



Substantive Scope of Arbitrator Restitution as a guarantee of litigation in international trade contracts

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<https://doi.org/10.61353/ma.0070495>

تاريخ استلام البحث ٢٠٢١/٧/٤ تاريخ قبول البحث ٢٠٢١/٨/٢٤ تاريخ نشر البحث ٢٠٢١/١٢/٢١

Stakeholders of international trade with its various patterns were keen on seeking further legal, financial, procedural, judicial and other guarantees, and managed to get guarantee of initiation of arbitration in the competent international arbitration centers which have become a reality for this type of contracts. As a result, legislation of countries in general, including Arab countries, were driven to enact laws of international commercial arbitration perception of their importance in attracting foreign investments and facilitating dealing with international trade contracts of various patterns.

This legislation contained within its provisions cases whereby arbitrators can recuse arbitrator and relieve him from consideration of the arbitration litigation in case of realization or appearance of some reasons that challenge its impartiality and independence. Those provisions- the provisions of arbitrators' restitution- constitute important guarantee for arbitrators to be granted professional neutral award away from defect or deficit that may mar it. This research handles the matter of arbitrators' restitution and the stance of legislation and arbitration centers of this important matter, in addition to reference to some decisions that were made by the competent authorities to consider the restitution requests based on legal grounds.

Keywords: arbitration, impartiality, independence, arbitral tribunal, dismissal, request for restitution

The Nature And Scope Of Restitution Vitiating Transfers Imputed Contracts And Disgorgement

Tariq Baloch



The Nature And Scope Of Restitution Vitiating Transfers Imputed Contracts And Disgorgement:

The Nature and Scope of Restitution Peter Jaffey, 2000-09-16 Joint Winner of the 2001 SPTL Prize for Outstanding Legal Scholarship In recent years there has been enormous interest in the law of restitution with many new books and academic articles and a number of important decisions in the courts However there remains great controversy and some confusion partly for historical reasons and partly as a result of continuing differences over the principles underlying the field There are particular difficulties over the relation of the law of restitution to other areas of law including contract and property law In this new and innovative work the author advances a view of the framework of fundamental principles underlying the law of restitution which offers a means of understanding the tangle of conflicting authorities and then proceeds to examine the case law in light of it As part of his analysis the author suggests new approaches to understanding the areas of overlap between restitution contract trusts and property law

The Law and Ethics of Restitution Hanokh Dagan, 2004-08-12 This 2004 book provides a comprehensive account of the American law of restitution

Separation and Abstraction in Property Transfers Zhicheng WU, 2023-05-08 This book argues that there are three dividing lines regarding modes and consequences of property transfers which should not be conflated by comparative lawyers namely intent alone versus intent plus unitary approach versus separatist approach and causality versus abstraction Unlike Chinese law English law takes a non unified approach not only in the stage of transfer but also in the stage of restitution where the consequence in relation to the property right transferred under a flawed underlying basis can be purely causal purely abstract and abstract in common law but causal in equity Nevertheless abstraction is normatively more justifiable than causality

Measuring Damages in the Law of Obligations Sirko Harder, 2010-07-12 This book challenges certain differences between contract tort and equity in relation to the measure in a broad sense of damages Damages are defined as the monetary award made by a court in consequence of a breach of contract a tort or an equitable wrong In all these causes of action damages usually aim to put the claimant into the position the claimant would be in without the wrong Even though the main objective of damages is thus the same for each cause of action their measure is not While some aspects of the measure of damages are more or less harmonised between contract tort and equity e.g. causation in fact and mitigation significant differences exist in relation to 1 remoteness of damage which is the question of whether when and to which degree damage needs to be foreseeable to be recoverable 2 the compensability of non pecuniary loss such as pain and suffering distress and loss of reputation 3 the effect of contributory negligence which is the victim's contribution to the occurrence of the wrong or the ensuing loss through unreasonable conduct prior to the wrong 4 the circumstances under which victims of wrongs can claim the gain the wrongdoer has made from the wrong and 5 the availability and scope of exemplary or punitive damages For each of the five topics this book examines the present position in contract tort and equity and establishes the differences between the three areas It goes on to scrutinise the arguments in defence of existing differences The conclusion on each

topic is that the present differences between contract tort and equity cannot be justified on merits and should be removed through a harmonisation of the relevant principles

Enrichment in the Law of Unjust Enrichment and Restitution Andrew Lodder, 2012-07-06 Enrichment is key to understanding the law of unjust enrichment and restitution This book provides a comprehensive analysis of the concept of enrichment and its implications for restitutionary awards Dr Lodder argues that enrichment may be characterised either factually or legally and explores the consequences of that distinction In factual enrichment cases the measure of enrichment is the objective value received This is the basis of many awards of money had and received quantum meruit quantum valebat and money paid In legal enrichment cases the benefit is the acquisition of a specific right or the release of a specific obligation The remedy is restitution of that right or reinstatement of that obligation It is demonstrated that specific restitution of the defendant's legal enrichment is often the basis for resulting trusts rescission rectification and subrogation This book has profound implications for understanding restitutionary awards and the relationship between the enrichment inquiry and other aspects of the law of unjust enrichment including the at the expense of inquiry and the defence of change of position

The Right to Privacy in the Light of Media Convergence – Dieter Dörr, Russell L. Weaver, 2012-05-29 The rapid change of the culture of communication constantly poses new threats for the right to privacy These do not only emanate from States but also from private actors The global network of digital information has turned the protection of privacy since a long time into an international challenge In this arena national legal systems and their underlying common values collide This collection convenes contributions from European Australian and US experts They take on the challenge of providing an intercontinental analysis of the issue and answer the question how the right to privacy could be defended in future

The Impact of Equity and Restitution in Commerce Peter Devonshire, Rohan Havelock, 2018-11-29 Commercial relationships give rise to diverse forms of legal obligation in private law including contract tort agency company law and partnership More controversially equity and the law of restitution have a less defined and somewhat ambulatory role in regulating the affairs of commercial parties Nevertheless their impact is manifest in the commercial arena through the distinct types of liability they engender and the remedies that are imposed This collection draws together the views of leading international scholars and judges to explore the nature and extent of this impact from two perspectives Five chapters primarily address this impact at a macro level focusing on the roles of equity and the law of restitution in terms of legal taxonomy doctrine and policy In contrast five further chapters primarily address this impact at a micro level focusing on selected liabilities and remedies within equity and the law of restitution This bifocal approach enables a holistic appreciation of some important ways in which equity and the law of restitution affect or may affect commerce with a view to fostering further debate over the fundamental issues at stake

The Law of Unjust Enrichment in China: Necessary or Not? Siyi Lin, 2022-08-30 This book is the first book focusing on the Chinese law of unjust enrichment in English and introducing it to Western jurisdictions Unjust enrichment is currently one of the most controversial areas of law

in many jurisdictions and rife with academic debate This book analyzes the historical evolution current doctrines and relationships of unjust enrichment with other areas of private law in China It also provides insights into judicial practice In May 2020 China promulgated its first ever Civil Code since the establishment of the People s Republic of China which is a milestone in the history of Chinese law Before the Civil Code there was only one legal provision regulating unjust enrichment which requires a person obtaining benefits without a legal basis to return such benefits However the new Civil Code contains a separate chapter regulating unjust enrichment This book analyzes and evaluates those new provisions in the Civil Code to provide a most up to date analysis of the Chinese law of unjust enrichment

Cases and Materials on the Law of Restitution Andrew S. Burrows, Ewan McKendrick, James Edelman, 2007 Cases and Materials on the Law of Restitution is an authoritative and scholarly guide written by leading experts who have shaped and defined the law of restitution and unjust enrichment Extensive coverage of cases and academic perspectives provides a rounded view of the subject Introductions notes and questions enable readers to check their understanding of key issues The second edition of this seminal title covers many important new cases and academic publications including Birk s absence of basis approach The coverage reflects the continuing debates on questions such as BL what is an enrichment BL was the enrichment at the claimant s expense BL what is the role of tracing BL when will proprietary restitution be granted BL when does change of position operate as a defence BL and does corrective justice underpin this area of the law The book s structure has been updated to reflect the judicial development of the law of restitution providing a map through this complex subject This book is invaluable for undergraduate postgraduate and doctoral students as well as academics working in the area

Unjust Enrichment and Contract Tariq Baloch, 2009-03-12 This book examines the role of unjust enrichment in the contractual context defined as contracts which are a terminated for breach or b subsisting or c unenforceable The book makes three claims in relation to the orthodox common law account of restitution founded on unjust enrichment in the contractual context Firstly the orthodox account correctly proceeds on the basis that the restitutionary claim in the contractual context is founded on an independent cause of action in unjust enrichment rather than some equitable notion of unconscientiousness or the law of contract Secondly the book departs from the orthodox account by rejecting the unjust factors approach and endorsing the absence of basis approach for the law of unjust enrichment Finally the book argues that the right to restitution in the contractual context should be determined by the conditionality of the transfer of the benefit rather than a requirement such as the termination of the contract as the orthodox account dictates To that end the book proposes the following model under which the right to restitution in the contractual context is determined by the resolution of the following two questions 1 Was the transfer of the benefit eg of money or services conditional 2 Was there a qualifying failure of condition A condition can be and often is the other contracting party s counter performance but it may also be an event not promised by either party What qualifies as a failure of condition depends on the type of contract in question This book identifies two types of contracts namely those

which are apportioned eg instalment contracts and those which are unapportioned It is only in relation to the latter that termination is required It is a particular strength of the book that it is underpinned by detailed and original historical analysis which makes a novel and distinct contribution to the history of the laws of unjust enrichment and contract Dr Baloch has produced the definitive study of the inter relationship between contract and unjust enrichment This has been achieved by carefully considering the historical roots of our common law and how this is to be understood in its best light in the modern era Robert H Stevens University College London Dr Baloch s exploration of the boundary between contractual and unjust enrichment liability in the 17th to 19th centuries has important things to say about the history of ideas of contract in this period Mike Macnair Oxford University This is an innovative and rigorous book which engages with one of the most difficult areas in the law of unjust enrichment namely the relationship between the law of unjust enrichment and the law of contract Baloch roots his treatment of the modern law in its history and the historical analysis throughout is very careful and well grounded in the primary sources David Ibbetson Cambridge University This is a valuable book thoughtful and well researched It is concerned to build a model that fits comfortably with the cases and its focus is on the work of modern commentators Those concerned with the relationship of contract and the law of restitution whether at a theoretical level or in practice will benefit by careful study of what Dr Baloch has to say whether or not they agree with it Jack Beatson Royal Courts of Justice 14 February 2009 From the foreword

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