerce* (Hart, 2018) (OPTIONAL): ¶274-300.

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## 12 Exam Review

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- TBC.

### AUDIO/VIDEO RECORDING POLICY

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**Students are not permitted to record classes without the Professor's written permission.**

Classes will be recorded through Zoom but consistent access to recordings will only be made available to students whose requests for this academic concession enclose a letter of request from the [UBC Centre for Accessibility](#) or your [Allard Law Advisor](#). One-off access to a class recording (because, e.g., a student's online connection failed) may be sought and given to students who email me directly after class. Any student given access to class recordings may only use them for their own study purposes, may not share them with others, and must delete any links to and copies of the recordings once they have viewed them or, if necessary, once they have sat the final exam. Office hours, which are optional, will not be recorded.

Recordings will not be made available to the class generally because (1) I expect you to attend classes at the scheduled times, and (2) our class will be interactive, and I do not want students to feel self-conscious about speaking in class and there being permanent recordings.

### UNIVERSITY POLICIES

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#### Academic Integrity

All UBC law students are subject to [the University's rules on Academic Misconduct](#) and are expected to act with academic integrity at all times.

Students should be especially aware of the University's rules in relation to academic offence of plagiarism. Plagiarism includes: copying the work of another student; copying or paraphrasing from a textbook or reference book, journal article, case or electronic source without proper footnoting; copying your own work that has already been submitted for another course; and, passing off the ideas of another person as your own. If you plagiarize, you will be subject to penalties set out in the UBC calendar.

Academic honesty is an essential requirement in an institution of higher learning. Academic misconduct may have serious implications not only for your education, but also for your future career in law. Students are encouraged to consult [the University's Resources Guide on Academic Integrity](#).

If you would like to learn more about academic misconduct, visit [the UBC Library's website on Academic Integrity](#). Examples of academic misconduct can also be found in [the UBC Annual Report on Student Discipline](#).

#### Student Support

UBC provides resources to support student learning and to maintain healthy lifestyles but recognizes that sometimes crises arise and so there are additional resources to access including those for survivors of sexual violence. UBC values respect for the person and ideas of all members of the academic community. Harassment and discrimination are not tolerated nor is suppression of academic freedom. UBC provides appropriate accommodation for students with disabilities and for religious observances. UBC values academic honesty and students are expected to acknowledge the ideas generated by others and to uphold the highest academic standards in all of their actions.

Details of the policies and how to access support are available on [the UBC Senate website](#). Students can also be supported by UBC's [Early Alert](#) service.

You should also consult Allard Law's resources for [Student Wellbeing](#).

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