

LAWS50115 Unjust Enrichment & Restitution Law

Credit Points:	12.50																										
Level:	5 (Graduate/Postgraduate)																										
Dates & Locations:	2012, Parkville This subject commences in the following study period/s: Semester 2, Parkville - Taught on campus. 36 hours of seminar classes offered intensively over 6 days, or as 12 weekly 3 hour seminars over the course of a semester.																										
Time Commitment:	Contact Hours: 36 hours. Total Time Commitment: 144 hours.																										
Prerequisites:	<table border="1"> <thead> <tr> <th>Subject</th> <th>Study Period Commencement:</th> <th>Credit Points:</th> </tr> </thead> <tbody> <tr> <td>LAWS50023 Legal Method and Reasoning</td> <td>February</td> <td>12.50</td> </tr> <tr> <td>LAWS50024 Principles of Public Law</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50025 Torts</td> <td>Semester 2</td> <td>12.50</td> </tr> <tr> <td>LAWS50026 Obligations</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50027 Dispute Resolution</td> <td>Semester 1</td> <td>12.50</td> </tr> <tr> <td>LAWS50029 Contracts</td> <td>Semester 2</td> <td>12.50</td> </tr> <tr> <td>LAWS50030 Property</td> <td>Not offered 2012</td> <td>12.50</td> </tr> </tbody> </table>			Subject	Study Period Commencement:	Credit Points:	LAWS50023 Legal Method and Reasoning	February	12.50	LAWS50024 Principles of Public Law	Semester 1	12.50	LAWS50025 Torts	Semester 2	12.50	LAWS50026 Obligations	Semester 1	12.50	LAWS50027 Dispute Resolution	Semester 1	12.50	LAWS50029 Contracts	Semester 2	12.50	LAWS50030 Property	Not offered 2012	12.50
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Corequisites:	None.																										
Recommended Background Knowledge:	None.																										
Non Allowed Subjects:	Unjust Enrichment in Commercial Law (MLM subject).																										
Core Participation Requirements:	<p>The Melbourne Law School welcomes applications from students with disabilities. It is University and Law School policy to take all reasonable steps to enable the participation of students with disabilities, and reasonable adjustments will be made to enhance a student's participation in the School's programs. The inherent academic requirements for the study in the Melbourne Law School are: The ability to attend classes and actively engage in the analysis of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students must possess behavioural and social attributes that enable them to participate in a complex learning environment. Students are required to take responsibility for their own participation and learning. They also contribute to the learning of other students in collaborative learning environments, demonstrating interpersonal skills and an understanding of the needs of other students. Assessment may include the outcomes of tasks completed in collaboration with other students. Students who feel their disability will prevent them from participating in tasks involving these inherent academic requirements are encouraged to contact the Disability Liaison Unit: http://www.services.unimelb.edu.au/disability/.</p>																										
Coordinator:	Prof Michael Bryan																										
Contact:	Melbourne Law School Student Centre Email: law-studentcentre@unimelb.edu.au (mailto:law-studentcentre@unimelb.edu.au)																										

	Tel: +61 3 8344 4475
Subject Overview:	<p>This subject introduces students to the capstone private law discipline of unjust enrichment and restitution law. Unjust enrichment constitutes a critically important but largely misunderstood source of private law obligation in Australia. Likewise, restitution as a gain-based remedy is all too often confused with other forms of relief, or omitted from the armoury of applicable remedies out of ignorance. This course will enable students to develop a specialist understanding of the law of unjust enrichment and restitution and in so doing, enable them to obtain an advanced and integrated command of the private law as a whole. Although the primary focus is on the Australian law, the discipline is necessarily comparative, drawing upon the law of many comparative common law and civilian jurisdictions. The subject develops and integrates legal knowledge from across many sub-disciplinary fields (e.g. contracts, torts, property and trusts), engages with a variety of sources of legal obligation (common law, equitable and statutory) and utilises both doctrinal and jurisprudential modes of legal reasoning to build an understanding of the complex interactions that define the law of unjust enrichment and restitution. The course involves a critical examination of the historical and substantive development of a law of unjust enrichment, its development and disintegration under the stewardship of successive Australian High Courts, its role in the private law as the third dominant source of private law obligations, its elements and defences, personal and proprietary remedies and the forensic, theoretical and practical advantages and disadvantages of unjust enrichment and restitution jurisprudence.</p>
Objectives:	<p>A student who has successfully completed this subject will have:</p> <p>An advanced and integrated understanding of the Australian private law as a whole and in particular:</p> <ul style="list-style-type: none"> # Students will learn how personal and proprietary restitutionary rights arise in unjust enrichment and are affected by defences; # Students will learn to integrate their knowledge of contract, property, torts, trusts and other common law and equitable private law obligations to identify inconsistencies in the law of unjust enrichment and restitution; # Students will learn to 'feed back' their knowledge of unjust enrichment and restitution law into their foundational private law subjects, to develop a deep and incisive understanding of the full range of the private law; and # Students will develop an integrated mental map of the private law that will enable them to analyse diverse and complex legal scenarios within unjust enrichment and restitution law, but also to appreciate alternative analysis available throughout the private law; <p>An advanced capacity to compare and critically analyse the legal framework applicable to unjust enrichment and restitution law across Australian and overseas jurisdictions, as relevant, and to consider recommendations for judicial and legislative reform of aspects of the Australian approaches in light of those comparisons;</p> <p>A sophisticated appreciation of, and ability to engage in, the complex theoretical, policy-based and practical debates taking place domestically and internationally in relation to unjust enrichment law, including:</p> <ul style="list-style-type: none"> # The balance to be struck between 'top down' and 'bottom up' modes of legal reasoning in unjust enrichment and restitution law and the private law as a whole; # The roles of intermediate courts and appellate courts in developing unjust enrichment and restitution law and the private law as a whole; # The interactions between and balances to be struck between unjust enrichment and other sources of legal rights, such as contract; and # The role, ramifications and limitations of restitution as a gains-based remedy and its distinction from other forms of relief; <p>Specialised skills in self-directed legal research and in the autonomous and creative production of legal writing that is thoroughly researched, tightly edited and that develops arguments in a highly structured, supported and referenced way, with a high degree of original content;</p> <p>Sophisticated communication skills that enable them to link, integrate and convey complex legal principles, theories and frameworks concerning unjust enrichment law and its relationship to the private law as a whole to expert and non-expert legal audiences.</p>
Assessment:	<p>Case Note (30%): Students will be required to identify a relevant case, handed down over the preceding year, on which to prepare and submit a 1,500 word case note. The case may have been decided in Australia or overseas, but must relate to the law of unjust enrichment and restitution. Where the subject is run over the course of a semester, the case note will be due in</p>

	<p>week 5. Where the subject is run as an intensive, students will be advised of the due date for the case note on the first day of class. AND Take-home exam (70%): Students have 4 days to complete a take-home exam of approximately 4,500 words. The exam will be comprised of three essay-style questions of equal weighting. Where the subject is run over the course of a semester, the exam will be due at the start of swot vac. Where the subject is run as an intensive, students will be advised of the due date on the first day of class.</p>
Prescribed Texts:	J Edelman and E Bant, Unjust Enrichment in Australia (latest edition); Specialist printed materials will also be made available from Melbourne Law School.
Breadth Options:	This subject is not available as a breadth subject.
Fees Information:	Subject EFTSL, Level, Discipline & Census Date, http://enrolment.unimelb.edu.au/fees
Generic Skills:	<p>On completion of the subject, students should have developed their skills in the following areas:</p> <ul style="list-style-type: none"> # Cognitive skills demonstrating mastery of the law of unjust enrichment and restitution in Australia and its relationship to the private law as a whole; # Specialist understanding, interpretation, critical reflection, synthesis and comparison of case law relating to unjust enrichment and restitution law from the various Australian jurisdictions and overseas; # Specialist understanding, analysing, comparing and reflecting critically on scholarly commentary from the various Australian jurisdictions and overseas; # Generating and evaluating original proposals for judicial or legislative reform of Australian unjust enrichment and restitution law having regard to interstate and international experience; # Expert cognitive skills in conducting original research of, reflecting on and synthesising primary case law from the various Australian and comparator jurisdictions; and # Expert technical skills in interpreting and transmitting knowledge and ideas to specialist and non-specialist legal audiences.