

# LAWCOMM726

## The Law of Restitution

### Lecturer Bio



**Professor Jeff Berryman** is an expatriate New Zealander, who for the past 20 years has taught at the Faculty of Law, University of Windsor, Canada. A specialist in remedies, he also teaches contract law and

restitution. He is the author of *The Law of Equitable Remedies* (Irwin Publishing – Essentials of Canadian Law series) and is a contributing author to *Berryman et al, Remedies: Cases and Materials* (now in its 4th edition, published by Emond Montgomery). His published articles have appeared in journals in Canada, Australia, New Zealand, the United States, and England. He is the Editor-in-Chief of the *Windsor Yearbook of Access to Justice*, and has advised the New Zealand Ministry of Justice, Ontario Law Reform Commission, and the Federal Court of Canada.

### Syllabus

The law of restitution is the third main area of private ordering of obligations in the common law. In contract law, obligations are voluntarily assumed and the expectation interest is the primary interest protected by way of remedies. In tort law, obligations are imposed as normative standards of civil behaviour. The primary remedy is damages, assessed with the intent of placing the injured party back in the position they would have been in had the tort not occurred. The law of restitution gathers together a number of historical causes of action that have as their primary focus the restoration of benefits bestowed by the plaintiff on the defendant in circumstances where there is no justification

for the transfer. The underlying principle of restitution is the avoidance of unjust enrichment of the defendant at the expense of the plaintiff. Where the plaintiff has mistakenly bestowed an actual benefit on the defendant, corrective justice demands that it be returned to the plaintiff unless there is some juristic reason explaining the transfer; sometimes referred to as autonomous unjust enrichment. Restitution is also commonly sought where the plaintiff has not in fact bestowed a benefit on the defendant but has been deprived the opportunity of exploiting a right, or where the defendant has profited from wrongdoing, arguably at the plaintiff's expense; and commonly referred to as restitution arising from wrongdoing.

The restitution course will explore the theoretical and constituent elements of both forms of restitution. The course will also examine in detail a number of discrete causes of action and explore the relationship with the other primary areas of private obligation.

### Outcomes

Students who complete this course successfully should:

- Have an appreciation of the function fulfilled by an action sounding in unjust enrichment and how it is distinctive from other forms of action;
- Be able to analyse and apply restitution based concepts to diverse factual patterns.

### Assessment

100% coursework consisting of 20% class participation and 80% research paper (15,000 words) due by 4.30 pm, 7<sup>th</sup> November 2008



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## Important Information

- *Students may delete from the course up to 10 working days prior to the start of the class.*
- *Any extensions must be sought through the Postgraduate Manager in writing at least five working days before the due date.*
- *Students are reminded that research papers submitted for this course must be substantially different from those submitted for other courses.*
- *Students are notified by email when the course materials are ready. It is the responsibility of students to ensure their email details on CECIL are up to date.*

## Course Details

<b>Semester</b>	<i>Two (Intensive 13 -15 and 18-19 August 2008)</i>
<b>Location</b>	<i>TBC</i>
<b>Time</b>	<i>9.00am -4.30pm</i>
<b>Value</b>	<i>30 Points</i>
<b>Materials</b>	<i>TBC</i>

## Contact Details

*Postgraduate Law Centre  
Level 8, 1-11 Short St  
postgradlaw@auckland.ac.nz*

***Postgraduate Manager: Megan Baker***  
***Student Advisor: Françoise Godet***