

1. Record Nr.	UNINA9910454316203321
Autore	Baloch Tariq A (Tariq Ali), <1978->
Titolo	Unjust enrichment and contract / Tariq A. Baloch
Pubbl/distr/stampa	Oxford ; Portland, Oregon, : Hart Publishing, 2009
ISBN	1-4725-6040-X 1-282-26312-9 9786612263125 1-84731-498-8
Edizione	[1st ed.]
Descrizione fisica	1 online resource (232 p.)
Disciplina	346.029
Soggetti	Unjust enrichment Unjust enrichment - Great Britain Contracts Contracts - Great Britain Electronic books.
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references (pages 191-201) and index
Nota di contenuto	Introduction -- 1. An Historical Analysis of the Independence of Unjust Enrichment -- III. Introduction -- II. Myth, Mystery and Illusion -- A. The Two Senses of 'Contract': a Source of Rights and as a Method of Classification -- B. Procedure and the Development of Indebitatus Claims -- III. Development of the Law before Moses v Macferlan -- A. Holt CJ and Indebitatus Claims -- B. Role of Equity in the Development of the Law -- C. Encouraging Indebitatus Claims -- IV. Lord Mansfield's Decision in Moses v Macferlan -- V. The Period After Moses v Macferlan -- A. Case Law -- B. Legal Discourse -- VI. Learning from the Past: Concluding Comments -- 2. Rejecting the Role of Unjust Enrichment in the Contractual Context -- I. Introduction -- II. A Critical Appraisal of the Three Models -- A. Kull and the Third Restatement of Restitution -- B. Hedley -- C. Jaffey -- III. Conclusion -- 3. What is the Best Organisation for the Law of Unjust Enrichment: Unjust Factors or Absence of Basis? -- I. Introduction -- II. New Birksian Approach -- A. Objective and Subjective Tests of 'Basis' -- B. Notion of Basis -- C. Greater Unity -- III. The Pyramid -- A. Wrong reasons: the Swaps Cases

-- B. Wrong Basis: CTN Cash and Carry v Gallaher -- C. Clashing Obligations: Roxborough v Rothmans of Pall Mall Australia Ltd -- D. Enhancing Choice: Deutsche Morgan Grenfell v Inland Revenue Commissioners -- IV. Three Criticisms of the New Birksian Approach -- A. By-Benefits -- B. Negative Formulation -- C. Retrospectivity of Termination -- V. Conclusion -- 4. The Role of Unjust Enrichment in the Contractual Context: an Introduction to Chapters 5 and 6 -- I. Background -- II. The Model Proposed in this Book -- III. Overview of Chapters 5 and 6 -- 5. Historical Foundations of the Modern Law of Unjust Enrichment in the Contractual Context -- I. Introduction -- II. Evolution of the Dominant Model -- A. Background: Independency -- B. Antecedents of Kingston and Boone -- C. The Boone Principle in Detail -- D. Reception of Boone and Establishment of the Dominant Model -- III. Rescission and Total Failure of Consideration -- A. Total Failure of Consideration -- B. Rescission -- IV. Apportioned Contracts and Quantum Meruit -- A. Apportioned Contracts -- B. Quantum Meruit -- V. Conclusion -- 6. The True Role of Unjust Enrichment in the Contractual Context -- I. Introduction -- II. Core Principles -- A. Meaning of 'Condition' -- B. A Qualifying Failure of Condition -- C. Accrued Rights -- D. Prevention -- III. Distinctiveness of Quantum Meruit -- A. Infringing the Freedom of Choice -- B. Entire Contracts -- C. Valuation -- IV. Unenforceable Contracts and Claims by the Party in Breach. -- V. Failure of Condition and Absence of Basis -- VI. Restitution upon Failure of Condition: Contract or Unjust Enrichment? -- VII. Conclusion -- Conclusion

## Sommario/riassunto

This book examines the role of unjust enrichment in the contractual context, defined as contracts which are (a) terminated for breach, or (b) subsisting, or (c) unenforceable. The book makes three claims in relation to the orthodox common law account of restitution (founded on unjust enrichment) in the contractual context. Firstly, the orthodox account correctly proceeds on the basis that the restitutionary claim in the contractual context is founded on an independent cause of action in unjust enrichment, rather than some equitable notion of unconscientiousness or the law of contract. Secondly, the book departs from the orthodox account by rejecting the unjust factors approach and endorsing the absence of basis approach for the law of unjust enrichment. Finally, the book argues that the right to restitution in the contractual context should be determined by the conditionality of the transfer of the benefit rather than a requirement such as the termination of the contract, as the orthodox account dictates. To that end the book proposes the following model, under which the right to restitution in the contractual context is determined by the resolution of the following two questions: (1) Was the transfer of the benefit (eg of money or services) conditional? (2) Was there a qualifying failure of condition? A condition can be, and often is, the other contracting party's counter-performance, but it may also be an event not promised by either party. What qualifies as a failure of condition depends on the type of contract in question. This book identifies two types of contracts, namely those which are apportioned (eg instalment contracts) and those which are unapportioned. It is only in relation to the latter that termination is required. It is a particular strength of the book that it is underpinned by detailed and original historical analysis which makes a novel and distinct contribution to the history of the laws of unjust enrichment and contract. 'Dr Baloch has produced the definitive study of the inter-relationship between contract and unjust enrichment. This has been achieved by carefully considering the historical roots of our common law, and how this is to be understood in its best light in the modern era.' Robert H Stevens, University College,

London. 'Dr Baloch's exploration of the boundary between contractual and unjust enrichment liability in the 17th to 19th centuries has important things to say about the history of ideas of 'contract' in this period.' Mike Macnair, Oxford University. 'This is an innovative and rigorous book which engages with one of the most difficult areas in the law of unjust enrichment, namely the relationship between the law of unjust enrichment and the law of contract. Baloch roots his treatment of the modern law in its history and the historical analysis throughout is very careful and well grounded in the primary sources.' David Ibbetson, Cambridge University. 'This is a valuable book, thoughtful and well researched. It is concerned to build a model that fits comfortably with the cases, and its focus is on the work of modern commentators. Those concerned with the relationship of contract and the law of restitution whether at a theoretical level or in practice will benefit by careful study of what Dr Baloch has to say, whether or not they agree with it.' Jack Beatson, Royal Courts of Justice, 14 February 2009 (From the foreword)

---