

LAWS70148 The Law of Restitution

Credit Points:	12.50
Level:	7 (Graduate/Postgraduate)
Dates & Locations:	2012, Parkville This subject commences in the following study period/s: March, Parkville - Taught on campus.
Time Commitment:	Contact Hours: The total class time is between 24 and 26 hours. Total Time Commitment: Visit the Melbourne Law Masters website for more information about this subject.
Prerequisites:	None.
Corequisites:	None.
Recommended Background Knowledge:	Applicants without legal qualifications should note that subjects are offered in the discipline of law at an advanced graduate level. While every effort will be made to meet the needs of students trained in other fields, concessions will not be made in the general level of instruction or assessment. Most subjects assume the knowledge usually acquired in a degree in law (LLB, JD or equivalent). Applicants should note that admission to some subjects in the Melbourne Law Masters will be dependent upon the individual applicant's educational background and professional experience.
Non Allowed Subjects:	None.
Core Participation Requirements:	The Melbourne Law Masters welcomes applications from students with disabilities. The inherent academic requirements for study in the Melbourne Law Masters are: The ability to attend a minimum of 75% of 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 who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact the Disability Liaison Unit: www.services.unimelb.edu.au/disability/
Contact:	For more information, contact the Melbourne Law Masters office. Email law-masters@unimelb.edu.au (mailto:law-masters@unimelb.edu.au) or phone +61 3 8344 6190. Alternatively, visit our website: www.law.unimelb.edu.au/masters (http://www.law.unimelb.edu.au/masters)
Subject Overview:	Although of ancient origin, the law of restitution is a new, intensely interesting and vital part of the common law of Australia. The law of restitution intersects with, sits alongside or forms a part of, contract law, insolvency, equity, trusts and torts, and as such an understanding of the subject is important for lawyers or non-lawyers with an interest or who practise in the field of private law. The subject syllabus focuses on decisions of Australian courts, with some reference to English and Canadian cases. Through the cases, an understanding of the law of restitution is developed. Practical and theoretical aspects are also considered: from how to plead a claim for restitution to examining the place of the law of restitution under the current High Court. Both lecturers are ideally suited to provide instruction on the subject: The Hon. Keith Mason as the former President of the NSW Court of Appeal and co-author of the leading Australian text on the subject, and Mr Michael Rush, presently practising at the Victorian Bar with a doctorate in restitution from the University of Oxford. This subject provides an analysis of the law of restitution in Australia.

	<p>Principal topics will include:</p> <ul style="list-style-type: none"> # Overview of the law of restitution, including the principles on which it is based, its nature and ambit, how it should be pleaded, its role as part of the common law of Australia and its impact on unwinding commercial transactions # Identification of parties: Determining the breadth of what constitutes an enrichment in the hands of a defendant and how a plaintiff can establish a connection to that enrichment sufficient to found a cause of action in restitution # Reasons for restitution: When is it unjust for a defendant, who receives an enrichment at the expense of the plaintiff, to retain that enrichment? Grounds for restitution, including benefits conferred by mistake, failure of consideration, duress, undue influence and instances where the claimant has no intention to benefit the recipient. Consideration of restitutionary claims for wrongdoing, including breach of contract and breach of fiduciary duty # Defences: Change of position, estoppel, passing on, illegality, bona fide purchase and ministerial receipt.
Objectives:	<p>A student who has successfully completed this subject should:</p> <ul style="list-style-type: none"> # Understand the nature and elements of a claim in restitution, different and common situations in which such claims arise, and areas of debate # Understand how the law of restitution sits alongside, forms part of, or cuts across contract law, construction law, insolvency, equity and trusts # Understand how to plead a cause of action based on a claim for restitution, the availability of alternate restitutionary remedies (whether in common law or equity) and the impact of restitution law on the drafting of commercial agreements # Understand the nature of restitution and the extent to which it is personal or proprietary claim, and how and why breach of fiduciary duty, breach of contract, a mistaken payment, failure of consideration, duress and undue influence may each give rise to a claim for restitution # Understand the contemporary debate as to the place of unjust enrichment in the law of restitution, and in particular its development under the Mason High Court and review by the Gleeson High Court.
Assessment:	Take-home examination (100%) (12 pm 11 May to 5 pm 14 May)
Prescribed Texts:	Core subject materials will be provided free of charge to all students. Some subjects require further texts to be purchased. Visit the Melbourne Law Masters website for more information about this subject.
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
Links to further information:	http://www.law.unimelb.edu.au/masters/courses-and-subjects/subject-details/sid/5262