Unjust Enrichment and Restitution in Common Law and Cypriot Law
[Αδικαιολόγητος Πλουτισμός και Αποκατάσταση στο Κοινοδίκαιο και το Κυπριακό Δίκαιο]

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This article, intended to be a book review, uses the extensive and valuable work of the author as a compass in the attempt to map the law of unjust enrichment in Cyprus. It aspires to assist other legal scholars and practitioners in making effective use of the 600-page book of the author and in quickly accessing the main rules and principles of unjust enrichment in the various cases and (even) other branches of law in which unjust enrichment may be of relevance.

The book, titled *Unjust Enrichment and Restitution*, significantly enriches Cypriot legal literature, which, due to legal scholars like the author, has gradually been ceasing to be or to be considered poor. The book deals with unjust enrichment, a mysterious and peculiar area of law that, in the minds of many lawyers, is associated with certain provisions of the Cyprus Contracts Law, Cap. 149 (which indeed concern it) or with certain constituent elements or criteria established by Common Law and reproduced in Cypriot jurisprudence. For others, unjust enrichment means a cause of action 'thrown' into a pleading somewhere among several 'and/or' that separate it from other more primary causes of action, which is rarely pursued in the end.

The book itself can be considered proof that unjust enrichment is actually much more than the above. It is a branch of law that, as emerges from the Preface and Chapter 1 of the book, has two main pillars in Cyprus: (a) the Contracts Law, Cap. 149, certain provisions of which are part of the law of unjust enrichment, and (b) relevant Common Law and principles of equity embodying the contemporary relevant law. The primary remedy is not (compensatory) damages, as typically in contract law and tort law, but restitution[1] partly governed by certain provisions of Cap. 149 as

[1] Restitution is determined by reference to the benefit accruing to the Defendant rather to the loss suffered by the Claimant.

well as associated jurisprudence, hence the title of the book, which refers not only to unjust enrichment but also to restitution. According to the author, this branch of law combines elements of both unjust enrichment and restitution, with restitution being the remedy for unjust enrichment, which functions as the legal basis for its claim. This is so even though restitution is often articulated as part of the very principles or provisions of unjust enrichment.

In Chapter 2, titled Cypriot Legal System and Unjust Enrichment, the author explains the structure and hierarchy of the rules of law in Cyprus, with reference to Article 29(1)(c) of the Courts Law of 1960 as well as the rules of interpretation of Cap. 149, which essentially mandate recourse to English jurisprudence and generally to Common Law and Equity. The analysis in this chapter may be considered self-evident for the Cypriot lawyer, but, being concise, it is limited to what is absolutely necessary to facilitate full understanding of the pillars and sources of the law of unjust enrichment.

Chapter 3 addresses whether unjust enrichment is necessary in modern law, answering this question affirmatively since there are cases where it is necessary (or fair) to provide a remedy, yet there is neither a contract nor tortious behaviour, making it impossible to seek a remedy based on contract law or tort law. This chapter also highlights the views of foreign judges and scholars against recognising unjust enrichment as a separate category of law (contrary to the approach in England), with the author opposing this view and returning to this issue in Chapter 4. The author concludes that the law of unjust enrichment indeed exists as a category of law separate from the traditional categories of contract law and tort law. Chapter 3 inevitably leads to the question of whether unjust enrichment directly creates an actionable right. This question is inextricably linked to whether unjust enrichment constitutes an independent cause of action. The author, correctly in the opinion of the writer, disagrees with the position that unjust enrichment does not create an actionable right. Indeed, from the moment unjust enrichment consists of specific constituent elements or criteria, which, if satisfied, allow a person to successfully ring a claim seeking a remedy, unjust enrichment cannot but constitute an actionable right and consequently an independent cause of action.

Interestingly, as highlighted in Chapter 28 of the book, Cypriot courts do not adopt these views, agreeing with older English jurisprudence that unjust enrichment is neither a separate category of law nor an autonomous cause of action. The author identifies confusion and errors in this Cypriot jurisprudence. It must be said how-

ever, that for the practicing lawyer, these issues can only have limited significance. More important for the practicing lawyer is the fact that, if unjust enrichment is properly pleaded and relevant evidence is presented to satisfy the relevant criteria, the Claimant will secure a remedy.

In Chapter 5, the author provides a historical overview offering the reader interesting historical information regarding the 'birth' and evolution of the widely known categorisation of obligations into contractual and non-contractual, with a third category recognised since the 2nd century AD initially as the obligation arising from the erroneous payment of an amount and later as an additional category of obligations arising from events that did not concern either a contract or a tort. It was in Roman law that the category of unjust enrichment was first recognised, thus creating the need to define its scope and content and develop relevant rules and methodologies for its application. By the mid-1700s, it was decided that a person to whom an undue amount is paid by mistake must return it based on the principle that it is not right and fair to retain it.[2] Despite objections relating to the generality of such terms and criteria, this basic theory, according to which the goal is to neutralise and prevent enrichment acquired unfairly and unjustifiably, i.e., without reasonable cause, was reinstated in the 1900s[3] and has remained valid ever since. Perhaps the first case of unjust enrichment in England was decided in 1979 and involved a payment made by mistake by the Claimant bank to the Defendant, who was ordered to return the corresponding amount.[4] Basic criteria for providing a remedy based on unjust enrichment began to be formulated then, with the fundamental principles recognised by significant English jurisprudence during the 1990s and thereafter. The author effectively highlights that the law of unjust enrichment is a product of case law despite the existence in Cyprus of relevant legislative provisions.

The author dedicates a short chapter, namely Chapter 6, to terminology and particularly to the distinction between unjust enrichment in its narrow sense and unjust enrichment in its broader sense, which covers cases where the remedy of restitution is used not only to deprive the Defendant of unjust enrichment, but also for purposes of protecting the Claimant's property rights or when the defendant has acquired a particularly significant benefit. In Chapter 7, the author lists and explains certain theoretical and practical difficulties arising mainly due to the recognition of unjust

2 *Moses v. Macferlan* (1760) 2 Burr. 1005.

3 *Fibrosa Spolka v. Fairbairn* [1943] AC 32.

4 *Barclays Bank Ltd v. W J Simms, Son and Cooke (Southern) Ltd* [1979] 3 All ER 522.

enrichment as a separate category of law, which aligns with the fact that the book is far from a simple textbook and constitutes an extensive study -a research project- contributing to legal knowledge in this specific branch of law.

The book begins to address more practical issues in Chapter 8, which refers to the four questions that must be answered for a Claimant to establish unjust enrichment and achieve a remedy, as they arise from English literature and jurisprudence. The first three criteria of unjust enrichment are the ones established by Common Law; the author comprehensively analyses each one of them in Chapter 9. The fourth one refers to the existence of a defense.

Chapter 9 is one of the most important chapters of the author's extensive study, as it explains the criteria or constituent elements of unjust enrichment. Regarding the first, i.e., the acquisition of a benefit by the Defendant, the author explains that the concept of 'benefit' covers both positive benefit, such as a right, an object or an amount, and negative benefit, such as the discharge from an obligation. Regarding the second, i.e., the existence of a relationship between the Defendant's benefit and the Claimant's loss, and the third, specifically that the benefit must be unjust, i.e., without legal basis or reasonable cause, the author succinctly records the various interpretative approaches. He further explains how the Defendant's fault or reprehensible behaviour, such as coercion, can turn a benefit into an unjust one, thus satisfying the second criterion. In the same chapter, the author deals with the payment of an amount by mistake, which is the classic case of unjust enrichment, as well as with the case of payment if the consideration disappears. The author further emphasises the need for proper pleading of unjust enrichment by the Claimant, who bears the burden of proof.

In Chapter 10, the author addresses the case of undue payments to public authorities when there is no authorisation, i.e., when they have been demanded based on an unconstitutional law or when they are simply made voluntarily by the citizen. As the author explains, such payments can be recovered both for reasons of public interest and based on unjust enrichment.

The author dedicates (and rightly so, in the opinion of the writer) a separate chapter, specifically Chapter 11, to the relationship between contract and unjust enrichment. While unjust enrichment often appears in pleadings as an alternative cause of action when the primary cause is breach of contract, this chapter clearly, and with reference to English and other foreign jurisprudence, highlights that there can be no unjust enrichment where there is a contract. Consequently, pursuing a claim based

on unjust enrichment where the parties have made contractual arrangements will most likely fail. Contract law is what should be applied to decide the dispute. The co-existence of the two branches of law is not excluded, yet this occurs only where a parallel situation or dispute arises that is not covered by the existing contract between the parties. The author proceeds with explaining three different cases in which unjust enrichment can occur while there is or was a contract. The first case is widely known and refers to a contract that is defective or voidable (for example, due to duress), and is annulled after the liable party has obtained a benefit from the contract, such as a payment. This payment is considered wealth (enrichment) that has been unjustly secured and can thus be recovered based on unjust enrichment. The author dedicates the entire Chapter 14 to this case. The second case refers to an unjust benefit acquired by the liable party within the framework of a contract, which is not annulled, yet it is considered fair to deprive that party of the said benefit. The third case refers to the implied or quasi contract, which as a legal fiction is recognised by courts to provide a solution to problems that cannot be resolved by contract law (or tort law).

In two relatively short chapters, specifically Chapters 12 and 13, the author discusses the principle of free acceptance, which, according to the prevailing judicial view, is part of the law of unjust enrichment, and the remedy of Quantum Meruit, which often also serves as a cause of action, respectively. Free acceptance refers to the case where the Defendant explicitly requested the provision of service outside of a contract and when, while he did not request it, the Defendant had the opportunity to refuse it, yet he did not, resulting in its acceptance while knowing that compensation would be expected. In both cases, the Defendant is obliged to pay reasonable remuneration for the service received. Regarding Quantum Meruit, this is not 'monopolised' by the law of unjust enrichment, as it can also arise in a contractual context. As the author explains, there are cases, such as when one party to a contract refuses to perform what was promised, where the Claimant may be able to choose between contractual damages (for breach of contract) and reasonable remuneration for the work or service provided.

In the law of unjust enrichment, Quantum Meruit covers or may be relevant in cases of provided services, which the Defendant freely accepted, or which were provided within the framework of a void contract or with the prospect of a contract that ultimately was not concluded. The latter is not a clear case and has generated relevant English jurisprudence. Regarding the former, although the author does not state it expressly, it seems that the underlying principle is that of free acceptance (discussed

in Chapter 12 of the book), with Quantum Meruit being the relevant remedy. The author rightly clarifies that in Cyprus, Quantum Meruit is codified, specifically in Article 70 of the Contracts Law, Cap. 149, and therefore, there are certain differences with Common Law, which is the focus of Chapter 13. Article 70 of Cap. 149 is studied by the author in Chapter 28, which deals with unjust enrichment in Cypriot law.

Chapter 14 is the largest chapter of the book, spanning almost one hundred pages. It deals with voidable contracts, which, as mentioned earlier, result, if annulled, in unjust enrichment that can be reversed and returned to the Claimant. According to contract law, a contract is voidable if consent is defective due to duress, undue influence, fraud, misrepresentation, and mistake. The chapter analyses each of these reasons for defective consent with reference to both English and Cypriot case law, making this chapter essentially a chapter on contract law (rather than unjust enrichment). In the opinion of the writer, this extensive chapter could have been omitted from the author's work, making it not only strictly on-topic but also significantly shorter and thus more accessible to the reader, especially the practicing lawyer. After all, as the chapter itself suggests, unjust enrichment only comes into play *after* the voidable contract is annulled based on rules belonging to contract law and because any enrichment loses its legal basis from the moment of annulment, thus becoming unjust. It is, however, indeed a fact that within the framework of voidable contracts, contract law and the law of unjust enrichment, otherwise separate branches of law, are, one might say, in the same relay team, with contract law handing the baton to the law of unjust enrichment to 'run' towards the remedy of restitution.

Chapter 14 is complemented by Chapter 15, which is very short and could have formed part of Chapter 14. In this chapter, the author refers to cases where, despite the existence of a voidable contract, the remedy of rescission and consequently, restitution is not available to the Claimant. This is when the restitution of the Defendant to the pre-contractual state is impossible or when third-party rights (such as those of a bona fide purchaser) have been created, or when the voidable contract has been affirmed by the Claimant. In these cases, despite the existence of a voidable contract, the law of unjust enrichment may not successfully be invoked leading to the Claimant's restitution.

Chapter 16 is one of the most important chapters of the book, as it deals with the available defenses to claims of unjust enrichment. Even if the three criteria (or constituent elements) of unjust enrichment are satisfied, the Claimant may not succeed in their corresponding claim. This will be the case when the Defendant successfully

invokes one of the defenses, which are analysed with reference to relevant examples and English and other foreign case law. These defenses, namely the Defendant's change of position, estoppel, illegality, transferred loss, reverse restitution, bona fide purchase, agency, and public policy, are obviously broader in the sense that they do not apply only within the framework of unjust enrichment.

The author dedicates a separate chapter, specifically Chapter 17, to one of these defenses, namely illegality, which presents difficulty, as it is not clear whether, and under what circumstances, a benefit obtained based on an illegal contract should be restored. The author refers to the strict approach of Cypriot jurisprudence according to which, in the absence of special circumstances, the courts do not intervene nor provide assistance to a party to an illegal contract. This approach shows that Article 65 of Cap. 149 does not apply to illegal contracts. On the other hand, in Common Law, the rule is in favour of restitution (return of enrichment) except if doing so would equate the relevant claim with the application of the illegal contract. The author deals more extensively with the issue of claims based on or concerning an illegal contract in Chapter 28, where he comparatively and critically analyses the relevant jurisprudence of the Full Bench of the Cyprus Supreme Court contrasting the opposing positions of the majority and minority.

In Chapters 18 and 19, the author deals with two interesting issues of unjust enrichment. More specifically, Chapter 18 focuses on whether a person is entitled to recover expenses and costs incurred in providing assistance, such as in the form of services to another, who was in a state of actual and serious need. As the author explains, there seems to be a distinction in Common Law between the case where the Claimant and Defendant had a prior legal or other relationship that justified the offer and one where such a relationship is absent. Recovery is possible in the first case only, an approach with which the author disagrees, believing that recovery should be possible in both cases.

Chapter 19 deals with restitution in the case of torts. As explained in the said chapter, this case does *not* refer to claims for ordinary damages (covering the loss suffered by the Claimant), but to damages equivalent to the benefit gained by the Defendant (to deprive them of that benefit). A Claimant can, in certain cases, choose between the two types of damages. Obviously, the former type of damages would not fit into a work on unjust enrichment, and even regarding the latter, there is relevant disagreement which the author highlights, explaining his own opinion. The question of *when* a Claimant can choose the type (and consequently, the amount) of

damages they will claim in a tort case is interesting, since, as the author explains by reference to the rule against double compensation, typically both cannot be claimed. The choice can be made at the hearing stage, when the Claimant will present relevant evidence, something that emerges from English case law cited by the author. Indeed, this was generally the prevailing approach, which obviously favoured the pleading of different alternative causes of action and/or remedies. In the opinion of the writer, this possibility may be somewhat limited by the new Rules of Civil Procedure.

The author ensures to tackle every aspect of unjust enrichment. Thus, in Chapter 20, the author specifically addresses torts recognised in equity, namely breaches of fiduciary duties, which can result in unjust benefits, such as bribery. The author explains that, in Anglo-Saxon law, in such cases, the benefit in question is considered to belong to the Claimant through a constructive trust, which is recognised in this case to ensure that justice is served.

In Chapter 21, the author discusses the relationship between contractual damages and unjust enrichment, reminding readers that the traditional method of calculating contractual damages refers to the computation of the claimant's loss due to the breach of contract. This calculation assumes the possibility of accurately estimating the profit the claimant would have earned had the contract been performed properly. When this is not possible, a second method of calculating contractual damages refers to the lost expenditure, i.e., the costs and expenses incurred by the Claimants within the contract that were wasted (thrown away) due to the defendant's breach. The author also highlights a third method of calculation, which focuses on the benefit gained by the defendant from the breach of contract, aiming to strip it from him. There are cases where the (more) common remedies of compensation are insufficient (e.g., when the benefit gained by the defendant arises from a violation of a *fundamental* contractual obligation or is particularly large). In such exceptional cases, 'benefit deprivation' (restitutionary) damages (i.e., of the third of the aforementioned types) may be awarded.

As observed by the author, Cypriot case law is aligned with the English approach regarding the aforementioned triple categorisation of the aggrieved party's claims for contractual damages. Evidently, it is the third category of damages that is related to unjust enrichment. Of course, as the author acknowledges, there is the view that compensation based on the defendant's benefit, which serves as a remedy in contract and tort law, is different from restitution based on unjust enrichment law, where the goal is not only to neutralise the defendant's benefit, but also to reverse it (to the

Claimant). The author explains that, nevertheless, the former can be considered as part of unjust enrichment law (in its broader sense) and also reflects the influence of unjust enrichment in various other areas of law. The present writer agrees with the second of these observations, aligning with the view that contract or tort cases where restitutionary damages may be awarded do not, for this reason, escape the boundaries of contract or tort law becoming part of unjust enrichment law.

Similarly, in Chapter 22, the author deals with proprietary restitution, highlighting the relationship between proprietary rights and unjust enrichment. In cases where the Defendant appropriates property belonging to the Claimant, which still exists and is in the defendant's possession, either in its original or a transformed form, it can be recovered by the Claimant asserting his proprietary rights against the Defendant. Resorting to unjust enrichment is neither necessary nor appropriate in such cases, according to English case law cited by the author. However, the author and other scholars cited by him believe that this absolute separation is not justified. According to this view, if the right to trace, locate, and secure assets was not recognised to the claimant, the defendant would unjustly enrich himself, and thus, the concept of unjust enrichment continues to play a role in this (proprietary) context. This is certainly correct, but in the opinion of the writer, unjust enrichment as a mere concept differs considerably from unjust enrichment as a cause of action and, even more so, as a branch of law. The concept of unjust enrichment can be one of the reasons why the law recognises various actionable rights and consequently the right to a remedy, but not all those rights are or can be considered part of unjust enrichment law. Care is needed to ensure that unjust enrichment -a concept that is inherently general and broad- does not threaten the clarity of the classic categorisation of obligations into contractual, tortious, and others. Moreover, if unjust enrichment is to be recognised as a (distinct) branch of law (as opposed to a mere concept or principle), it must be confined within sufficiently distinct boundaries governed by clear rules and criteria.

In Chapter 23, the author discusses tracing, which, as rightly pointed out, is not a claim or a remedy, but a process by which the claimant seeks to identify his property, which may have been transformed into something else by the defendant, so that he can recover it. This process is available even if the claimant's property has been mixed with other assets, such as when it is sold and converted into money deposited into a bank account along with other funds. The object of tracing is not the property in any form, but the right to recover it, along with any further benefit derived from it (for example, if the claimant's property was converted into shares which may have yield-

ed dividends or increased in value). As the author explains, the basis of this right to recover can be traced to principles and/or ideas of unjust enrichment. Consequently, it could be said that tracing is a process facilitating the pursuing of a cause of action, including that of unjust enrichment. This chapter again proves that the author's work seeks to cover every aspect of unjust enrichment, no matter how remote, as it even touches upon tools (or processes) of broader application,[5] simply because they can be used within the framework of unjust enrichment, though in this case, it is mainly property rights that the Claimant seeks to assert against the Defendant, unjust enrichment being an inevitable consequence in the case of the Claimant not managing to trace and recover his property.

Similarly, Chapter 24 deals with constructive trusts because it is a way of addressing the problem of unjust enrichment, especially when the defendant acquired title to property belonging to the claimant in a culpable manner. In such cases, particularly in countries like the USA and Canada, it is recognised that a trust has been created with the claimant as the beneficiary (without the parties' intention) to neutralise and reverse unjust enrichment. As the author explains, English case law is more reserved, recognising a constructive trust only where the titleholder is aware of the (reprehensible) facts associated with his possession. Interestingly, in such cases, a constructive trust is recognised as a matter of law and is not based on general principles of fairness and justice. Again, the relationship between constructive trusts and unjust enrichment is that, if a constructive trust is not recognised to lead to restitution, the Defendant will ultimately unjustly be enriched.

The author, faithful to his (evident) goal not to omit any issue related to unjust enrichment, dedicates Chapter 25 to subrogation. The reader's mind immediately goes to the principle of subrogation in the field of insurance, which arises explicitly or implicitly from the contract between the insurer and the insured. The author explains that, apart from subrogation in contract law, there is also subrogation, as a remedy, in cases of unjust enrichment. The issue is complex, and, in the writer's opinion, the reader would benefit from reading the chapter in combination with commentary on relevant case law.[6] Essentially, if the elements of unjust enrichment are satisfied, meaning that the defendant gained an unjust benefit at the claimant's expense without any relevant defenses, subrogation can be used as an equity tool to

[5] It is worth mentioning that there are extensive works exclusively dedicated to tracing. See for example, Smith, L.D., 1997, *The Law of Tracing*, Clarendon Press.

[6] 'Equitable Subrogation: Standing in the Shoes of a Third Party with a Secured Interest', *Butterworths Journal of International Banking and Financial Law*, November 2013, 621.

avoid unjust enrichment through the claimant's restitution. Interestingly, it emerges from this chapter that a defective or invalid security held by a lender, such as a bank, does not necessarily mean that the bank will fail in claiming its corresponding rights. Conversely, the bank may be subrogated to the unpaid seller's right of lien over the property (even if the seller has already been paid from the funds secured by the borrowing buyer from the bank), allowing it to be considered a secured creditor for the recovery of the owed amounts. In this respect, the subrogation tool is used to prevent the borrowing buyer's unjust enrichment.

The author also addresses the issue of rectifying a document prepared by the contracting parties when they have recorded their agreement incorrectly, as some scholars believe that rectification is an equity tool to prevent unjust enrichment. In Chapter 26 of the book, the author asserts the view (and rightly, in the writer's opinion) that rectification belongs to contract law, and although it may result in preventing unjust enrichment, this is not enough for it to be considered as one of the procedures and remedies for addressing unjust enrichment issues.

Chapter 27 is dedicated to improvements to movable or immovable property, which essentially involve the provision of (improvement) services to someone else's (the defendant's) property, movable or immovable. This chapter largely focuses on proprietary estoppel, as the author argues that many such cases (especially those involving improvements to immovable property) are decided with reference to proprietary estoppel rather than unjust enrichment. The provision of unsolicited services as a benefit in the context of unjust enrichment (as opposed to the classic benefit in the form of payment of a sum of money) is commented on by the author in Chapter 9, where he explains the criteria for unjust enrichment one by one, as well as in Chapter 12, which analyses the principle of free acceptance. Chapter 12 emphasises, with reference to English case law, that the mere offer of improvement services does not by itself create an obligation for the defendant to pay the claimant for those services. The chapter concludes that the prevailing view based on case law is that such an obligation arises when there is free acceptance of the offered service. It emerges from Chapter 27, however, specifically its (small) part *not* referring to proprietary estoppel, that beyond free acceptance, an obligation to pay may also arise when the claimant undertakes improvements (such as repairs) on property he genuinely believes to be his, for example, because he was unaware of a defect in the title to the property he purchased.

As already mentioned, Chapter 27 largely focuses on proprietary estoppel, the application of which can provide a solution in cases where the claimant seeks pay-

ment for unsolicited improvement services to the defendant's property. The author discusses the components of proprietary estoppel, which requires the existence of clear assurances by the defendant to the claimant, the claimant's reliance on them, and, consequently, the claimant's suffering of detriment. The author devotes significant parts of the chapter to the relevant principles and developments in the law of proprietary estoppel, but rightly acknowledges that it is a separate category of law. Considering the view of foreign scholars opining that unjust enrichment has little to do with proprietary estoppel, the author defends his choice to include it in his book by referring to many common elements of the two and to the useful parallel that can be drawn between them. In the writer's opinion, given the research-oriented nature of the work, which deals extensively with theoretical issues of law categorisation, the author's choice is reasonable and also encourages fruitful reflection and further research on the exact boundaries of unjust enrichment law.

However, it has to be said that proprietary estoppel and unjust enrichment are two clearly different and distinct categories of law. They are related to each other in that they can be 'employed' to resolve the same claim, specifically, that for compensation for unsolicited provision of improvement services to property, but they remain two distinct categories with different constituent elements or criteria. Indeed, such a claim can succeed on both bases (if both are invoked as alternative causes of action), or fail on one basis but succeed on the other. Indeed, in a very recent English case concerning a claim for compensation for improvement services to a property,[7] the action was brought based on *both* proprietary estoppel and unjust enrichment. The court examined the case considering one and then the other basis separately and dismissed the claim for proprietary estoppel (because the assurances given by the Defendant to the Claimant were not sufficiently clear). However, the claim succeeded based on unjust enrichment, something that more generally highlights the caution a lawyer must exercise when 'building' their client's case by choosing its legal characterisation. Had the claim been raised solely based on proprietary estoppel, it would have failed, and the Claimant would not only have received no compensation for their services, but would also have been ordered to pay the costs of the proceedings.

In its last (substantive) chapter before the Epilogue, specifically in Chapter 28, the book deals with unjust enrichment and restitution in Cypriot law. The chapter focuses on domestic law regarding unjust enrichment, but as the author would likely agree, Cypriot law on the subject is not exhausted in that chapter. Indeed, as the

[7] *Mate v. Mate & Ors* [2023] EWHC 238 (Ch).

author explains in Chapter 3 of the book, common law and equity (when there is no contrary Cypriot provision or jurisprudential approach) form part of Cypriot law. It is not accidental that in this purely 'Cypriot-themed' chapter, extensive reference is made to English jurisprudence. It is therefore submitted that the entire book, and not just Chapter 28, effectively deals with Cypriot law on unjust enrichment. After all, it is on very few points throughout the book that the author highlights existing differences between Common Law and Cypriot law. Moreover, as the author emphasises by reference to Article 70 of Cap.149, which incorporates principles of unjust enrichment and restitution, the said provision 'does not abolish common law.'

Article 70 essentially combines, as the author rightly observes, the principles of 'free acceptance' and *quantum meruit*, which are discussed in previous chapters of the book, specifically Chapters 12 and 13, respectively. According to the author, it also covers the mistaken non-gratuitous payment by the Claimant to the Defendant, which, as previously mentioned, is the classic case of unjust enrichment. In the opinion of the writer, while the generality of the wording of Article 70 indeed permits its application to this case too, nonetheless, Article 72 of Cap.149 explicitly and specifically addresses it, so the mistaken payment of money should be excluded from the scope of Article 70. The author, through a review of relevant Cypriot jurisprudence, demonstrates that the core of unjust enrichment in Cyprus is examined with reference to the four criteria or components of unjust enrichment established by common law and analysed in previous chapters of the book. Furthermore, as the author notes, despite some judicial confusion relating to the source and nature of the principles of unjust enrichment, Cypriot courts are generally correctly guided by the recent English jurisprudence. This reinforces the above-expressed view that the whole of this book is effectively on the Cypriot law of unjust enrichment.

Cap.149, specifically Articles 68 and 69, cover some other cases of unjust enrichment, specifically the provision of necessities to a person incapable of contracting and the payment of a third party's debt, respectively. Article 69 refers to both the case where the Claimant has been legally compelled to pay and the case where the Claimant and the Defendant are jointly liable to pay but the primary responsibility lies with the latter. This would appear to apply to the case where a guarantor fully or partly repays the loan of a borrower. After a brief discussion of these two cases, where the Claimant is entitled to receive corresponding compensation, Chapter 28 of the book addresses the application of quantum meruit, stating that the relevant common law principles are adopted in Cyprus in conjunction with Article 70 of Cap. 149. As indi-

cated, this principle in Cyprus also applies to cases involving contracts, specifically when the contract is silent on the amount of the Claimant's remuneration. The burden of proof lies with the Claimant, who must positively prove both the performance of the works and the reasonable remuneration for them based on objective criteria.

Next, the author deals with Articles 64 and 65 of Cap.149, which set out the consequences concerning the obligations of the parties in the case of voidable and void contracts, respectively. While Article 64 relates to other articles of Cap.149 concerning the factors that render a contract voidable (such as Article 19), it clearly falls within the law of unjust enrichment, since it refers to the reversal of the benefit acquired in the absence of a valid contract and thus unjustly. Analysing Article 65, the author inevitably addresses the issue of claims based on or related to illegal contracts, emphasising that despite its wording (which does not seem to exclude a void contract due to illegality), Article 65 does not apply to illegal contracts since such application would be against public policy.

In the Epilogue of his work, the author attempts to draw some conclusions regarding the fundamental issue of categorising unjust enrichment and of the precise content of the corresponding law. Clearly, the author does not reject the broader sense of the law of unjust enrichment, which includes not only unjust enrichment in the strict or narrow sense, encompassing the relevant four criteria or components established by common law, but also cases where the appropriate remedy is restitution (neutralising the unjust enrichment acquired by the Defendant), even if the enrichment is the result of committing a tort, a breach of contract, or an infringement of property rights.

The writer's view aligns with the school of thought that the author clearly documents, recognising the logic inherent in it. More specifically, according to this view, the cases involving a tort, a breach of contract or some other behaviour which gives rise to a right of action under a recognised branch of law, do *not* fall within the law of unjust enrichment. Conversely, depending on the cause of the Defendant's unjust enrichment, they fall within one of the traditional categories of law, such as contract law and tort law. In the writer's view, the fact that in such cases the most appropriate remedy may be restitution (rather than ordinary compensation) is not sufficient to 'evict' those cases (of committing a tort for example) from the corresponding branch of law, namely tort law. Bringing them or regarding them as falling within the (separate) branch of unjust enrichment threatens the clarity of traditional legal categorisation, which has always focused on the wrongful or culpable behaviour (such as

breach of contract and committing a tort) and *not* on the remedy for the detriment that behaviour caused.

If one were to attempt a different categorisation (focusing on the remedy instead), it would be more appropriate to include all cases covered by unjust enrichment, both in its narrow and broader sense, under the umbrella of the law of restitution (rather than the law of unjust enrichment), as all these cases share the (common) remedy of restitution. Consequently, in this respect, the choice of the title of the work, 'unjust enrichment *and* restitution', is fully understandable and proves to be correct. Indeed, the author's choice to cover *all* cases where there is unjust enrichment in the hands of the Defendant effectively rendered the (alternative) title 'law of unjust enrichment' a risky choice, which the author skilfully avoided.

Undoubtedly, the work of this great Cypriot jurist is a valuable contribution to legal knowledge in Cyprus. The present writer sought to use it as a compass for critically exploring the deep and mysterious waters of unjust enrichment, extracting and presenting the main principles and conclusions of the extensive research work of the author in a compact contribution. An attempt was made to map these waters and to provide a safe 'raft' for new researchers and legal practitioners, thereby facilitating their understanding of the content and limits of this peculiar branch of law and, additionally, of a number of other branches of law, which the author so successfully highlighted as related to unjust enrichment.

Mapping unjust enrichment law, the core of the said branch of law is doubtless the three legal criteria (or ingredients), specifically (a) a benefit to the Defendant, (b) which is unjust and (c) correlates with the detriment suffered by the Claimant. These three criteria, established by common law, are also encompassed in Article 70, Cap.149. Their generality suggests that the cases of unjust enrichment are not closed and that, therefore, courts may bring, under unjust enrichment law, a variety of cases in which these criteria are met, when those cases do not fall within any other recognised branch of law, such as contract law or tort law.

So far, however, there is a number of specific cases, which have already been recognised as cases of unjust enrichment. The classic one is the case of a mistaken payment to the Defendant codified in Cyprus in Article 72, Cap.149; a non-classic extension of this case is that of a mistaken payment to public authorities. Another case is the one of a voidable contract, which has been annulled by the aggrieved party after the Defendant has received a benefit, which in Cyprus is codified by Article 64, Cap.149. There are three exceptions that may prevent a successful unjust enrichment

claim in this case: third party rights, impossible restitution, and affirmation of the contract. Additionally, there is the case of void contracts that led to a benefit for the Defendant (not including in Cyprus, as opposed to Common Law, the case of illegal contracts) codified in Cyprus in Article 65, Cap.149. Another case covers the unsolicited provision of services, including improvements to movable or immovable property. In this case, the Claimant may be entitled to fair remuneration if said services have been freely accepted by the Defendant or when the Claimant has provided them genuinely believing that the property was his own. Two additional cases refer to the provision of services under a void contract (which may be seen as coming under the broad umbrella of Article 65, Cap.149), and service provision with the prospect of a contract which has eventually not been concluded, respectively. The remedy in these three cases (of service provision) is Quantum Meruit, a restitutionary remedy specifically linked to the fair (or market value) of the services offered. The said remedy also appears codified in Article 70, Cap.149, as part and parcel with unjust enrichment, hence the reason why it may also be regarded as a cause of action. Finally, another two cases, namely the incurrence of costs and expenses in aiding the Defendant in need (or under necessity), codified in Article 68, Cap.149, and the legally compelled payment of the debt of another party, codified in Article 69, Cap.148, would seem to complete the map of unjust enrichment law in Cyprus as (heavily influenced) by Common Law. The main remedy to unjust enrichment is restitution (including Quantum Meruit), though, in appropriate cases, subrogation (in the shoes of a secured third party) may also be utilised.

There are certain other branches of law related to unjust enrichment. More specifically, in some tort cases, restitutionary (as opposed to compensatory damages) may be claimed by (and awarded to) the Claimant. Also, in cases of equity torts, (such as breach of fiduciary duties), a constructive trust may be recognised to ensure that the Defendant is deprived of the unjust benefit and that that benefit is returned to the Claimant. Furthermore, in cases involving a violation of property rights, tracing and constructive trusts are equity tools that may be employed to ensure restitution. These cases should not be placed on the 'unjust enrichment law' map in the view of the writer. Yet, as the main remedy in all these cases is restitution, they can be placed together with all unjust enrichment cases under the law of restitution, this law being understood to cover all cases in which restitution is the main appropriate remedy.

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