UNJUST ENRICHMENT

By George B. Klippert

Butterworth & Co. (Canada) Ltd., 1983

xlix, 389 pp.

Keith Turner, Q.C.*

Professor Klippert of the Faculty of Law, University of British Columbia, has in this book addressed the basic principle underlying the law of restitution — namely, unjust enrichment — instead of approaching restitution under various categories such as mistake, necessity and so on. In so doing he has sought an alternative to the traditional method of dealing with the subject as found in Goff and Jones,[1] Palmer,[2] and Fridman and McLeod. The first of these treatises is English, the second is American, and the third is Canadian. Klippert observes at the outset that restitution as a distinct head of civil liability has been affirmed by the Supreme Court of Canada "in a fashion that has no counterpart in either England or the United States . . . The Canadian law of restitution has come a long way since *Deglman* . . . a great deal of the theoretical development of unjust enrichment has been accomplished under the leadership of Chief Justice Laskin and Mr. Justice Dickson", referring to dissenting judgments.

Professor Klippert, like the other authors, takes the reader through the historical development — Lord Mansfield's contribution and thereafter — and moves into the cases on Canadian acceptance of the principle of unjust enrichment, the Canadian concept. What types of benefit? What about voluntariness? What is the role of volition? What is the meaning of unjust detention? There must be controls, for unjust enrichment does not contemplate giving to the Judge carte blanche discretion to wave the magic wand of justice in the abstract (a personalized version) over the facts and circumstances of the particular case, and then come up with an ad hoc solution. These questions, then, are confronted in chapters 3, 4, 5, and 6.

Given that restitution based on the principle of unjust enrichment is a third head of civil liability, or a fourth when you consider breach of trust, the role of equitable remedies must be considered. That is done in chapter 7.

Chapter 8 deals with defences, chapter 9 with the wrongdoer, chapter 10 with contracts and chapter 11 with illegality. The book closes on unjustified enrichment in Quebec law.

Having reviewed Goff and Jones, as well as Palmer's four volumes, as noted earlier, do I have a feeling or sense of déjà vu? No, not at all. If I may say so, I think Professor Klippert has made a real and substantial contribution with his book. It is not prolix. It is clear. He is to be congratulated on focusing attention, as he set out to do, on the basic principle

---

* Of the Faculty of Law, University of Manitoba.

1. Reviewed (1980), 10 Man. L.J. 327.
2. Reviewed (1979), 9 Man. L.J. 335.

rather than upon categorization of a wilderness of single instances. The legal profession will undoubtedly benefit from his efforts.

There are many Manitoba cases referred to, including *Mulligan* (1888) through *Morrison* (1954) and *MacIver* (1976), to *Zinman* (1981), to name a few.

Clearly, it will not do for students, Bench and Bar to think of civil liability only in terms of contract, tort and breach of trust (and not overlooking sec. 654, 655 Criminal Code); in addition, close attention must be given to the fourth head, namely, restitution based upon unjust enrichment.

Professor Klippert suggests that the "controls" in Canadian law might be stated as follows:

(i) that the defendant received a benefit at the plaintiff's expense,

(ii) evidence of volition in the receipt or retention of the benefit,

(iii) that the benefit was not voluntarily conferred, and

(iv) that the benefit is unjustly retained by the defendant.

This, he suggests, makes out a *prima facie* case. But, and this is an important 'but', each of these control devices (as Klippert calls them) "carries with it a substantial body of case law which must be considered." In other words, the four items above mentioned constitute a frame-work only — by no means a completed structure. For the foundations of this great edifice one must consult the historical development; yes, even unto Lord Mansfield. For the structure itself, the Bar must assume its share of responsibility. The author points out that some responsibility for the confusion which has been experienced in the Courts must be placed on the lawyer arguing a restitution case. And, may I add, the law schools must bear a threshold responsibility. Restitution, based on the principle of unjust enrichment, should have its *own* place in the compulsory scheme of the curriculum, along with contract, tort and trust. Perforce, restitution should be addressed in our continuing legal education program.