

# THE DOCTRINE OF UNJUST ENRICHMENT: A BRIEF STUDY IN APPLIED COMPARATIVE LAW

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## I. INTRODUCTION

Justice, in the Aristotelian sense, is essentially the proper equilibrium of all conditions and interest in a society assessed according to value-judgments which are not necessarily of a juridical character and which are moreover susceptible of changes with time and place.<sup>1</sup> In this sense, justice constitutes the rational foundation of the law. In the attempt to achieve justice, the legal system makes use of certain general principles of law, one of which is the doctrine of unjust enrichment.

### A. CONCEPT.

Under this doctrine, every one who has, without valid ground, enriched himself at the expense of another must restore the amount of his enrichment to the latter.

### B. GENERAL APPLICATION.

The doctrine finds application in various circumstances. It has been considered as the basis of a person's quasi-contractual liability. There are also decisions concerning unjust enrichment as a result of the nullity or cancellation of contracts. It has also been utilized in determining the extent of a person's liability as a result of his unlawful act, in conjunction with the principle that every person who suffers a loss as the result of the unlawful act of another is entitled to have such loss made good by the wrongdoer.<sup>2</sup> The person who has suffered as a consequence of another's unlawful act must be restored not only to the position in which he was before the commission of the unlawful act, but to the position in which he would probably have been, had the unlawful act not been committed. In the application of this principle, the law seeks to assure to every person what is legally his due. While the wrongdoer is required to pay integrally the losses he has caused, he is not required to do more. Therefore, if no damage, whether material or moral, has in fact been caused, the victim would have to be satisfied with a mere declaratory judgment with perhaps a small amount of nomi-

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<sup>1</sup> CURRENT LEGAL PROBLEMS, Edited by Keeton and Swarchenberger, 190 (1955).

<sup>2</sup> *Ibid.*, 193.

nal damages, but the wrongdoer would not be required to pay punitive damages. The mere fact that a person has been the object of an unlawful act must not be turned into a source of enrichment for him. He should recover what is his due; but no more. Any reparation which he might receive in excess of his actual loss would constitute unjust enrichment. The courts carefully guard against making the wrongdoer pay for a loss twice over or pay damages in respect of loss which is deemed caused by either the contributory negligence of the victim or the concurrent fault of third parties.

The different countries of the world have not as yet formulated any hard and fast rules on the subject of "unjust enrichment," although there is no doubt that at present the doctrine is accepted and applied generally, even in the absence of specific law, but the difficulty rests in fixing the limits within which it can and must be applied. A person confers a benefit upon another if he gives to the other the possession of or some other interest in money, land, chattels, or choses in action, performs services beneficial to or at the request of the other, satisfies a debt or a duty of the other, or in any way adds to the other's security or advantage. He confers a benefit not only where he adds to the property of another, but also where he saves the other from expense or loss.<sup>3</sup> The word "benefit," therefore, denotes any form of advantage.<sup>4</sup> The advantage for which a person ordinarily must pay is pecuniary advantage; it is not, however, necessarily so limited. But even when a person has received a benefit from another, he is liable to pay therefor only if the circumstances of its receipt or retention are such that, as between the two persons, it is unjust for him to retain it. The mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor. Ordinarily, the benefit to the one and the loss to the other are co-extensive and the result of the remedies given is to compel the one to surrender the benefit which he has received and thereby to make restitution to the other for the loss which he has suffered. There are situations, however, in which a remedy is given where the benefits received by the one is less than the amount of the loss which the other has suffered. In such a case, if the transferee was guilty of no fault, the amount of recovery is usually limited to the amount by which he has been benefited. The amount of recovery, however, is not invariably determined by the value of what has been received.<sup>5</sup> In some cases, the value of what is given is determinative, as where, because of fraud or breach of contract, services are given, the value

<sup>3</sup> RESTATEMENT OF THE LAW OF RESTITUTION, American Law Institute, 12 (1936).

<sup>4</sup> PASCUAL, *LEGAL METHOD*, 172, 2d Ed. (1958).

<sup>5</sup> RESTATEMENT OF THE LAW OF RESTITUTION, American Law Institute, 12 (1936).

of which is greater than the amount by which the recipient's estate has been increased. In other situations, a benefit has been received by the defendant but the plaintiff has not suffered a corresponding loss, or, in some cases, any loss, but nevertheless, the enrichment of the defendant would be unjust. In such cases, the defendant may be under a duty to give to the plaintiff the amount by which he has been enriched.<sup>6</sup>

## II. COMPARATIVE ANALYSIS

This paper is an attempt to present the manner in which the doctrine of unjust enrichment has been applied in three different legal systems—that of our own country, where the civil law obtains, that of the United States, a common law country, and, lastly, that of Soviet Russia, another civil law country like the Philippines. The problem, however, will inevitably boil down to a comparison between the capitalist democracy and the communist society.

### A. APPLICATION IN PHILIPPINE LEGAL SYSTEM.

A careful examination of Philippine jurisprudence on the subject will reveal that the doctrine of unjust enrichment is the underlying principle of several different provisions of our law—most especially, the Civil Code of the Philippines.

#### 1. *Right of Accession.*

Thus, with respect to the law governing the right of accession, there is the rule that he who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation.<sup>7</sup> And, although the general rule is to punish bad faith, still, the builder, planter, or sower in bad faith is entitled to reimbursement for the necessary expenses of the preservation of the land.<sup>8</sup> Whenever two movable things belonging to different owners are, without bad faith, united in such a way that they form a single object, although the owner of the principal thing acquires the accessory, he must first indemnify the owner of the accessory for its value.<sup>9</sup> And in case of commixtion or confusion, each owner shall acquire a right proportional to the part belonging to him, bearing in mind the value of the things mixed or confused.<sup>10</sup> Although one, who in good faith has employed the material of another in whole or in part in order to make a thing of a different kind, is given by the law the right to appropriate the thing thus

<sup>6</sup> *Ibid.*, 14.

<sup>7</sup> Article 443, Civil Code of the Philippines.

<sup>8</sup> *Ibid.*, Article 452.

<sup>9</sup> *Ibid.*, Article 466.

<sup>10</sup> *Ibid.*, Article 472.

transformed as his own, the law at the same time imposes on him the obligation to indemnify the owner of the material for its value.<sup>11</sup>

## 2. *Effect of Possession.*

Likewise, there are quite a number of rules of Philippine law regarding the effect of possession, which are manifestly founded on the doctrine of unjust enrichment. The Civil Code has declared that if at the time the good faith ceases, there should be any natural or industrial fruits, the possessor shall have a right to a part of the expenses of cultivation, and to a part of the net harvest, both in proportion to the time of the possession. The charges shall be divided on the same basis by the two possessors.<sup>12</sup> Useful expenses are to be refunded to the possessor in good faith; while necessary expenses are to be refunded to every possessor, regardless of his good faith or bad faith.<sup>13</sup> With regard to expenses for pure luxury or mere pleasure, although they are not to be refunded to the possessor in good faith, yet, in order to prevent unjust benefit from accruing to his successor in possession, the law gives to the possessor in good faith the right to remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.<sup>14</sup> It seems that the same right is given to the possessor in bad faith.<sup>15</sup>

## 3. *Rights of Usufructuary.*

Similar rules may be found with respect to the law governing the rights of the usufructuary. Thus, the usufructuary, at the beginning of the usufruct has no obligation to refund to the owner any expenses incurred; but the owner shall be obliged to reimburse at the termination of the usufruct, from the proceeds of the growing fruits, the ordinary expenses of cultivation for seed, and other similar expenses incurred by the usufructuary.<sup>16</sup> It is to be noted that expenses which are indispensable for the preservation of the thing are to be borne by the owner; but should the owner not make them, so that the usufructuary is obliged to make them himself, thus performing an obligation which is by law imposed upon the owner, the usufructuary has a right to demand of the owner, at the termination of the usufruct, the increase in value which the immovable may have acquired by reason of the repairs.<sup>17</sup>

<sup>11</sup> *Ibid.*, Article 474.

<sup>12</sup> *Ibid.*, Article 545.

<sup>13</sup> *Ibid.*, Article 546.

<sup>14</sup> *Ibid.*, Article 548.

<sup>15</sup> See Article 549, Civil Code of the Philippines.

<sup>16</sup> *Id.*, Article 567.

<sup>17</sup> See Article 594, Civil Code of the Philippines.

#### 4. *Rescission or Annulment of Contracts.*

When a contract is either rescinded or annulled, the doctrine of unjust enrichment also finds application, so much so that the contracting parties are obliged to restore to each other whatever they have received by virtue of the contract, together with their fruits, and the price with its interest.<sup>18</sup> It also provides that an obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.<sup>19</sup>

#### 5. *Extent of Liability Arising from Delict or Quasi-Delict.*

So, also, when a person suffers a loss or injury due to the act or omission of another, be it a delict or a quasi-delict, the law limits his recovery to an amount that is determined generally by the extent of the loss or injury suffered by him. To give him more than that would constitute unjust enrichment, which the law seeks to avoid.

#### 6. *Implied Trusts.*

Another field of operation of the unjust enrichment doctrine is the field of implied trusts. These are situations wherein the law presumes an implied intention of the parties that the beneficial interest in a certain thing is to be vested in a person other than the one who holds the legal title over it. The purpose of such an arrangement is to give to the beneficiary what is legally his due, and thus to avoid any unjust benefit from accruing in favor of the trustee. Thus, there is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property.<sup>20</sup> There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.<sup>21</sup> Likewise, if two or more persons agree to purchase property by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is thereupon implied by law in favor of the others in proportion to the interest of each.<sup>22</sup> And if the property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.<sup>23</sup>

<sup>18</sup> *Id.*, Article 1385.

<sup>19</sup> *Id.*, Article 1398.

<sup>20</sup> *Ibid.*, Article 1448.

<sup>21</sup> *Ibid.*, Article 1449.

<sup>22</sup> *Ibid.*, Article 1452.

<sup>23</sup> *Ibid.*, Article 1466.

### 7. *Quasi-Contracts.*

It is, however, in the field of quasi-contracts that the doctrine of unjust enrichment finds its widest and most effective application. It is here that the law expressly acknowledges the doctrine as the basis for recovery, when it declares that certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.<sup>24</sup> The Civil Code enumerates several instances of quasi-contract, but it makes provision, too, for circumstances which may not be directly covered by the enumeration, by declaring that the provisions of quasi-contracts do not exclude other quasi-contracts which may come within the purview of the definition of the term given by the Code. The principal instances of quasi-contracts given by the Civil Code are *negotiorum gestio* and *solutio indebiti*. The former arises when one voluntarily takes charge of the agency or management of the business or property of another which has been neglected or abandoned, without any power from the latter.<sup>25</sup> This juridical relation imposes upon the owner of the property or business under officious management the liability for obligations incurred in his interest, and the officious manager is entitled to reimbursement for the necessary and useful expenses and for the damages which he may have suffered in the performance of his duties. This obligation is imposed upon the owner only where he enjoys the advantages of the officious management, except when the management had for its purpose the prevention of an imminent and manifest loss, in which case the owner will still be liable, although no benefit may have been derived.<sup>26</sup>

The juridical relation of *solutio indebiti* arises if something is received when there is no right to demand it, and it was unduly delivered through mistake, in which case the obligation to return arises.<sup>27</sup> Other instances of quasi-contract are enumerated in the Civil Code, some of them are the following: When, without the knowledge of the person obliged to give support, it is given by a stranger, the latter shall have a right to claim the same from the former, unless it appears that he gave it out of piety and without intention of being repaid.<sup>28</sup> When the person obliged to support an orphan, or an insane, or other indigent person unjustly refuses to give support to the needy individual, any third person may furnish support to the needy individual with right of reimbursement from the person obliged to give support; this rule shall also apply when

<sup>24</sup> *Ibid.*, Article 2142.

<sup>25</sup> See Article 2144, Civil Code of the Philippines.

<sup>26</sup> *Id.*, Article 2150.

<sup>27</sup> *Ibid.*, Article 2154.

<sup>28</sup> *Ibid.*, Article 2164.

the father or mother of a child under eighteen years of age unjustly refuses to support him.<sup>29</sup> When through an accident or other cause a person is injured or becomes seriously ill, and he is treated or helped while he is not in a condition to give consent to a contract, he shall be liable to pay for the services of the physician or other person aiding him, unless the service has been rendered out of pure generosity.<sup>30</sup> And when during a fire, flood, storm, or other calamity, property is saved from destruction by another person without the knowledge of the owner, the latter is bound to pay the former just compensation.<sup>31</sup> When the government, upon the failure of any person to comply with health or safety regulations concerning property, undertakes to make the necessary work, even over his objection, he shall be liable to pay the expenses.<sup>32</sup> And, when in a small community a majority of the inhabitants of age decide upon a measure for protection against lawlessness, fire, flood, storm, or other calamity, any one who objects to the plan and refuses to contribute to the expenses but is benefited by the project as executed shall be liable to pay his share of said expenses.<sup>33</sup> Also, a person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter.<sup>34</sup> And, finally, when funeral expenses are borne by a third person, without the knowledge of those relatives who were obliged to give support to the deceased, said relatives shall reimburse the third person, should the latter claim reimbursement.<sup>35</sup>

#### B. APPLICATION IN AMERICAN LEGAL SYSTEM.

The principle of unjust enrichment, in American jurisprudence is intended only as a general guide for the conduct of the courts and is not intended to express that universality of application to particular cases.<sup>36</sup> It is, however, one of the basic assumptions in regard to what is required by justice in the various situations upon which is dependent the validity of the rules concerning restitution. In the case of *Bough v. Darley*,<sup>37</sup> the court stated that unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. Under such circumstances, the law implies an agreement or obligation on the part of the one who has such money or benefits to pay the same over on demand and this is all the privity between him and the rightful

<sup>29</sup> See Article 2166, Civil Code of the Philippines.

<sup>30</sup> *Id.*, Article 2167.

<sup>31</sup> *Ibid.*, Article 2168.

<sup>32</sup> *Ibid.*, Article 2169.

<sup>33</sup> *Ibid.*, Article 2178.

<sup>34</sup> *Ibid.*, Article 2175.

<sup>35</sup> *Ibid.*, Article 2165.

<sup>36</sup> RESTATEMENT OF THE LAW OF RESTITUTION, American Law Institute, 11 (1936).

<sup>37</sup> 184 P. 2d. 335 (1947).

owner which the law requires to uphold a suit for its recovery. Implied contracts are as a rule only maintained to prevent the enrichment of one person at the expense of another. As a rule, there is no implied contract where no benefit has been received. Thus, although the person receiving money under a void contract for the sale of land is bound to return it on the theory that it is the money of the other party to the void contract, the law imposes no liability on one who has, under a void contract, caused valuable improvements to be made upon another's land because, the contract being void and the defendant receiving no benefit, there could be no implied promise to respond for a benefit bestowed upon another.<sup>38</sup>

### 1. *Implied Contracts.*

A careful perusal of various court decisions will give an idea of the scope and the manner in which the doctrine has been applied in the United States. It has been held that where expenditures are made in good faith under a mistaken view of one's rights, reimbursement will be allowed to the extent that such payments benefit another primarily obligated to pay.<sup>39</sup> And when any deceit is practiced, by which a man obtains the labor, money, or other property of another, with the other's consent, in the expectation of recompense, the law implies a quasi or constructive contract for compensation.<sup>40</sup> The law implies a promise to pay on the part of one who actually receives goods at a price for which the other party has engaged to deliver them to him because it would be unconscionable that the receiver would accept goods for which he knew the other party expected payment, and not render the consideration therefor.<sup>41</sup> One at whose instance work is performed for which no special remedy can be enforced is liable on an implied promise to pay for the same.<sup>42</sup> And he who knowingly avails himself of the benefits of another's services is presumed by the law to have intended to pay for them their reasonable value, and a promise so to do is implied.<sup>43</sup>

But, although when services are rendered and voluntarily accepted, the law will imply a promise on the part of the recipient to pay for them, where such services are rendered by members of a family living in one household, no such implication will arise from the mere rendition and acceptance of the service.<sup>44</sup>

The services of an attorney will usually be considered as necessities, and a promise to pay for them will be implied when rendered

<sup>38</sup> *Henrikson v. Henrikson*, 127 NW 962 (1910).

<sup>39</sup> *Hallet v. Alexander*, 34 L.R.A. (N.S.) 328 (1911).

<sup>40</sup> *Plate v. Durst*, 32 L.R.A. 404 (1896).

<sup>41</sup> *Johnson v. Robinson Consolidated Mining Co.*, 5 L.R.A. 769 (1889).

<sup>42</sup> *Moore v. Barry*, 4 L.R.A. 294 (1889).

<sup>43</sup> *Ball v. Dolan*, 114 NW 998 (1908).

<sup>44</sup> *Howard v. Randolph*, 68 SE 586 (1910).



in a proceeding personal to an infant or other person incapable of entering into a contract. An attorney may recover compensation for services rendered to assist a person committed to an institution as insane, to secure his release therefrom, as for necessities if they were faithfully and intelligently performed, although they may not have been successful.<sup>45</sup> A surgeon who performed an operation in the endeavor to have the life of one who has been rendered unconscious by an accident may, upon the theory of implied contract, hold his estate liable for the recovery of the value of his services, although the operation was unsuccessful.<sup>46</sup> An agreement on the part of the parent to pay for medical services rendered a minor child may be implied from the facts that a physician, who was called by a friend to a hospital where the child was taken after the accident, performed an operation immediately necessary and later a second operation and continued to treat the child for a period of nine months, all with the knowledge and acquiescence of the parent.<sup>47</sup> Independent of statutory provision, the law implies a promise to restore to the party from whom it was exacted, payment under a judgment subsequently reversed or set aside.<sup>48</sup> Where one's land has been appropriated without first securing the right, as a railway right of way, and a road constructed thereon, he may waive his remedies in ejectment, injunction, and trespass, and, assuming that the company could acquire the land in condemnation proceedings, waive such proceeding and sue as upon an implied contract to pay the reasonable value of the land taken.<sup>49</sup> And when a suit is brought against a corporation on an ultra vires contract evidenced by a written instrument, the action is not maintained by virtue of the written instrument, but on the implied contract of the corporation to return the property delivered by virtue thereof or to place the parties in status quo.<sup>50</sup> So, also, a person boarding with and in the care of another, under an express agreement fixing the monthly rate of pay therefor, having become insane, the element of mutuality requisite to continue in force the old as well as to give vitality to a new agreement, ipso facto ceases to exist; but the law will imply a liability on the part of the lunatic to pay, upon quantum meruit, for the reasonable value of her subsequent board and care, as well as for the additional services for her benefit and necessitated by such change.<sup>51</sup>

The doctrine of unjust enrichment has been utilized in the American legal system, as the basis for several other juridical relations,

<sup>45</sup> *Re Freshow*, 140 NW 517 (1913).

<sup>46</sup> *Cotnam v. Wisdom*, 104 SW 164 (1907).

<sup>47</sup> *Lufkin v. Harvey*, 154 NW 1097 (1915).

<sup>48</sup> *Chamblis v. Hass*, 101 NW 153 (1904).

<sup>49</sup> *Boise Valley Construction Co. v. Kroeger*, 28 L.R.A. (N.S.) 988 (1909).

<sup>50</sup> *Crowder State Bank v. Aetna Powder Co.*, 138 Pac. 392 (1913).

<sup>51</sup> *Waldron v. Davis*, 58 Atl. 293 (1904).

like the constructive trust, equitable lien, subrogation, and the liability of an innocent donee.

## 2. *Constructive Trusts.*

Thus, where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises.<sup>52</sup> In most cases where a constructive trust is imposed, the result is to restore to the plaintiff property of which he has been unjustly deprived and to take from the defendant the property retention of which by him would result in a corresponding unjust enrichment of the defendant; the effect, therefore, is to prevent a loss to the plaintiff and a corresponding gain to the defendant, and put the plaintiff in the position in which the plaintiff was before the defendant acquired the property. There are some situations, however, in which a constructive trust is imposed in favor of a plaintiff who has not suffered a loss, or who has not suffered a loss as great as the benefit received by the defendant. In these situations, the defendant is compelled to surrender the benefit on the ground that he would be unjustly enriched if he were permitted to retain it, even though that enrichment is not at the expense or wholly at the expense of the plaintiff.

## 3. *Equitable Lien.*

Where the property of one person can, by a proceeding in equity, be reached by another as security for a claim on the ground that otherwise the former would be unjustly enriched, an equitable lien arises.<sup>53</sup> Thus, where a person makes improvements upon the land of another under circumstances which entitle him to restitution, he may have an equitable lien upon the land, but he cannot charge the owner of the land as constructive trustee of the land for him and compel the owner to transfer the land to him. If one person misappropriates money of another and with it purchases property, the other can at his option either enforce an equitable lien upon the property so acquired, holding the wrongdoer personally liable for the balance, if any, or enforce a constructive trust of the property.

## 4. *Subrogation.*

Where the property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched

<sup>52</sup> Section 160, RESTATEMENT OF THE LAW OF RESTITUTION, American Law Institute, 640 (1986).

<sup>53</sup> Section 161, *op. cit.*, 650.

by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lien-holder.<sup>54</sup>

#### 5. *Liability of an Innocent Donee.*

And, where a person receives the title to property of which another has the beneficial interest without notice of the other's interest but without paying value, and being still without such notice exchanges it for other property, he is under a duty either—to surrender the property which he acquired in exchange, or, at his option, to pay the value of the property which he originally received, the property which he acquired in exchange being subject to an equitable lien for such payment.<sup>55</sup>

That is roughly the scope of the application which the American courts have given to the doctrine of unjust enrichment.

### C. APPLICATION IN SOVIET LEGAL SYSTEM.

Although the Philippines is a civil law country, and the United States, a common law country, the application of the doctrine of unjust enrichment has much in common in the two legal systems. And this is due to the fact that both are capitalists democracies. In Soviet Russia, however, communism has led to a very different application of the same principle. The Soviet Civil Code recognizes the right of recovery on the ground of unjust enrichment in two instances in general—those arising from contract and those not arising from contract.

#### 1. *Those Arising from Contracts.*

It is a particular feature of the Soviet law of contracts that, in case of unjust enrichment, what the aggrieved party may obtain as a result of the recovery is forfeited to the State. The compilers of the Soviet Civil Code were definitely instructed by Lenin "to enlarge the interference of the State with the relations pertaining to 'private law' and to enlarge the right of the government, to annul, if necessary, private contracts."<sup>56</sup> In the fulfillment of this aim, section 1 of the Civil Code declared a conditional protection for private rights in general. The particular feature of the Soviet law of contracts lies in the provisions of Section 147, which established, as a penalty additional to invalidation, not only that none of the parties shall have the right to recover from the other whatever such party has performed under the contract but also that unjust enrichment shall be collected for the benefit of the State. Thus, whatever

<sup>54</sup> Section 162, *op. cit.*, 653.

<sup>55</sup> Section 204, *op. cit.*, 831-832.

<sup>56</sup> GSOVSKI, VLADIMIR, *SOVIET CIVIL LAW, Volume I, Contracts in General*, 426 (1949).

was delivered by one party to another in performance of such transaction reverts to the State.

The Plenary Session of the R.S.F.S.R. Supreme Court on May 16, 1927, has ruled that such provision requiring forfeiture to the treasury of the unjust enrichment of the party who received performance should not apply in cases between governmental or cooperative organizations. It was, therefore, understood that the provision was designed for individual citizens only.<sup>57</sup> The following provisions of the Soviet Civil Code give us the Soviet attitude on the subject under consideration. Thus, Section 147 provides that:

"In the event a contract is invalid as one contrary to law or directed to the obvious prejudice of the State, none of the parties shall have the right to claim from the other the restoration of that which such party has performed under the contract. Unjust enrichment shall be collected for the benefit of the State."

Section 149 also provides that:

"In the event the contract has been declared invalid by reason of fraud, violence, threat, or malicious agreement between the agent of one party and the other party, or where the contract is invalid as one intended to take advantage of distress, the party aggrieved may claim from the other party the restoration of all that which was performed by that party under the contract. The other party shall have no such right. Unjust enrichment by the aggrieved party shall be collected for the profit of the State."

And, finally, Section 150 provides that:

"Where the contract intended to take advantage of the distress of another is not declared void from its very inception but has been rescinded merely as to its operation in the future, the aggrieved party shall have the right to claim from the other party the restoration of only that part of the bargain performed by the claimant for which the aggrieved party, up to the time of rescission of the contract, did not receive counterperformance. Unjust enrichment of the aggrieved party shall be collected for the profit of the State."

## *2. Those Not Arising from Contracts.*

Like the Philippine and the American legal systems, the Soviet legal system also permits recovery of unjust benefits not arising from contracts. Sections 399 through 401 of the Soviet Civil Code are designed to apply to these situations where the enrichment of one person at the expense of another, and the loss of the latter, do not appear just, and nevertheless no remedy is available under the

<sup>57</sup> *Ibid.*, 427

law of contracts and that of torts. The compilers, however, of the Soviet Code confined themselves to the most general statement and failed to include any regulation of specific instances of enrichment. Drafted in this manner, the provisions of the Soviet Code are not a success in the opinion of soviet jurists, except Goikhbarg, the principal compiler of the Code.<sup>58</sup> The Soviet Code also deviates from the capitalist codes in that it fails to state that the enrichment may be recovered from a party who acted in good faith only if it still exists at the time it is claimed. The majority of the soviet jurists deduce from this omission that the enrichment must be restituted as it was obtained. This was not the opinion of Stuchka, who made, in general, the most critical comments on the pertinent provisions, as follows: "Unjust enrichment is outlined in our Code in terms too broad, without any need therefor. In fact, these provisions are mostly applied by various arbitral tribunals settling disputes among government agencies and thus are concerned with 'enrichment' of one governmental pocket at the expense of another such pocket. . . . Our Code has borrowed only a few casual sections from the capitalist codes but omitted sections stating that only such enrichment may be recovered as is still in existence when claimed. The text of our Code absolutely does not fit the Soviet conditions."<sup>59</sup>

Contrary to this opinion, the authors of Soviet textbooks of 1938 and 1944 think that provisions regarding unjust enrichment serve to protect both socialist and personal ownership in the Soviet State. But they also admit the shortcomings of the provisions of the Soviet Code. Says one of them: "The language of Sections 399 and 400 has many defects. The most frequent and practically important instance, *viz.*, the recovery of what was unduly paid is not specifically treated or even mentioned in the Code. Therefore, the provisions of the Code appear to be too general in character. It is desirable to regulate in a more specific manner the duty to restore property unduly received."<sup>60</sup>

Section 402 provides that unjust enrichment at the expense of another is to be collected for the revenue of the State wherever it arises from an act of the person enriched, which is either "contrary to law," or was "directed to the prejudice of the State." In cases of transactions declared void because they were under duress or in a state of necessity, the aggrieved party may recover from the guilty party whatever he paid or gave, but the guilty party has no such right. Thus, the aggrieved party may be unjustly enriched if, having recovered, he is also permitted to remain in possession of

<sup>58</sup> *Op. cit.*, Volume II, R.S.F.S.R. Civil Code, *Law of Obligations*, 203.

<sup>59</sup> *Ibid.*, 204.

<sup>60</sup> *Ibid.*

what he received from the guilty party under the contract. Such enrichment must also be collected for the State. The extreme complexity of these provisions perhaps explains the absence of information on their application by the soviet courts. Section 399 of the Soviet Civil Code provides that "Whoever has been enriched at the expense of another, without sufficient ground provided by law or contract, must restitute that which he has groundlessly received. The duty of restitution arises also if the ground justifying the enrichment subsequently ceases." Section 400 provides that "Whoever has been unjustly enriched must restore or compensate for all profits which he gained or ought to have gained out of the unjustly acquired property from the time when he has learned that such enrichment has been unjust. From such time, he shall be liable for letting or causing the property to deteriorate. Until that time, he shall be liable only for intentional acts or gross negligence. On the other hand, he may claim reimbursement for necessary expenses in connection with the property incurred by him from the beginning of the period for which he must restore profits."

### III. CONCLUSION.

It is to be observed, therefore, that in spite of differences in ideologies and systems of law, the principle of unjust enrichment has been maintained in the various countries of the world. The principle is not a monopoly of one single country alone; it forms the basic reason upon which is based or founded a country's legal system itself. This is not surprising, because man, to whatever country, race, creed, ideology, or civilization he belongs, has been gifted with conscience, which demands that he should act in accordance with the postulates of justice, fairness, righteousness, and equity. This has been termed "natural law" which is implanted or impressed in the human heart and mind.<sup>61</sup> And it is this unique and distinctive feature which has been inspired in man at the very moment of being and in a way even before that,<sup>62</sup> which has compelled him to adopt the doctrine of unjust enrichment. The civil law countries, the common law countries, democracy and communism alike—they all have one common objective, which is justice and happiness for all. They only differ in their ideas concerning the process or method by which their goal is to be attained.

#### A. EVALUATION.

The Philippines, the United States, and Soviet Russia are all agreed that no person shall be unjustly enriched or benefited at the

<sup>61</sup> PASCUAL, *THE NATURE AND ELEMENTS OF THE LAW*, Introduction, 9 (1954).

<sup>62</sup> *Ibid.*

expense of another. For, otherwise, they would contravene "the law written in their hearts, their conscience witnessing with them and their thoughts."<sup>63</sup>

It is to be sadly noted, however, that Communism has led to an application of the principle in a manner which quite obviously negatives its very purpose. When a contract is declared invalid because it is "contrary to law" or is "directed to the prejudice of the State," the Soviet Civil Code requires that unjust enrichment is to be collected for the benefit of the State. Such a rule, it is true, would prevent an injustice or unfairness as between the contracting parties themselves, but what about the State? Is it in accordance with justice that the State should profit at the expense of its citizens? The same situation arises under the rule that unjust enrichment shall be collected for the profit of the State in cases of contracts declared invalid due to fraud, threat, violence, or malicious agreement between the agent of one party and the other party. The same question may here be asked: Is it in accordance with justice that the party who was defrauded or otherwise aggrieved should lose what has been given him by virtue of the contract although he is permitted by law to demand the return of what he has given under such contract? It must be remembered that he was defrauded or cheated, and has, therefore, been taken advantage of by the other party. In view of this then, should he not be allowed to retain what the guilty party has given him, by way of an indemnity for the damage that the aggrieved party has presumably suffered due to the other's misconduct? The doctrine of unjust enrichment was designed to be applicable not only to persons which compose the State. The State, as a juridical entity, neither should be permitted to be unjustly enriched or benefited at the expense of its subjects or citizens. This, I believe, is justice.

#### B. SYNTHESIS.

Viewed as a whole, the provisions of our legal system concerning the doctrine of unjust enrichment are quite satisfactory. The Civil Code has enumerated and defined several specific situations which are to give rise to restitution or some other sort of remedy to prevent the retention by a person of any unjust benefits. It has also taken into consideration cases which may not directly be covered by its specific provisions, and to fill this gap, it has provided that "The provisions for quasi-contracts in this Chapter do not exclude other quasi-contracts which may come within the purview of

<sup>63</sup> *Ibid.*, 8, citing THE BIBLE, *Romans* ii: 14-15.

the preceding article.”<sup>64</sup> And such preceding article has the following provision:

“Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.”

For clarity and precision, however, it would have been better if our Legislature could have systematized the provisions of our law concerning the doctrine of unjust enrichment. However, that is a mere matter of form, although form often has a substantial effect upon the substance contained in it.

The provisions of our law are satisfactory, but even then, it does not mean that having had such provisions written down in our statute books, we have already attained our goal, which is justice. The provisions based on the doctrine of unjust enrichment, as thus written down, are mere words—dead to the voice of our people, raised in crying need for justice. In addition to the provisions of the law, we must have honest men in the government to execute and apply them. But in order that we could have such men in the government, we must first have them in the citizenry from which they are to be chosen.

In order, therefore, to achieve justice for the country as a whole, there has to be justice first in the relations among the people which compose the country. Hence, the doctrine of unjust enrichment is not a mere rule of law, it is not intended as a mere guide for the conduct of the courts—but it is, above all, a fundamental rule of conscience that every man must follow, so that he could be at peace with himself and, more especially, with his Creator.

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<sup>64</sup> Article 2143, Civil Code of the Philippines.

<sup>65</sup> *Ibid.*, Article 2142.