

# UNJUST ENRICHMENT AND RESTITUTION ASSESSMENT IN SAUDI CIVIL LAW

Ali Salem Ali Al-Marri \*

\* Department of Private Law, Faculty of Law, King Faisal University, Al Ahsa, Saudi Arabia  
Contact details: Department of Private Law, Faculty of Law, King Faisal University, P. O. Box 400, 31982 Al Ahsa, Saudi Arabia



## Abstract

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This study aims to clarify the theory of unjust enrichment as an independent source of obligation when filing a case for unjust enrichment, with particular focus on its incorporation into the new Saudi Civil Transactional Law. Using a descriptive methodology, the study delineates for Saudi lawyers, legal practitioners, and law students a framework for identifying incidents of unjust enrichment and applicable methods of restitution. It charts the evolution of the theory, defines the conditions under which unjust enrichment arises, and categorizes its various forms, which can involve money, services, or other benefits. It clarifies the procedural requirements when submitting an unjust enrichment claim to the courts and explains how restitution is assessed. By addressing a critical gap in the literature, this study enhances understanding of how unjust enrichment operates within Saudi civil law, which is rooted in Shariah principles. Its findings offer a detailed analysis of its theoretical basis and its distinction from related doctrines such as undue payment. Based on this analysis, it calls for stronger legal education on unjust enrichment and legislative reforms, including a dedicated restitution law, clearer assessment criteria, a shorter statute of limitations, and penalties for unreported cases.

**Keywords:** Unjust Enrichment, Restitution, Civil Law, Source of Obligation, Impoverishment, Litigation, Assessment

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## 1. INTRODUCTION

Legal opinion on restitution and its relationship to unjust enrichment varies. Saudi civil law has recently affirmed this relationship through Article 144 of the Civil Transactions Law (Royal Decree No. M/191, 2023), which states that a person who benefits from unjust enrichment at another's expense is liable to provide restitution, but only up to the amount they have gained. This form of restitution should not be confused with cases involving the misappropriation of public funds or the theft of money by someone to whom it has been entrusted.

Saudi civil law provides remedies for disputes involving unjust enrichment or unjust benefit, both of which are rooted in the principle of restitution. However, while restitution aims to reverse unjust enrichment by requiring the enriched party to return the benefit gained at another's expense, its application in such cases is not always straightforward. The law considers various factors, including whether the enrichment was legally justified or whether another remedy is more appropriate. Thus, while restitution generally seeks to correct unjust enrichment, its implementation can be complex and context-dependent (Burrows, 2012).

Although there is extensive global literature and Islamic jurisprudence on unjust enrichment, few studies have explored how Saudi Arabia has incorporated this theory into civil law in alignment with the norms and principles of Shariah law. This study bridges this gap by examining the legal framework governing unjust enrichment in Saudi Arabia, analyzing its practical application, and providing recommendations for legal education and legislative development. By offering a detailed analysis of how unjust enrichment operates within Saudi civil law, this study aims to enhance both academic understanding and legal practice.

This research seeks to answer several key research questions:

*RQ1: Who are the parties to an unjust enrichment claim, and who bears the burden of proof in such cases?*

*RQ2: Under what circumstances is the beneficiary of unjust enrichment obligated to restore the loss suffered by the impoverished party?*

*RQ3: What penalties may be imposed on the enriched party, and how should the extent of enrichment and impoverishment be assessed?*

The research employs an analytical methodology involving an intensive literature review to assess current interpretations and ambiguities within Saudi civil law. It also incorporates an analysis of legal developments derived from Islamic jurisprudence to provide a comprehensive understanding of unjust enrichment in the Saudi context.

Beyond its contribution to legal scholarship, the study highlights the ambiguity surrounding the current status of the legal theory of unjust enrichment in Saudi civil law and the importance of that theory given the increasing volume of financial transactions and recent legislative reforms aimed at closing regulatory gaps. Examining Saudi Arabia's evolving legal framework offers insights into how the legal system can be strengthened to ensure fairness and consistency in the handling of restitution claims. The study also serves as an impetus for further research into related legal theories and areas requiring legislative development.

The rest of the paper is structured as follows. Section 2 reviews the relevant literature, beginning with an overview of key concepts, including enrichment, liability, and restitution, before considering the legal basis for unjust enrichment. Section 3 explains the methodology that has been used to conduct the research. Section 4 examines various forms of unjust enrichment, outlines the process for making a legal claim, analyzes how enrichment is valued, and discusses the methods used to determine the penalty imposed. Section 5 concludes the paper with a summary of key findings and recommendations for strengthening the legal framework on unjust enrichment in Saudi Arabia.

## 2. LITERATURE REVIEW

### 2.1. Enrichment and restitution

While both unjust enrichment and civil wrongs can give rise to liability and restitution, the legal basis for each differs. In the case of unjust enrichment, restitution is triggered by the defendant's enrichment at the claimant's expense, whereas restitution for civil wrongs is triggered when the defendant commits a civil wrong against

the claimant (Sheehan, 2024). Restitution for unjust enrichment can take several forms, including the recovery of payments when the expected consideration has entirely failed to materialize, payments made in error, payments made to discharge another's debt, and the cost of the services wrongfully obtained (Birks & Pretto-Sakmann, 2002).

In the case of civil wrongs, a right to restitution is established by the plaintiff when the defendant has committed a civil wrong against them. The primary concern is not, however, to establish that there is a cause of action, but to ensure that the defendant does not profit from their wrongdoing (Gold et al., 2020). Restitution in such cases is achieved by taking away all or part of the benefit the defendant has wrongfully gained. In cases of unjust enrichment, by contrast, restitution concerns the remedy to which the claimant is entitled, independent of the cause of action caused by the defendant's wrongdoing. A useful way to differentiate between restitution for unjust enrichment and restitution for civil wrongs is to examine the effect of a breach of contract (Ahmed, 2017). Imagine, for example, that a party to a contract pays for a product or service, but the other party fails to deliver and instead contracts with a third party in breach of the first contract and benefits directly from doing so. This distinction is essential because different legal criteria apply to each cause of action. The legal outcomes will also differ, as will the defence.

Restitution becomes a legal obligation when a person is enriched unjustly at another person's expense. The person who has been used by the other for unjust enrichment can claim restitution for what they have lost. Unjust enrichment is neither a tort nor a contract; rather, it exists as an independent legal concept (Hill & Ní Shuilleabháin, 2016). Nevertheless, some legal scholars consider it to be an offshoot of contractual liability. Enrichment becomes unjustified when it lacks the necessary legal basis for gain, creating an obligation to return what has been improperly acquired. A restitution claim should be raised because the defendant has in some way benefited unfairly, requiring them to return the gain (or its equivalent value) to the claimant. Reversing unjust enrichment is the primary function of restitution law and the foundation for the remedy of restitution. Thus, the key issue in a restitution case is whether or not the defendant became enriched in unjust circumstances.

Victims of unjust enrichment may be eligible to submit claims seeking restitution to recover the value of a benefit gained due to a mistake made by the defendant (Day & Worthington, 2020). For example, when a defendant commits a tort against a claimant, remedies may be assessed based on either the claimant's loss or the defendant's gain. Similarly, a claim can be brought when the defendant benefits as a result of breaching a contract. It is reasonable to assume that wrongdoers should not be allowed to benefit from their wrongdoings; this principle underpins the rationale for awarding restitution remedies.

There are key differences between restitution and unjust enrichment. Unjust enrichment is a legal concept for which restitution is a remedy, just as compensation is a remedy for tort. Restitution is used to recover the value that was wrongfully acquired by the defendant. As such, it may also apply in contexts other than unjust enrichment,

such as tort and equitable wrongs; however, these broader applications lie outside the scope of the current research (Hondius & Janssen, 2015).

Traditionally, unjust enrichment has been categorized under contract and trust law. Consequently, most lawyers are unfamiliar with the concept, which is not covered as a separate subject in most law degrees. There are similarities between unjust enrichment and the legal doctrine of payment for a non-existing debt, which establishes that an unnecessary payment confers the right to seek restitution (Edelman, 2022). The doctrine of restitution is also comparable to that of compensation, but with an important distinction: restitution is an earnings-based recovery, whereas compensation is a loss-based recovery. Thus, restitution entitles the claimant to recover a benefit wrongfully gained by the defendant, while compensation requires the defendant to remedy a loss suffered by the claimant.

Although unjust enrichment has often been treated as an element of other legal doctrines (e.g., restitution law and civil law in Saudi Arabia), its unique nature demands that it be treated separately from other laws such as restitution and compensation. Enrichment can occur, for example, when money is mistakenly transferred to an anonymous person. In such cases, the enrichment arises from the mistake rather than from a breach of contract or a civil wrong. The main legal question is why the enrichment at another's expense is considered unjust.

## 2.2. The legal basis for unjust enrichment

Jurisprudence scholars differ over the legal foundation of unjust enrichment. The roots of these differences can be traced to Roman and French law, which recognized only two sources of obligation: contracts and tort (Peari & Swain, 2023). Faced with cases of unjust enrichment, early scholars endeavored to categorize it within existing legal frameworks, initially resisting its recognition as an independent basis for legal claims.

Some scholars first sought to categorize unjust enrichment under the doctrine of *negotiorum gestio*, but this proved to be an unsuitable framework, because *negotiorum gestio* involves an intention to act for another's benefit, whereas unjust enrichment does not (Häcker, 2013). The next approach considered unjust enrichment as a form of tort, but this was also rejected because tort liability is based on wrongful conduct, while unjust enrichment does not necessarily involve wrongdoing. Ultimately, legal scholars concluded that unjust enrichment constitutes an independent source of obligation. In other words, a person who confers a benefit on another, for example, by voluntarily paying a debt on their behalf, does so intentionally, not because they are legally required to do so. However, if the recipient retains the benefit without a valid legal basis, they may be required to return it through restitution.

A second body of opinion attempted to classify unjust enrichment as an illegal action or tort, both of which have legal consequences. However, critics noted that an illegal act is one that causes harm or danger, whereas unjust enrichment does not. Given that unjust enrichment benefits the recipient, it cannot be equated with an act that causes harm. Ultimately, the fundamental distinction between

unjust enrichment and illegal action lies in their elements and legal consequences.

At its core, the theory of unjust enrichment rests on the principle that no one should be unjustly enriched at another's expense. If one person's loss corresponds directly to another's gain, restitution may be required even in the absence of wrongful action or negligence. Simply put, if a person has been unjustly enriched without a legal basis, they must return the benefit. Likewise, the unintentionally impoverished person has the right to claim what they have lost or its equivalent value. Most legal systems now recognize unjust enrichment as an independent source of obligation; in other words, a claim can be brought solely based on an allegation of unjust enrichment, which, if proven, requires the debtor to return to the creditor what they have lost (Birks & Pretto-Sakmann, 2002).

Unjust enrichment is widely recognized as a source of obligation in civil law (Waddams, 2015). The enriched party is legally required to return either the money received or the equivalent value of the benefit received. This ensures that the wrongfully impoverished person can recover their loss.

The obligation to return an unjust benefit arises even when the defendant has not committed a legal wrong, such as a tort or a breach of contract. For example, if an uncle gives his nephew 1,000 Saudi riyal (SAR), the nephew is enriched at the uncle's expense, but this enrichment is not unjust. In contrast, if money is mistakenly transferred to an unintended recipient, restitution is necessary because the enrichment lacks a legal basis.

The distinction between unjust enrichment and other restitutionary claims hinges on both the relationship between the claimant and the enrichment and the justification for deeming the enrichment unjust (Birks, 1985). Key questions in determining unjust enrichment include:

- 1) Has the defendant been enriched?
- 2) Was the enrichment at the plaintiff's expense?
- 3) Is the enrichment unjust?
- 4) What type of right does the plaintiff claim?

These questions provide a structured framework for investigating the circumstances surrounding the claim and establishing a legal basis for restitution.

The question of whether the defendant has been enriched is often overlooked, not because it is irrelevant, but because of the common assumption that cases of unjust enrichment always involve the acquisition of money. Given that money is the standard measure of wealth, in cases where money is gained by the defendant, their enrichment is self-evident. However, restitution also applies to non-monetary benefits, because the underlying principle remains the same: if an enrichment can be assigned a monetary value, restitution may be required. The concept aligns with the rationale for reversing payments made by mistake: What has been wrongly acquired must be returned, giving rise to a new right for the claimant to seek restitution (Birks, 2002).

## 3. RESEARCH METHODOLOGY

To explore the concept of unjust enrichment and how it differs from other legal concepts such as civil wrongs, this research adopts a descriptive methodology combined with a comparative approach. Offering a comprehensive review of

the relevant literature, including an evaluation of scholarly opinion on the topic, the study analyses unjust enrichment as a source of obligation and considers how restitution is determined in such cases.

By employing a descriptive method, the study provides readers with a clear understanding of unjust enrichment, while the comparative approach helps to distinguish its features and remedies from those of other, similar legal concepts. This methodology aims to clarify existing ambiguities and contribute to a more precise understanding of unjust enrichment within legal discourse.

## 4. RESULTS AND DISCUSSION

### 4.1. Forms of unjust enrichment

Unjust enrichment consists of three elements: enrichment, impoverishment, and the absence of a legal basis for the enrichment (Degeling et al., 2021; Reimann & Zimmermann, 2019). Enrichment can be positive, as when a person's account balance increases as a result of receiving money in error. It can also be negative, as when someone mistakenly pays a stranger's debt or makes use of someone else's property without compensating the owner. Similarly, enrichment can be either direct, as when someone receives money in their bank account that has been deposited by another person by mistake, without the involvement of an intermediary, or indirect, as when a buyer begins renovations on a house, only for the seller to cancel the sale before the workmen have been paid (Johnston & Zimmermann, 2002). In the latter scenario, the seller is indirectly enriched by the actions of the buyer while the workmen suffer a loss. Because the relationship between the workmen and the seller is mediated by the buyer, the enrichment is considered indirect rather than direct. In such a case, the workmen can file a claim against the seller, demanding restitution equivalent to the value of the work they did on the house.

Enrichment can also be moral, as when a student gains knowledge from a teacher. Although education is an intangible benefit, moral enrichment can form the basis of a claim for restitution within the legal conception of unjust enrichment, provided the enrichment can be monetarily assessed (Häcker, 2013; Jaffey, 2023).

Whether the enrichment is positive or negative, direct or indirect, tangible or intangible, it must be directly related to the impoverishment for a claim of unjust enrichment to be valid. In other words, the same event must cause both the enrichment of one party and the impoverishment of the other (Beaumont & Holliday, 2022). Furthermore, enrichment is considered unjust only when there is no legal basis or reason for it to occur (Smith, 2020). For example, if a lawyer rents an apartment for business purposes and makes decorative changes to create a neat and pleasant space for their clients, but the lease contract states that any improvements must remain in the apartment after the contract ends, the lawyer cannot remove the improvements they made or claim compensation for their equivalent value when they vacate the apartment because the contract provides the legal basis for enrichment.

The law itself can also provide a valid basis for enrichment. For example, imagine a worker who neglects to claim their rights within the timeframe

set by the statute of limitations. In this case, although the company benefits while the worker suffers a loss, the enrichment is lawful because the statute of limitations provides a legal basis for it. Thus, legal provisions and contracts can legitimize the enrichment of one party and the impoverishment of another.

### 4.2. Claiming unjust enrichment

#### 4.2.1. The complaint

The remedy for unjust enrichment can be sought by filing a complaint. If the elements necessary to establish unjust enrichment are present, a claim for restitution may be submitted.

In this context, the plaintiff is the impoverished person, that is, the one who provided the benefit and was not paid for it. The plaintiff may be represented by a lawyer when filing the complaint. The defendant is the person who was enriched, that is, the one who received the money or benefit. In legal terms, the defendant (the enriched party) is considered the debtor because they have a financial obligation to return the unjustly obtained benefit.

#### 4.2.2. The burden of proof

The burden of proof is a crucial aspect of an unjust enrichment case. The impoverished creditor bears responsibility for proving that an unjust enrichment event has occurred. To establish their claim, the plaintiff must demonstrate that: 1) they have suffered impoverishment; 2) the defendant has received enrichment; 3) there is a causal relationship between the debtor's enrichment and their own impoverishment; 4) there is no legal justification for their impoverishment. Additionally, the plaintiff must provide proof of both the amount of their impoverishment and the amount of the enrichment received by the defendant. They may use any available means to do so (Swann & von Bar, 2010).

A statute of limitations applies to all unjust enrichment claims, meaning that a plaintiff may lose their right to seek restitution if they fail to submit their claim within the specified timeframe. This timeframe varies between jurisdictions. In Saudi Arabia, a case cannot be heard in a court if the plaintiff does not file a complaint within three years of learning that the unjust enrichment has occurred or, in any event, more than ten years after it occurred (Civil Transaction Law, Royal Decree No. M/191, 2023, Article 159).

#### 4.2.3. The penalty for unjust enrichment

A court can impose a penalty of restitution in cases of unjust enrichment, requiring the enriched debtor to restore the loss suffered by the impoverished creditor (McBride, 2021). This type of restitution differs from that which arises from tort or a contract. The value or amount of restitution is determined by whichever is lower: the creditor's impoverishment or the debtor's enrichment. The difference between these values can vary, particularly when assessing the worth of the benefits provided. For example, if a creditor, after buying a house but before the debtor terminated the sale contract, paid for refurbishments costing 1 million SAR, and those refurbishments increased the value

of that house by 3 million SAR, the creditor has suffered an impoverishment while the debtor, whose house was refurbished has been enriched. In this case, although there is a direct causal link between the impoverishment and the enrichment, the amount of restitution due to the creditor is limited to the cost of the refurbishments (1 million SAR), not the value added to the house following refurbishment (3 million SAR). Conversely, if the value added to the house were less than the amount spent on the refurbishments, the creditor would receive the lesser amount. The principle of restitution in cases of unjust enrichment dictates that the creditor cannot recover more than what they have lost. Otherwise, the restitution itself would result in unjust enrichment.

#### 4.3. Assessing the value of unjust enrichment

The standard measure of value is money, and services and goods are assessed at market based on their monetary worth. Defining a market price is not always straightforward, however, as purchasing preferences vary from one person to another, leading to differences in price. Unjust enrichment, put simply, occurs when money that a person has done nothing to earn or receive appears in that person's bank account or paycheque. In such cases, the recipient has been enriched while the sender, who may simply have entered the wrong account number during the transaction, thereby unintentionally transferring the funds to the wrong person, almost certainly has suffered a loss.

This type of unjust enrichment involves three key elements: the payer, the payee, and the payment itself. As the cause of both the payee's enrichment and the payer's impoverishment, it is the payment (the transaction) that gives rise to the unjust enrichment. Under Saudi law, anyone who has been unjustly enriched must return the money to its rightful owner. This is because the principle underlying the law of unjust enrichment is justice; because the payment was received by mistake, it would be unfair for the recipient to keep it (McBride, 2021).

#### 4.4. Determining the penalty for unjust enrichment

The method used to assess the amount of enrichment and impoverishment depends on the reason the enrichment or impoverishment occurred. Enrichment can occur in various ways, such as by transferring money to the wrong bank account, mistakenly paying another's debt, or unwittingly providing benefits to others (von Bar & Swann, 2010). If unjust enrichment occurs because the debtor receives money that the creditor transferred into their bank account (with no legal basis for the transaction), the impoverished creditor can claim from the debtor the exact amount they transferred. When the enrichment and impoverishment result from improvements made to property, the creditor can refer to the debtor and claim the lesser of the enrichment (the amount added to the value of the property) or the impoverishment (the amount spent on improvements). If the enrichment arose because the debtor received a benefit, such as the use of a property without paying rent, the creditor, as the owner of the property, can claim restitution from the debtor

equal to the amount of rent that they would have earned from a similar property in the same location. In cases involving the mistaken payment of another's debt, the creditor can claim the exact amount they paid from the enriched debtor. When the enrichment takes the form of services, such as a consultation or technical drawings provided by an architect, the impoverished creditor is entitled to claim the value of the service rendered, which is determined by asking experts in the relevant field to assess the worth of the service, which establishes the value of the enrichment.

Timing is critical when assessing the amount of impoverishment and enrichment because the value of assets, products, services, benefits, and currency can change over time. In this context, several dates are important in an unjust enrichment case: when the enrichment occurred, when the case was filed, and when the court decision was issued. For example, the impoverished creditor who spent 1 million SAR on home improvements may have incurred those costs at a time when the riyal was strong, but at the time the complaint was filed, the currency may have depreciated. In this situation, the creditor must decide whether to seek restitution from the debtor based on the exact amount paid at the time the improvements were made or to claim the current market value of 1 million SAR. Since the value of the SAR at the time the improvements were made is higher than it is currently, common practice is to assess restitution based on its value at the time the enrichment and impoverishment occurred, rather than the time the complaint is filed or the court renders its decision.

### 5. CONCLUSION

The legal principles surrounding unjust enrichment evolved over a long period before it was formally recognized as an independent source of obligation. As discussed above, unjust enrichment is distinct from contract law, tort law, and *negotiorum gestio*. It involves two parties: an enriched party (the creditor) and an impoverished party (the debtor). The impoverishment of the latter is the direct result of the enrichment of the former; this causal link is fundamental to the concept. Another essential aspect of unjust enrichment cases is the absence of intent: the impoverished party did not intend to confer a benefit on the enriched party. Where such unjust enrichment occurs without legal justification, the impoverished party has the right to claim restitution. This penalty for unjust enrichment is strictly limited to monetary compensation equal to the loss suffered.

Through a detailed examination of the theory of unjust enrichment and its implementation in Saudi civil law, this study has shown that unjust enrichment constitutes an independent source of obligation. In addition to tracing its legal evolution, including the debate among legal scholars over whether to recognize it as a distinct legal theory, the study has identified the key elements of unjust enrichment and the circumstances in which it occurs, giving the impoverished creditor the right to file a claim and recover their loss. The study also has outlined the parties involved and the time limit for filing a case. It has addressed the question of who bears the burden of proof and explained how unjust enrichment is established in court. It has

clarified that restitution is the sole remedy for unjust enrichment is restitution and has considered how this is assessed when unjust enrichment arises from services rendered but not paid for. Finally, it has noted the various methods of determining the value of unjust enrichment when the event in question and the court's ruling occur at different times.

The research findings underscore that while Saudi civil law has been transformed by recent legal reforms, challenges remain in fully understanding the practical and theoretical aspects of concepts such as unjust enrichment. Greater legal clarity and further elaboration are needed to ensure the law is both accessible and applicable in practice. The study also highlights the broader challenge of aligning new legislation with the goals of Saudi Vision 2030. Although the law on unjust enrichment is a promising step toward modernization, its implementation has revealed ambiguities that could undermine legal certainty and consistency. Nevertheless, Saudi Arabia is committed to developing a legal system in which unjust enrichment is clearly defined and effectively addressed. While there are gaps in the law in its current form, they provide opportunities for future research to clarify and refine the law.

This research contributes to both the academic discourse and practical legal understanding in the field of unjust enrichment. It offers valuable insights into how the doctrine functions in theory, how it is applied in Saudi courts, and how the proposed reforms can be realized. The findings reflect Saudi Arabia's broader commitment to legal reform and demonstrate how unjust enrichment law contributes to the project of reforming the Saudi civil legal system, which is a key aspect of the Saudi Vision 2030. In keeping with this commitment to reform, this study proposes several recommendations. First, further scholarly research is needed to deepen understanding of unjust enrichment. Second, the doctrine should be given greater emphasis in colleges of law across the country. Third, to ensure

fair and consistent legal outcomes, a comprehensive law of restitution should be enacted that clearly outlines the criteria for assessing restitution in cases of unjust enrichment. Moreover, restitution should reflect the value of the loss at the time the case is filed. Fourth, the statute of limitations for unjust enrichment should be reduced from 15 years to 10 years to improve legal efficiency. Finally, in addition to restitution, a fine should be imposed on those who receive unjust enrichment and fail to report it to the authorities or their bank.

These recommendations aim to resolve the current ambiguities in Saudi unjust enrichment law and to strengthen the connection between legal theory and real-world application. By calling for greater doctrinal clarity and a more thorough integration of the theory of unjust enrichment into the curriculum in Saudi colleges of law, this study offers a roadmap for future research and reform. Together, these efforts support the broader goal of improving the quality of justice and legal coherence in Saudi Arabia as part of its legal transformation under Vision 2030.

This research offers insight into the enactment of unjust enrichment as a commitment source in the recent Saudi Civil Transaction Law within the goal of Saudi Arabia to improve the legal apparatus. This study's understanding depth and applicability are constrained by several limitations. The most obvious limitation is the scarcity of the resources that are written in Arabic language for people to refer to and study. Another limitation is that colleges of law curriculums do not offer sufficient information about unjust enrichment for the students to absorb unjust enrichment legal principle in theory and in practice. The direction in the future is for researchers to write more researches in unjust enrichment legal principle and the other form of the unjust enrichment. Finally, for the colleges of law in to offer sufficient classes to make unjust enrichment is more understandable.

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