PART 2

CLARIFYING THE LAW OF UNJUST ENRICHMENT
Chapter 10
Implied Contract and the Taxonomy of Unjust Enrichment

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Peter Birks developed a taxonomy over a period of twenty years, which he described by the use of various grids.¹ He was also a major player in the development of the law of restitution. The two elements of his work proceeded in parallel. Birks attempted to use his taxonomy to help justify and explain the separation of unjust enrichment from other areas of law. He also used it to analyse the internal workings of the law of restitution. One consequence is the division of the law of restitution into unjust enrichment and restitution for wrongs, based on different causative events.²

Birks’ attempts at classification, and his use of classification as an analytical tool, have attracted criticism from several quarters. Samuel has suggested that