

# Law of Restitution

by *George E. Palmer*

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The prevention of unjust enrichment is a fundamental legal principle manifested explicitly in contract, tort, and much of the common law. *Law of Restitution* is a comprehensive guide that provides in-depth coverage of the substantive and remedial aspects of the law of restitution — one of the most important bases of legal liability.

Providing insightful analysis of principles and practical, expert advice on a wide range of legal and equitable remedies that can be used to redress unjust enrichment, *Law of Restitution* is an invaluable practice tool.

## Highlights of the 2005 Cumulative Supplement No. 1

*Supplement prepared by Lawrence Kaplan*

The 2005 Cumulative Supplement No. 1 includes discussion of many recent developments in the law of restitution and adds significant new and revised material on a number of critical topics including:

- The significance of the beneficiary's knowledge that services were performed with an expectation of payment as an element of *quantum meruit*. See Sections 1.1, 10.4(a).
- Additional cases analyzing the law–equity distinction in the unjust enrichment context. See Section 1.1.
- Numerous new cases in a variety of contexts determining whether the existence of an express contract governing the dispute will preclude relief based on unjust enrichment. See Section 1.1.
- Review of the elements of a claim for promissory estoppel. See Section 1.2.
- The use of resulting trusts and the distinction between resulting and constructive trusts. See Sections 1.3, 6.7(a).

- Applicability of constructive trusts to a wide range of circumstances, and limitations upon the availability of the remedy. *See* Sections 1.3, 1.4, 2.19.
- Prerequisites to the assertion of a right of subrogation in various jurisdictions. *See* Sections 1.5(b), 10.2, 23.9(a).
- Limits on the use of equitable accounting. *See* Section 1.5(c).
- Several cases denying relief despite the enrichment of defendant at plaintiff's expense where the enrichment could not be deemed "unjust." *See* Sections 1.7, 6.1(a).
- Other cases denying relief despite the impoverishment of plaintiff where the defendant was not enriched. *See* Sections 1.8, 9.9(b).
- New cases examining the applicability of a cause of action for conversion in controversies involving banking, real property, trade secrets and sales commissions. *See* Section 2.2(a).
- Applicability of the discovery rule to claims in *quantum meruit*, restitution and unjust enrichment. *See* Section 2.3(c).
- Several cases discussing the nature of the relationship between the parties required to support a claim for disgorgement. *See* Section 2.11.
- The measure of damages available to a building contractor on a *quantum meruit* claim. *See* Section 4.2.
- Effect of a "hell or high water" contractual provision upon the right to claim unjust enrichment. *See* Section 4.5(d).
- Exclusion from a bankruptcy estate of an individual retirement account, held by a debtor in bankruptcy, subject to a constructive trust. *See* Section 4.10(b).
- Application of section 374 of the Restatement (Second) of Contracts to permit a contract breaker to obtain restitution. *See* Section 5.1.
- Unavailability of an unjust enrichment cause of action by a disappointed bidder on a government contract against a successful bidder for the value of the contract. *See* Section 6.1(a).

- Preclusion of quasi contract recovery when a home improvement contract is void for statutory violations. *See* Section 8.3(a).
- A California Supreme Court decision allowing *quantum meruit* recovery when two law firms negotiated a fee-sharing agreement without complying with the client consent requirement. *See* Section 8.4(b).
- Numerous new cases discussing the right to indemnification or to contribution under a variety of circumstances. *See* Section 10.6(c).
- Extension of the conditional gift doctrine, used most often in the context of gifts given in anticipation of marriage, to other familial and charitable contexts. *See* Section 18.4.
- An opinion based on California law, refusing to equitably extend the slayer's rule to a contingent beneficiary of the slayer's life insurance policy. *See* Section 20.16.

The Table of Cases and Index have been completely updated for this supplement.

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