

**FACULTY OF LAW, UNIVERSITY OF VICTORIA**  
**2011-12 COURSE REGISTRATION – PRELIMINARY COURSE INFORMATION<sup>1</sup>**

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| <b>COURSE</b>                      | Law 310 Restitution                         |
| <b>UNIT VALUE</b>                  | 1.5 Units (3 hours of instruction per week) |
| <b>INSTRUCTOR</b>                  | Peter Maddaugh                              |
| <b>TERM OFFERED</b>                | Fall 2011                                   |
| <b>CLASS TIMES</b>                 | See Schedule                                |
| <b>PREREQUISITES/CO-REQUISITES</b> | None  |

### **RESTITUTION**

Restitution has long been recognized in Canada as an independent branch of the law of obligations standing alongside contract and tort. A number of Supreme Court of Canada decisions affirm Restitution's role in preventing an unjust enrichment in a wide variety of contexts. A knowledge of restitutionary causes of action and remedies often gives a lawyer a "leg up" over those whose approach to legal issues is limited to the more traditional subjects. For example, a claimant who elects to "waive a tort" or to assert a "constructive trust" may reap significant advantage. Students who take Restitution in their second or third year usually profit much through returning to key problems of contract and tort law from a different direction. Restitution also fills the vacuum created in the law school curriculum when the study of Equity as a distinct subject was abandoned.

### **EDUCATIONAL GOALS AND OBJECTIVES**

To acquaint the student with the existence and utility of the body of doctrine based upon the principle of preventing an "unjust enrichment" that stands as an independent discipline alongside contract and tort as part of the general law of obligations. The course will focus upon the four major grounds upon which a right to restitutionary relief arises: benefits conferred by mistake; benefits conferred in the course of an ineffective transaction; benefits conferred as a result of wrongdoing; and benefits conferred in a non-officious context. The course will also examine the various restitutionary remedies – both at common law and in equity – that are available to redress an unjust enrichment. Endeavour will be made to illustrate the breadth and scope of the subject and, in particular, its ability to cut across traditional boundaries to solve legal issues in a creative fashion.

### **SUBJECT MATTERS COVERED**

The twelve weeks of term (two one and one-half hour sessions per week) will be devoted to an examination of the following topics:

1. Historical background of both quasi-contract and constructive trust and the bringing together of these two streams of doctrine into a single body of law unified by the unjust enrichment principle.
2. Recovery of benefits conferred under mistake and defences of estoppel and change of position.
3. Recovery of benefits improperly demanded by government and other public authorities.
4. Recovery of benefits conferred in the course of an ineffective transaction, including transactions that have failed due to informality, incapacity, illegality, want of authority, and frustration.
5. Recovery of benefits conferred as a result of criminal activity and the doctrine of waiver of tort.
6. Recovery of benefits conferred under compulsion, including economic duress and undue influence.
7. Recovery of benefits conferred through a breach of fiduciary duty.
8. Recovery of benefits conferred through a breach of confidence and as a result of an unconscionable transaction.
9. The equitable proprietary remedies of constructive trust and the equitable lien.
10. The doctrine of equitable compensation.
11. The doctrine of tracing, both at common law and in equity.
12. The remedies of indemnity, contribution and subrogation.

### **TEXT MATERIAL**

Canada Law Book now produces a Student's Edition of *The Law of Restitution* by P.D. Maddaugh and J.D. McCamus. This edition will include this summer's release to the Looseleaf Edition of the treatise and, therefore, will be completely up-to-date. Our understanding is that the Student Edition will be reasonably priced.

### **TEACHING METHODOLOGY**

The teaching method used will be primarily lecture, interspersed with discussion of the key case law and the issues presented in the materials.

### **EVALUATION METHODOLOGY**

The course will be evaluated solely on the basis of a final examination of three hours duration during the examination period at the end of term. In the evaluation of problem questions on examinations, students will be expected to analyze and discuss all major issues raised by the facts, to canvass the case law and/or statutory law which may be applicable, to use the facts and the law to construct arguments for the various parties and give an opinion on the merits of those arguments, to evaluate alternative approaches which may be available to the parties, and to identify minor issues and briefly discuss them. Good organization of the discussion and clarity of expression will improve the answer.

May 16, 2011

<sup>1</sup> The information in this document is provided for course registration purposes only and is **subject to change**. More detailed course information about course content and evaluation will be provided upon the commencement of the course. Students seeking additional information about the course prior to its commencement may contact the instructor or, if no instructor is listed, the Manager of Academic Administration and Student Services ([lawmaass@uvic.ca](mailto:lawmaass@uvic.ca)).