

## UNJUST ENRICHMENT

*by*

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Unjust enrichment occurs when one party gains more benefits than what they are supposed to at the cost of another party.

For instance, Mr. Ali entered into a contract with an automobile repair shop to paint his two cars, an Audi and a Mercedes. However, the workshop only managed to paint the Audi Car, and not the Mercedes. Mr. Ali refused to make payment as he alleged that the contract is being breached and thereto considered void.

Mr. Ali will be unjustly enriched if he does not pay for the Audi car paintjob.

While the workshop may be in breach for not carrying out the painting of the Mercedes, the workshop is still entitled for the payment of the Audi car paintjob. Unjust enrichment is a separate cause of action which can be brought by a party in a lawsuit to recover any benefit obtained by another party.

Every cause of action in a law suit is accompanied with a remedy. In the case of unjust enrichment, it is complemented with a restitutionary right as the remedy.

Restitutionary right is defined as to restore an innocent party the gains that someone else has obtained from them on the principle that no one should be made richer through the loss of another.

Dream Property Sdn. Bhd. v Atlas Housing Sdn. Bhd. [2015] 2 CLJ 453 [FC] is the first and the landmark case that recognizes the unjust enrichment principle in Malaysia. The case revolves around two parties that entered into a contract for a purchase of land. The purchaser ("Dream Property"/"Defendant") purchased the property with the intent to construct a shopping mall. The parties had a disagreement pertaining to the handover of vacant possession of the property and the manner of relocation of the School on the property.

Despite the ongoing law suit, the Defendant continued constructing the mall on its own costs and efforts until the value of the mall surpasses the value of the vacant property. Plaintiff proceeded to the contract and did not prevent the Defendant from continuing the construction by obtaining an injunction.

At the Federal Court, it was held that there is an unjust enrichment. Defendant was rewarded with an amount equivalent to the current market value of the Mall excluding the market value of the vacant property.

The Federal Court had highlighted four elements that needed to be established. Referring to this present case, the first element is the Plaintiff must have been enriched by receiving advantages. Secondly, the enrichment received by the Plaintiff must be unjust. Thirdly, the enrichment must be gained at the Defendant's costs and lastly, there must be no defenses that could be raised.

Currently, the court has adopted the "absence of basis" approach in determining whether enrichment is "unjust". The question is whether it will be unjust for the Defendant to keep the benefit. The "absence of basis" means the Defendant must restore the benefits received to the innocent party unless the Defendant is able to prove there is a legal ground or reason for keeping the benefits.

In conclusion, the unjust enrichment principle as a cause of action is still fresh and developing in our country. It will continue to evolve and change as the court has to decide based on facts that positively differ from case to case.