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Restitution in Texas: Civil Liability for Unjust Enrichment

David Dittfurth

54 S. TEX. L. REV. 225 (2012).

The Texas Supreme Court must clarify the law of restitution. The law of restitution regulates a major area of litigation in Texas and suffers from a significant degree of confusion. The Texas Supreme Court has adopted the modern view of restitution, but its rulings lack the detailed guidance needed by lower courts. The Texas Supreme Court should establish an independent and generally applicable cause of action for unjust enrichment, describe clearly the elements of that cause of action, and lend its authority to the modern terms that describe the law of restitution.

The Texas Supreme Court's rulings on restitution describe a generally applicable cause of action aimed at preventing unjust enrichment. This cause of action supports both equitable and common law remedies in restitution. The quasi-contract cause of action identified by some lower Texas courts cannot, without stumbling over its own history, authorize equitable restitution. The Texas Supreme Court rulings also tend to label unjust enrichment as a general cause of action that is independent of tort or contract claims.

The Texas Supreme Court's actions have created a foundation for clarification of its unjust enrichment cause of action. That clarification should begin with an authoritative statement describing the elements of the cause of action and the breadth of its application. Those steps by the Texas Supreme Court will necessarily diminish the significance of the confusing terms concerning unjust enrichment. Texas courts do not need the linguistic cover provided by quasi-contract terminology, and the law is better served by allowing judges and litigants to confront the problem of unjust enrichment directly.

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