

Shaping the law of unjust enrichment

Work by the late Professor Peter Birks and Professor Andrew Burrows QC, Professor of the Law of England at the University of Oxford, has been influential in the development of a new branch of English private law: the law of unjust enrichment.



The law of unjust enrichment (also called the law of restitution) was officially recognised by the highest court in the United Kingdom in 1991. Professors Birks and Burrows' research has been influential in the identification and clarification of the principles of this new branch of law. Their theoretical work in this area has been frequently cited in English courts and has shaped many decisions made in this area.

Unjust enrichment can affect all citizens. It covers situations, for example, where payments are made by mistake which could include anything from a phone bill which has been paid twice to a mistakenly paid tax bill worth millions.

Research into this area of the law by Professor Birks and Professor Burrows has stated that all claims based on unjust enrichment involve four questions: (1) 'The enrichment question': has the defendant been enriched? (2) 'The at the expense of question': was the enrichment at the claimant's expense? (3) 'The unjust question': was the enrichment at the claimant's expense unjust? (4) 'The defence's question': does the defendant have a defence? If the answer to the first three of these questions is 'yes' and the answer to the fourth question is 'no' then the claimant has a right to restitution. This four part framework has become accepted as the best way for judges to decide cases on the English law of unjust enrichment. The work of Birks and Burrows has been mentioned in many judgments in England and Wales and other jurisdictions including Australia, Canada and Hong Kong.