

HEY, THAT'S CHEATING! THE MISUSE OF THE IRREPARABLE INJURY RULE AS A SHORTCUT TO PRECLUDE UNJUST-ENRICHMENT CLAIMS

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In a recent case, the Eighth Circuit, following the lead of other courts interpreting Minnesota law, hinted that a plaintiff may not be able to pursue an unjust-enrichment claim if a statutory cause of action is available. It did so by calling unjust enrichment an equitable remedy and invoking the “irreparable injury rule,” which states that a plaintiff may not have an equitable remedy if an adequate legal remedy—in this situation, a statute—is available. Numerous other courts have followed similar logic. This Note explores the foundations of unjust enrichment and the Minnesota case law to show that this reasoning is flawed. It then touches on how other states handle similar claims, suggests that courts invoking the irreparable injury rule in this manner may have other motivations, and posits that statutory language and policy should determine whether an unjust-enrichment claim is crowded out by a statute.

INTRODUCTION

Many commentators have observed that the law of unjust enrichment is ill defined and poorly understood, particularly compared to the laws of contracts and torts.¹ As a consequence, potential claimants may not understand whether they have a viable claim in unjust enrichment.² While most publications on unjust enrichment focus on defining, clari-

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1. See, e.g., Andrew Kull, *Rationalizing Restitution*, 83 *Calif. L. Rev.* 1191, 1194–95 (1995) [hereinafter Kull, *Rationalizing*] (“[N]ineteenth-century treatise writers defined bodies of law called ‘torts’ and ‘contracts’ that lawyers came to regard as appropriate . . . [but] in the area of liability for unjust enrichment . . . this threshold task of definition was not pursued to a conclusion . . .”); Douglas Laycock, *The Scope and Significance of Restitution*, 67 *Tex. L. Rev.* 1277, 1277 (1989) [hereinafter Laycock, *Scope and Significance*] (“In an outline of the sources of civil liability, the principal headings would be tort, contract, and restitution . . . Despite its importance, restitution is a relatively neglected and underdeveloped part of the law.”). The terms “restitution” and “unjust enrichment” are related and often used interchangeably. See *infra* Part I.B (exploring taxonomy of restitution and unjust enrichment).

2. Cf. Kull, *Rationalizing*, *supra* note 1, at 1191 (“Few American lawyers, judges, or law professors are familiar with even the standard propositions of the doctrine, and the few who are continue to disagree about elementary issues of definition.”); George P. Roach, *How Restitution and Unjust Enrichment Can Improve Your Corporate Claim*, 26 *Rev. Litig.* 265, 267 (2007) (“The law of restitution and unjust enrichment is widely perceived as needlessly archaic, complex, and boring . . . Nevertheless, some corporate litigators are applying this body of law to their clients’ great advantage in complex litigation, regulatory litigation, and intellectual property.”).

fyng, and illustrating the elements of a cause of action or discuss the appropriate remedy,³ this Note explores a narrower issue: whether a claimant may pursue an unjust-enrichment claim when other causes of action may be available.

A recent case illustrates the issue nicely. In *United States v. Bame*,⁴ the government sought to recover an erroneously paid tax refund under the Minnesota Uniform Fraudulent Transfer Act (MFTA)⁵ and, in the alternative, under a common-law unjust-enrichment theory.⁶ The district court determined that the statutory claim presented several thorny issues, but granted summary judgment for the government on the unjust-enrichment claim.⁷ The Eighth Circuit reversed, finding summary judgment improper, and further noted that the unjust-enrichment claim may have been entirely precluded by the availability of a statutory cause of action—in this case, under the MFTA.⁸ While the *Bame* court did not definitively resolve the issue, as it was unnecessary in that particular case,⁹ the court did indicate that it was “a serious question.”¹⁰

Although the position the Eighth Circuit articulated in *Bame* finds support in the Minnesota case law, the conclusion is not inevitable. The court cited several opinions interpreting Minnesota law that invoke the

3. E.g., Restatement (Third) of Restitution & Unjust Enrichment (2011); 1 Dan B. Dobbs, *Law of Remedies: Damages—Equity—Restitution* ch. 4, at 550–706 (2d ed. 1993); Goff & Jones: *The Law of Unjust Enrichment* (Charles Mitchell et al. eds., 8th ed. 2011) [hereinafter Goff & Jones: *Unjust Enrichment*].

4. *United States v. Bame*, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,528, at 86,491 (D. Minn. 2012), rev'd, 721 F.3d 1025 (8th Cir. 2013). The parties settled the case in December 2013. *United States v. Bame*, No. 0:11-cv-00062-JRT:JJK (D. Minn. Dec. 13, 2013) (order of dismissal).

5. Minn. Stat. Ann. §§ 513.41–513.51 (West 2014).

6. *Bame*, 2012-2 U.S. Tax Cas. (CCH) at 86,493. The government also made a statutory claim under the Federal Debt Collection Procedures Act and a common-law claim under the theory of money had and received, but the opinion focused on the MFTA and unjust-enrichment claims. *Id.* The district court evaluated the unjust-enrichment claim under Minnesota law. *Id.* at 86,494. On appeal, the government also asserted an unjust-enrichment claim under federal common law. See *Bame*, 721 F.3d at 1030 n.4. However, the Eighth Circuit applied Minnesota law and found that the case did not implicate federal common law because the government failed to identify any “specific, concrete federal policy or interest that is compromised by [state] law.” *Id.* (alteration in original) (quoting *O’Melveny & Myers v. FDIC*, 512 U.S. 79, 87–88 (1994)) (internal quotation mark omitted).

7. *Bame*, 2012-2 U.S. Tax Cas. (CCH) at 86,494–95.

8. *Bame*, 721 F.3d at 1029–32.

9. The Eighth Circuit reversed the district court’s decision on the ground that granting summary judgment was improper, as there were genuine issues of material fact regarding the defendant’s good-faith defense and entitlement to the money, either of which could have impacted the unjust-enrichment claim. *Id.* at 1028–29.

10. *Id.* at 1029–30. At least one court has interpreted the Eighth Circuit’s dictum to mean that the court approves of this interpretation of Minnesota law. See *In re Petters Co.*, 499 B.R. 342, 372–75 (Bankr. D. Minn. 2013). But see *George v. Uponsor Corp.*, 988 F. Supp. 2d 1056, 1075 (D. Minn. 2013) (noting result in *Bame* but declining to dismiss unjust-enrichment claim pled in alternative to other causes of action).

“irreparable injury rule”—which states that a plaintiff may not have a remedy in equity when there is an adequate remedy at law¹¹—to conclude that an unjust-enrichment claim is crowded out by the availability of statutory claims affording similar relief.¹² However, a different interpretation of the case law suggests a less rigid state of affairs that would allow an unjust-enrichment claim to exist as an alternative to a statutory claim.¹³ Moreover, it may be easier to reconcile the latter interpretation with the history and principles underpinning unjust enrichment.¹⁴

This Note picks up where the Eighth Circuit left off and attempts to resolve the question of whether a plaintiff may successfully make out an unjust-enrichment claim in the shadow of potential statutory relief. While the analysis principally focuses on Minnesota law, it also sweeps more broadly: Courts interpreting other states’ laws have also found it proper to preclude unjust-enrichment claims by invoking the irreparable injury rule.¹⁵ This Note proceeds in three Parts. Part I outlines the general contours of the law of unjust enrichment, highlighting areas of particular confusion. It then discusses the historical development of unjust-enrichment law and the background and purpose of the irreparable injury rule. Part II examines the Minnesota case law that has led courts to dismiss unjust-enrichment claims by invoking the irreparable injury rule, and suggests that the result is not clearly required by precedent. It goes on to check courts’ use of the irreparable injury rule in this manner against the purpose of the rule and the origins of unjust-enrichment doctrine. It then highlights themes from the case law of other states. Part III offers an explanation for courts’ invocation of the irreparable injury

11. See Douglas Laycock, *The Death of the Irreparable Injury Rule* 4 (1991) [hereinafter Laycock, *Irreparable Injury Rule*] (stating rule). There are two common formulations of the rule: “Equity will act only to prevent irreparable injury, and equity will act only if there is no adequate legal remedy. The two formulations are equivalent; what makes an injury irreparable is that no other remedy can repair it.” *Id.* at 8. But see 1 Dobbs, *supra* note 3, § 2.5(1), at 123–25 (describing two formulations and concluding “irreparable injury is different from . . . inadequate remedy at law when the plaintiff seeks to create new substantive rights”); David L. Shapiro, *Jurisdiction and Discretion*, 60 *N.Y.U. L. Rev.* 543, 548 (1985) (describing inadequacy of legal remedy as “jurisdictional” and irreparability of injury as “address[ing] the need to act” (emphasis omitted)).

12. See, e.g., *Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1132 (D. Minn. 2012) (denying unjust-enrichment claim when plaintiff could have obtained relief under fraudulent-transfer statute); *Cummins Law Office, P.A. v. Norman Graphic Printing Co.*, 826 F. Supp. 2d 1127, 1131–32 (D. Minn. 2011) (denying unjust-enrichment claim when plaintiff could have secured statutory attorney’s lien); *Curtis v. Altria Grp., Inc.*, 792 N.W.2d 836, 851–53 (Minn. Ct. App. 2010) (“Because we have reinstated appellants’ claims under [the private-attorney-general statute] we affirm dismissal of appellants’ unjust-enrichment claim based on the availability of a legal remedy.”), *rev’d on other grounds*, 813 N.W.2d 891 (Minn. 2012).

13. See *infra* Part II.A (detailing Minnesota case law and expounding alternative understanding).

14. See *infra* Part II.B (suggesting *Bame* court’s interpretation of case law is at odds with underpinnings of irreparable injury rule and common practices).

15. See *infra* note 191 (listing cases in numerous states invoking rule).

rule in this manner and proposes an alternative way to evaluate whether an unjust-enrichment claim should be crowded out by a statutory cause of action.

I. UNJUST ENRICHMENT: A DOCTRINE ELUDING CLEAR DEFINITION

Simply stated, the law of unjust enrichment requires a person who enriches herself at the expense of the claimant, under circumstances the law deems to be unjustified, to disgorge the enrichment.¹⁶ It rests on the ancient maxim that “no one be made richer through another’s loss.”¹⁷ While unjust enrichment may straddle other, more familiar, areas of law,¹⁸ core unjust-enrichment claims involve payments induced by fraud, mistake, or coercion; unsolicited benefits; and the unwinding of failed contracts.¹⁹ That is, there exists a set of claims for which the law of unjust enrichment may alone provide relief: those that do not arise from a mutually consensual transaction—typically governed by the law of contracts—or a wrong to which tort liability attaches.²⁰

There is near-universal agreement on the elements of an unjust-enrichment claim.²¹ Yet, despite the apparent clarity of its terms and its

16. See Goff & Jones: Unjust Enrichment, *supra* note 3, at 7 (stating “unjust enrichment is not an abstract moral principle,” but “groups . . . authorities on the basis that . . . in all of them the defendant has been enriched by the receipt of a benefit that is gained at the claimant’s expense in circumstances that the law deems to be unjust”); James Steven Rogers, Restitution for Wrongs and the Restatement (Third) of the Law of Restitution and Unjust Enrichment, 42 Wake Forest L. Rev. 55, 57 (2007) (“The central substantive notion is that one must not (unjustifiably) enrich oneself at the expense of another. The correlative remedial principle might be expressed as ‘[one] who unjustifiably enriches himself at the expense of another owes a duty to pay a sum of money that will disgorge the enrichment.’”).

17. John P. Dawson, Unjust Enrichment: A Comparative Analysis 3 (1951) [hereinafter Dawson, Unjust Enrichment] (internal quotation mark omitted) (quoting maxim from Pomponius in second century AD). In his series of lectures, Professor Dawson traced the modern legal concept of unjust enrichment to two Roman legal actions, *condiction* and *negotiorum gestio*. See *id.* at 41–61.

18. See Laycock, *Scope and Significance*, *supra* note 1, at 1283–84 (“Many cases of unjust enrichment are also covered by other principles, including the basic rules of tort and contract.”); Rogers, *supra* note 16, at 57–61 (illustrating straightforward tort, contract, and unjust-enrichment claims, and claims blurring lines of different bodies of law).

19. Emily Sherwin, Restitution and Equity: An Analysis of the Principle of Unjust Enrichment, 79 Tex. L. Rev. 2083, 2089 (2001). Professor Sherwin largely drew these categories from the Restatement (First) of Restitution. See *id.*; see also *infra* notes 30–33 and accompanying text (discussing “unjust” element of unjust enrichment).

20. See Peter Birks, Unjust Enrichment 21–25 (2d ed. 2005) (describing unjust enrichment as including “all events materially identical to the receipt of a mistaken payment of a non-existent debt” and contrasting such events with those arising from “manifestations of consent,” “wrongs,” and “miscellaneous others”).

21. See *Overka v. Am. Airlines, Inc.*, 265 F.R.D. 14, 20 (D. Mass. 2010) (“Courts have noted that unjust enrichment claims in different states are substantially similar.” (citing *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 697 n.40 (S.D. Fla. 2004)));

potentially broad applicability, unjust enrichment is not well understood.²² This Part highlights some of the reasons for the confusion and attempts to trace the contours of the law of unjust enrichment. Part I.A elaborates on the common elements of an unjust-enrichment claim. Part I.B dissects the taxonomy of unjust enrichment and restitution. Part I.C discusses the nature of unjust enrichment as a legal and equitable concept, its roots in the courts of law and equity, and the implications of that duality. Part I.D explains the origin and purpose of the irreparable injury rule.

A. Essential Ingredients of an Unjust-Enrichment Claim

Despite the confusion in the doctrine, courts and commentators generally agree on the fundamental elements of any unjust-enrichment claim: The defendant must be enriched; the enrichment must have come at the expense of the plaintiff; and the transfer must have occurred under circumstances that the law deems unjust.²³

The first element requires proof that the defendant received some enrichment or benefit; it is not enough that the plaintiff suffered a loss.²⁴ Enrichment in this context generally constitutes a benefit received without solicitation—typically accidentally—and may come in the form of money, property, improvement of property, personal services, or performance of a duty.²⁵ Although this element seems straightforward, courts may have to grapple with difficult issues of valuation and timing in quantifying the amount of the enrichment.²⁶

David Dittfurth, *Restitution in Texas: Civil Liability for Unjust Enrichment*, 54 S. Tex. L. Rev. 225 app. at 265–79 (2012) (surveying elements of unjust enrichment in each state).

22. See *supra* note 1 and accompanying text (discussing commentators' views on underdevelopment of law of unjust enrichment).

23. See, e.g., Birks, *supra* note 20, at 39 (listing factors); Goff & Jones: *Unjust Enrichment*, *supra* note 3, at 7–8 (same); Dittfurth, *supra* note 21, app. at 265–79 (listing elements of unjust-enrichment claim in each state).

24. Goff & Jones: *Unjust Enrichment*, *supra* note 3, at 81; see, e.g., *Timm v. State Bank of Young Am.*, 374 N.W.2d 588, 590 (Minn. Ct. App. 1985) (finding unjust-enrichment claim improper because, although defendant suffered loss when bank foreclosed on property, *lis pendens* action prevented bank from realizing gain on property).

25. John W. Wade, *Restitution for Benefits Conferred Without Request*, 19 Vand. L. Rev. 1183, 1183 (1966); see also Goff & Jones: *Unjust Enrichment*, *supra* note 3, at 109–34 (describing different types of enrichment). As an example, consider *Partipilo v. Hallman*, 510 N.E.2d 8 (Ill. App. Ct. 1987). In the case, the parties owned adjacent properties. *Id.* at 10. The county assessor erroneously assessed the plaintiff for land and improvements belonging to the defendant, and the former sued the latter to recover the overpayment, arguing that the defendant had been unjustly enriched. *Id.* The court allowed the claim because, even though the defendant did not request the payment, he was undeniably enriched and it would have been unjust for him to retain that enrichment. *Id.* at 11; see *infra* text accompanying notes 201–204 (discussing *Partipilo* further).

26. See, e.g., *Heim v. Shore*, 157 A.2d 146, 148 (N.J. Super. Ct. Ch. Div. 1959) (listing cases choosing different times to value mistaken improvements); *Dellagrotta v.*

To meet the second element, the plaintiff must show that she suffered an impoverishment and that the defendant's gain was sufficiently linked to the loss for the law to require a reversal of the gain.²⁷ The loss is often measurable in monetary terms, but may also come from an interference with a protected right that does not produce a measurable loss.²⁸ Frequently, the plaintiff's loss and the defendant's gain will be equal, but this is not always so; where they are unequal, courts typically measure liability in terms of the defendant's gain.²⁹

For the third element to be met, the transaction producing the defendant's enrichment must belong to one of several well-defined categories that the law deems to be unjust, including failed contracts and transfers induced by fraud, mistake, incapacity, or coercion.³⁰ Enrich-

Dellagrotta, 873 A.2d 101, 114–15 (R.I. 2005) (describing complications in awarding unjust-enrichment damages on real estate, including value of improvements, whether to combine cost of improvements and appreciation in value, and offsetting damages by rental value); *Cross v. Berg Lumber Co.*, 7 P.3d 922, 936 (Wyo. 2000) (recognizing valuation difficulties, while noting five factors to assist in measuring unjust-enrichment damages articulated in 1 Dobbs, supra note 3, § 4.5(1), at 628–29). See generally Goff & Jones: Unjust Enrichment, supra note 3, at 109–34 (detailing valuation and timing issues for different types of enrichment).

27. See Goff & Jones: Unjust Enrichment, supra note 3, at 137–38; Mark P. Gergen, What Renders Enrichment Unjust?, 79 Tex. L. Rev. 1927, 1930–31 (2001) (“Something must connect [defendant’s] gain with [plaintiff] in a way that gives [plaintiff] a rightful claim to the gain.”); see also, e.g., *Zelev Funeral Home, Inc. v. Buttry*, 645 N.E.2d 792, 794 (Ohio Ct. App. 1994) (finding no unjust enrichment because “[a]lthough [plaintiff] incurred a loss . . . there was no gain on the part of the [defendants] nor was there any causal relationship between the loss and the alleged gain”).

28. See Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. a (2011); Daniel Friedmann, Restitution of Benefits Obtained Through the Appropriation of Property or the Commission of a Wrong, 80 Colum. L. Rev. 504, 508–09 (1980) (discussing unjust-enrichment claims arising from interference with property rights); see also, e.g., *Olwell v. Nye & Nissen Co.*, 173 P.2d 652, 653–54 (Wash. 1946) (awarding restitutionary damages for wrongful use of machine even though use produced no tangible detriment to plaintiff).

29. See, e.g., *Hartford Whalers Hockey Club v. Uniroyal Goodrich Tire Co.*, 649 A.2d 518, 522 (Conn. 1994) (“[T]he measure of damages in an unjust enrichment case ordinarily is not the loss to the plaintiff but the benefit to the defendant.”). Although “[t]here is a tendency to . . . assume that plaintiff’s loss generally equals defendant’s gain,” Laycock, Scope and Significance, supra note 1, at 1287–88, the amount of the defendant’s gain may be more or less than the amount of the plaintiff’s loss. Compare *John A. Artukovich & Sons, Inc. v. Reliance Truck Co.*, 614 P.2d 327, 328–29 (Ariz. 1980) (requiring defendant to compensate plaintiff for unauthorized use of crane even though plaintiff had no right to use it at that time and, arguably, suffered no loss), with *Kerr v. Miller*, 977 P.2d 438, 449–50 (Or. Ct. App. 1999) (limiting recovery for mistaken improvements to cost even though improvements produced greater increase in value of defendant’s property).

30. See Goff & Jones: Unjust Enrichment, supra note 3, at 12–13 (listing categories); *Sherwin*, supra note 19, at 2096 & n.62 (same); see also *Fitch v. State*, 86 A.2d 718, 719–20 (Conn. 1952) (suggesting bases of unjust enrichment include actual or constructive fraud, failure of consideration, failure of an express trust, and mistake); *Cady v. Bush*, 166 N.W.2d 358, 361–62 (Minn. 1969) (“The theory of unjust enrichment . . . has been invoked in support of claims based upon failure of consideration, fraud, mistake, and in

ments may also be found to be unjust when they result from illegal or unlawful conduct.³¹ One commentator groups unjust-enrichment claims into three groups: those resulting from an impoverishment (e.g., a mistaken payment), those resulting from a wrong (e.g., a tort), and those resulting from a particular policy decision (e.g., contribution among tortfeasors).³² Courts universally agree that an enrichment resulting from a valid contractual agreement is not unjust.³³ Beyond these elemental definitions, there is significantly less agreement; the next two sections will discuss ways in which unjust enrichment is frequently misunderstood.

B. *Teasing Apart Unjust Enrichment and Restitution*

In discussing the law of unjust enrichment, the terms “unjust enrichment” and “restitution” often appear in close proximity and are frequently used interchangeably.³⁴ Conflating the terms may lead to confu-

other situations where it would be morally wrong for one party to enrich himself at the expense of another.”).

31. See, e.g., *First Nat’l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981) (“[I]t must be shown that a party was unjustly enriched in the sense that the term ‘unjustly’ could mean illegally or unlawfully.”). *First National Bank of St. Paul* could be interpreted to mean that an unjust-enrichment claim *must* be supported by an unlawful act, but an Illinois court could “find no support for [that] proposition . . . in any other case law or in the relevant literature” and found that idea “completely opposed to the concept of unjust enrichment.” *Partipilo v. Hallman*, 510 N.E.2d 8, 11 (Ill. App. Ct. 1987).

32. See Gergen, *supra* note 27, at 1933–49.

33. See, e.g., *Cohen v. Am. Sec. Ins. Co.*, 735 F.3d 601, 615 (7th Cir. 2013) (“In Illinois recovery for unjust enrichment is unavailable where the conduct at issue is the subject of an express contract between the plaintiff and defendant.”); *Cady*, 166 N.W.2d at 362 (“[U]njust enrichment should not be invoked merely because a party has made a bad bargain.”). However, unjust enrichment may be a basis for recovery if the existence of a contract is disputed or in certain other circumstances. See, e.g., *Mile 4 Auto., Inc. v. Ocean Petroleum, LLC* (In re *Mile 4 Auto., Inc.*), Ch. 11 Case No. 08-13622PM, Adv. No. 09-00080PM, 2009 WL 2927740, at *2 (Bankr. D. Md. June 16, 2009) (“It is generally held that no quasi-contractual claim or claim for unjust enrichment exists when a contract exists between the parties concerning the same subject matter. Exception to this rule is where there is fraud or bad faith in the formation of the contract.” (citations omitted)); *Buku Props., LLC v. Clark*, 291 P.3d 1027, 1033–34 (Idaho 2012) (“[I]n some instances ‘[a]n award for unjust enrichment may be proper even though an agreement exists.’ This occurs when the express agreement is found to be unenforceable.” (second alteration in original) (citation omitted) (quoting *Bates v. Seldin*, 203 P.3d 702, 706 (Idaho 2009))); *Patrick Eng’g, Inc. v. City of Naperville*, 955 N.E.2d 1273, 1289–90 (Ill. App. Ct. 2011) (“[W]here the scope and enforceability of the contract are disputed by the parties, there is no bar to pleading *quantum meruit* as an alternate basis for recovery.”), *rev’d on other grounds*, 976 N.E.2d 318 (Ill. 2012). *Quantum meruit* is one type of unjust-enrichment claim. See *infra* notes 74–79 and accompanying text (identifying different claims sounding in unjust enrichment).

34. See, e.g., Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. c (2011) (acknowledging differences between unjust enrichment and restitution but stating “‘restitution’ and ‘unjust enrichment’ will generally be treated as synonymous” in certain contexts); James J. Edelman, *Unjust Enrichment, Restitution, and Wrongs*, 79 Tex. L. Rev. 1869, 1869 (2001) (“Th[e] synonymous use of restitution and unjust enrichment . . . has become prevalent.”).

sion, however, as they are not synonymous, and each is best understood as a term of art.³⁵ It is thus necessary to separate the ordinary meaning of each term from its technical meaning.

In common parlance, restitution means “restoration.”³⁶ In a legal sense, restitution refers to “restoration of what the defendant has gained in a transaction.”³⁷ The term is intertwined with the law of unjust enrichment,³⁸ but may be more familiar as a punishment for criminal behavior³⁹ or as a remedy for a statutory violation.⁴⁰ The conflation of restitution and unjust enrichment in legal parlance is typically attributed to the authors of the Restatement (First) of Restitution.⁴¹ The authors of that Restatement chose the word “restitution” to describe the law compiled in the Restatement—the law “denot[ing] liability based on unjust enrichment”⁴²—because it was the American Law Institute’s policy not to coin new terms, and “restitution” connotes “the right to recover back something which one once had.”⁴³ But, even ignoring the broader legal

35. See Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. c (calling “restitution” “a term of art that has frequently proved confusing” because although it is “[e]mployed to denote liability based on unjust enrichment,” “the concepts of unjust enrichment and restitution (in the literal meaning of ‘restoration’) correlate only imperfectly”); Kull, *Rationalizing*, supra note 1, at 1214–15 (noting discrepancy between terms’ ordinary meaning and legal meaning).

36. See Webster’s Third New International Dictionary of the English Language Unabridged 1936 (Philip Babcock Gove ed., 1981) (defining restitution as “act of restoring or a condition of being restored,” “restoration of something to its rightful owner,” or “restoration of a thing . . . to its original state or form”).

37. 1 Dobbs, supra note 3, § 4.1(1), at 551.

38. See Restatement (Third) of Restitution & Unjust Enrichment § 1 (“A person who is unjustly enriched at the expense of another is subject to liability in restitution.”).

39. See 1 Dobbs, supra note 3, § 4.1(1), at 551 n.2 (“Judges and lawyers sometimes speak of a convicted criminal’s duty to make restitution to his victim Restitution in criminal cases has little relationship to restitution in civil cases”); Kull, *Rationalizing*, supra note 1, at 1214 (“[T]he ordinary lawyer is . . . more likely to associate the term ‘restitution’ with criminal sanctions.”).

40. See Colleen P. Murphy, *Misclassifying Monetary Restitution*, 55 SMU L. Rev. 1577, 1595–98 (2002) (discussing use of “restitution” in statutes).

41. See Kull, *Rationalizing*, supra note 1, at 1213 (“[T]he word ‘restitution,’ as a name for a body of law, is essentially a modern coinage: it is the word chosen by Warren Seavey and Austin Scott . . . to describe those rights and remedies whose unified treatment they inaugurated in the *Restatement of Restitution*.”).

42. Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. c.

43. Warren A. Seavey & Austin W. Scott, *Restitution*, 54 Law Q. Rev. 29, 29 (1938); see also Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. c (“The [Restatement (First) of Restitution] adopted the name ‘restitution’ . . . because recognition of unjust enrichment leads, in most instances, . . . to the avoidance of a transfer or to an obligation . . . to pay for what has been transferred. Either remedy results in a form of ‘restitution’”); cf. Kull, *Rationalizing*, supra note 1, at 1213 (“Because the law described in the *Restatement* is the law of unjust enrichment, the name ‘restitution’ was an unfortunate choice”).

meaning of “restitution,”⁴⁴ restitution and unjust enrichment are not coextensive, both because there are unjust-enrichment claims that lead to remedies not properly termed restitutionary⁴⁵ and because there are instances of restitution that do not stem from unjust enrichment.⁴⁶ Perhaps because of the difficulty inherent in reconciling the different meanings of the terms, one of the authors of the Restatement (First) suggested that using the term “unjust enrichment” in place of “restitution” may have been a better choice.⁴⁷

Of course, the term “unjust enrichment” introduces its own difficulties, largely stemming from the moralistic overtones of the word “unjust.”⁴⁸ In the context of the law of unjust enrichment, however,

44. See *supra* notes 39–40 and accompanying text (describing use of term “restitution” in criminal and statutory contexts).

45. See Goff & Jones: Unjust Enrichment, *supra* note 3, at 4 (“Responses to unjust enrichment other than restitution are possible, for example prophylactic remedies, which prevent unjust enrichment from arising . . .”); 1 George E. Palmer, *The Law of Restitution* § 1.1, at 4 (1978 & Supp. 2014 No. 3) (“The term [‘restitution’] is not wholly apt since it suggests restoration to the successful party of some benefit obtained from him. Usually this will be the case . . . , but by no means always.”); see also Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. c (providing disgorgement of profits as example). This depends on whether one is referring to restitution’s plain or technical meaning. If one defines restitution with reference to the law of unjust enrichment, then every adjudged unjust enrichment leads to a remedy in restitution. See Birks, *supra* note 20, at 4, 11–17 (suggesting all instances of unjust enrichment lead to restitutionary remedy, but defining “restitution” as “law of gain-based recovery” and not by plain meaning); Kull, *Rationalizing*, *supra* note 1, at 1196–98 (proposing rationalization of restitution by redefining it “exclusively in terms of its core idea, the law of unjust enrichment”).

46. See Goff & Jones: Unjust Enrichment, *supra* note 3, at 4 (“[A] right to restitution may arise from events other than unjust enrichment.”); Edelman, *supra* note 34, at 1869 (“All awards of restitution cannot be treated alike because all claims for restitution do not rest solely upon unjust enrichment.”); cf. Restatement (Third) of Restitution & Unjust Enrichment § 13 cmt. e (requiring no showing of unjust enrichment for rescission of transfer induced by fraud or misrepresentation). See generally John P. Dawson, *Restitution Without Enrichment*, 61 B.U. L. Rev. 563, 620–21 (1981) (arguing many cases purporting to provide restitution do so without proof of enrichment or without reference to amount of enrichment). Again, this may be a definitional issue. See Kull, *Rationalizing*, *supra* note 1, at 1199–1201 (disputing Dawson’s thesis because “most of Dawson’s examples . . . are not restitution at all” but cases “of surreptitious contract enforcement”).

47. See Kull, *Rationalizing*, *supra* note 1, at 1213 & n.67 (“Restitution is the equitable principle by which one who has been enriched at the expense of another, whether by mistake, or otherwise, is under a duty to return what he has received or its value to the other. Perhaps unjust enrichment would be a better term.” (quoting Warren A. Seavey, *Problems in Restitution*, 7 Okla. L. Rev. 257, 257 (1954)) (internal quotation marks omitted)); see also Goff & Jones: Unjust Enrichment, *supra* note 3, at 3 & n.4 (“[A] preference for ‘unjust enrichment’ over ‘restitution’ can be observed in more recent works.”).

48. See Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. b (preferring term “unjustified enrichment” since “[c]ompared to the open-ended implications of the term ‘unjust enrichment,’ instances of unjustified enrichment are both predictable and objectively determined, because the justification in question is not moral but legal”); see also Douglas Laycock, *Restoring Restitution to the Canon*, 110 Mich. L. Rev. 929, 932 (2012) [hereinafter Laycock, *Restoring Restitution*] (reviewing Restatement (Third) of Restitution & Unjust Enrichment) (clarifying “unjust” element of unjust

“unjust enrichment” is a term of art generally understood to have a more neutral meaning.⁴⁹ That is, courts do not necessarily correct every enrichment that moral conventions might deem “unjust”; they only remedy those that the *law* deems “unjust.”⁵⁰ Indeed, to mute the natural-law implications of the term, the Restatement (Third) of Restitution and Unjust Enrichment might have used the term “unjustified enrichment,” but felt bound by existing conventions.⁵¹

It is necessary to introduce one additional element to the mix. When discussing restitution and unjust enrichment, many authors refer to the “substantive” side and the “remedial” side of the phrase.⁵² Substantive unjust enrichment deals with whether, given the facts of the case, the plaintiff can establish a viable unjust-enrichment claim.⁵³ The remedial component concerns what relief is granted for the violation of the substantive right.⁵⁴ Despite talk of remedial unjust enrichment, unjust enrichment is best understood as a substantive principle giving rise to a

enrichment “is not a free-floating moral inquiry, but a matter of legal rules” and noting superiority of term “unjustified enrichment”).

49. Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. b.

50. See 1 Dobbs, *supra* note 3, § 1.1, at 6 (“[R]estitution . . . is a general term for diverse kinds of recoveries aimed at preventing unjust enrichment . . . but it has many specific forms, each of which must be addressed separately.”); *id.* § 4.1(2), at 558 (“[S]ome common patterns in the cases show that the unjust enrichment rationale is often only a unifying generalization about familiar kinds of cases, a way of protecting what we already believe to be the plaintiff’s entitlements.”); Laycock, *Restoring Restitution*, *supra* note 48, at 930 (“The law of restitution and unjust enrichment creates distinctive causes of action with many and diverse applications”); *supra* notes 30–33 and accompanying text (discussing “unjust” element of unjust-enrichment claim). But see Sherwin, *supra* note 19, at 2091–2104 (discussing alternative understandings of “unjust enrichment” allowing “individualized, fact-specific decision making” instead of a prescribed set of legal principles); Louis E. Wolcher, *Intent to Charge for Unsolicited Benefits Conferred in an Emergency: A Case Study in the Meaning of “Unjust” in the Restatement (Third) of Restitution & Unjust Enrichment*, 68 Wash. & Lee L. Rev. 911, 916–17 (2011) (arguing notion that all restitutions of unjust-enrichment claims rely on well-established legal basis may overstate reality).

51. Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. b. Despite the difference in terminology, the Restatement (Third) makes clear that, as a legal matter, “unjust enrichment” and “unjustified enrichment” are “precisely coextensive.” *Id.*

52. See, e.g., 1 Dobbs, *supra* note 3, § 4.1(1), at 552 (“Unjust enrichment has both a substantive and a remedial aspect.”); Laycock, *Scope and Significance*, *supra* note 1, at 1277 (“The law of restitution offers substantive and remedial principles of broad scope and practical significance.”); cf. *Stewart Title Guar. Co. v. Sanford Title Servs., LLC*, No. ELH-11-620, 2011 WL 2681196, at *4–*5 (D. Md. July 8, 2011) (calling equitable lien and constructive trust restitutionary remedies and distinguishing them from substantive claims including, *inter alia*, unjust enrichment).

53. See 1 Dobbs, *supra* note 3, § 1.1, at 1–2, § 4.1(2), at 557 (defining substantive law and substantive unjust enrichment).

54. See *id.* § 1.1, at 1–2, § 4.1(4), at 566 (defining remedial law and remedial unjust enrichment).

remedy, typically a restitutionary remedy, or gain-based recovery.⁵⁵ While restitution is a broader subject than unjust enrichment,⁵⁶ to avoid confusion this Note will principally use the term “restitution” as a way of discussing the remedy for unjust enrichment.

C. *Unjust Enrichment as a Legal and Equitable Principle*

That unjust enrichment sounds in equity should be no surprise; the principle of reversing a benefit received “unjustly” reflects a desire for corrective justice.⁵⁷ As a legal matter, though, unjust enrichment is not strictly “equitable.”⁵⁸ Its roots lie in both law and equity, as the precursors to unjust enrichment were recognized in different forms in both the law and equity courts of England.⁵⁹ Unjust enrichment’s parallel development in both courts helps explain the many shapes it takes and has implications for how it is used and what remedies are available.⁶⁰

1. *Unjust Enrichment at Law and Quasi-Contract.* — England’s law courts developed unjust-enrichment doctrine by implying a contract

55. See Birks, *supra* note 20, at 4, 21–26 (envisioning unjust enrichment as “causative event” (alongside torts, contracts, and miscellaneous others) giving rise to remedy in restitution, or gain-based recovery); Goff & Jones: *Unjust Enrichment*, *supra* note 3, at 4 (“The difference between [unjust enrichment and restitution] is the difference between event and response.”); Douglas Laycock, *Modern American Remedies* 622 (4th ed. 2010) [hereinafter Laycock, *Remedies*] (“‘Unjust enrichment’ generally describes the benefits that defendant has received and also the cause of action to recover those benefits.”). While advocating for a unity of unjust enrichment’s substantive and remedial components, Professor Kull admitted “[t]he question whether to separate [them] is purely one of classification” and the bifurcation “offers certain practical advantages.” Kull, *Rationalizing*, *supra* note 1, at 1226.

56. See Birks, *supra* note 20, at 4 (“The law of gain-based recovery is larger than the law of unjust enrichment.”); Laycock, *Remedies*, *supra* note 55, at 622 (“‘Restitution’ may mean either the cause of action or the remedy. Restitutionary remedies are generally based on unjust enrichment, but ‘restitution’ is also applied [in other contexts] . . .”).

57. See 1 Dobbs, *supra* note 3, § 4.1(2), at 558 (“[U]njust enrichment refers to corrective justice . . . [It is] about what is right between two particular people, considering ‘equity and good conscience’ . . .”); Sherwin, *supra* note 19, at 2106–07 (“[W]hat makes unjust enrichment both powerful and dangerous when interpreted as a legal principle is its open-endedness. Unjust enrichment is a highly abstract and morally charged idea, capable of accommodating many contestable views of corrective and distributive justice.”).

58. Cf. Sherwin, *supra* note 19, at 2088–89 (clarifying “equity” can refer to “individuation of justice,” “what is morally fair,” or “rules and practice of . . . courts of equity,” which “leaves uncertain just what it means to say that unjust enrichment is a principle of equity”).

59. Murphy, *supra* note 40, at 1598–99. While the discussion of the development of unjust-enrichment doctrine begins with the (relatively recent) English courts, the notion of recovering for an unjust enrichment in court dates back at least 2,000 years. See Dawson, *Unjust Enrichment*, *supra* note 17, at 41–61 (describing two Roman legal actions similar to unjust enrichment, *condiction* and *negotiorum gestio*).

60. See 1 Dobbs, *supra* note 3, § 4.2(1), at 570 (“Some doctrines were developed in equity, some at law. Both lines left their mark . . .”).

where none existed in order to apply the law of contracts then in place.⁶¹ Historically, actions in the law courts followed one of a set of prescribed writs.⁶² Actions for breach of contract were brought under the relatively flexible action of *assumpsit*.⁶³ But suits to recover money for the repayment of a debt, even if premised on a promise to repay, had to be brought under the less favorable action of debt.⁶⁴ Courts made it easier to bring actions for the repayment of money by stretching the *assumpsit* action to accommodate different types of cases and supplanting the debt action.⁶⁵

The courts proceeded gradually. First, the courts allowed an action in *assumpsit* where the plaintiff could prove that the defendant, owing a debt, had made an express promise to repay.⁶⁶ Next, the courts “imported” such a promise to repay into every debt, making it possible to bring an action in *assumpsit* to enforce any debt claim.⁶⁷ Not long after, the courts recognized contracts “implied in fact”—contracts implied by the parties’ conduct instead of their words.⁶⁸ Finally, claims in *assumpsit* began covering situations devoid of contractual elements, such as the mistaken payment of money, to prevent unjust enrichment of the defendant.⁶⁹ Even though there is no actual bargain in this context, “by reason of the money the law creates a promise”;⁷⁰ that is, to reverse unjust enrichment, courts fashioned contracts implied in law, otherwise known as quasi-contracts.⁷¹

61. See *id.* § 4.2(1), at 571.

62. J.H. Baker, *An Introduction to English Legal History* 53–57 (4th ed. 2002) (explaining writ system).

63. See 1 John Norton Pomeroy, *A Treatise on Equity Jurisprudence as Administered in the United States* § 29, at 35 (Spencer W. Symons ed., 5th ed. 1941) (describing *assumpsit* as action “by which the multiform contracts growing out of trade and commerce could be judicially enforced” and calling it one of “the most efficient and useful of all the forms of legal actions in promoting the growth of an enlightened national jurisprudence”).

64. 1 Dobbs, *supra* note 3, § 4.2(3), at 578. In general, if a plaintiff had a remedy in one form of action, she could not be granted a remedy in another form. *Id.*

65. See Baker, *supra* note 62, at 341–45 (comparing *assumpsit* and debt and tracing replacement of *assumpsit* with debt); see also Sherwin, *supra* note 19, at 2094 (“Restitution at law developed primarily through the form of action known as *assumpsit* . . .”). Professor Klerman posits that English courts developed pro-plaintiff procedures and substantive doctrines to compete with other courts, since judges received substantial fee income linked to caseload. See Daniel Klerman, *Jurisdictional Competition and the Evolution of the Common Law*, 74 *U. Chi. L. Rev.* 1179, 1181, 1189–92 (2007).

66. 1 Palmer, *supra* note 45, § 1.2, at 6–7.

67. *Id.* § 1.2, at 7. This was the subject of *Slade’s Case*, (1602) 76 *Eng. Rep.* 1074 (K.B.); 4 *Co. Rep.* 92 b.

68. 1 Dobbs, *supra* note 3, § 4.2(3), at 579.

69. *Id.* § 4.2(3), at 579–80.

70. *Id.* (quoting *Arris v. Stukely*, (1677) 86 *Eng. Rep.* 1060 (K.B.) 1062; 2 *Mod.* 260, 262).

71. See *id.* (describing development of quasi-contract, or “law-created promise”); see also Dittfurth, *supra* note 21, at 228 (explaining recipient of mistaken payment was made

In 1760, Lord Mansfield laid the groundwork for the modern conception of unjust enrichment, stating that an action in *assumpsit* would lie when “the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money.”⁷² Although this articulation invokes equity, quasi-contract “was tied to the action in *assumpsit* and to the limited judicial powers of the law judges.”⁷³ Moreover, instead of evolving into Lord Mansfield’s broad principle, quasi-contract developed along specific factual patterns, spawning the legal claims of money had and received,⁷⁴ money paid,⁷⁵ quantum meruit,⁷⁶ and quantum valebat,⁷⁷ among others.⁷⁸ Although these claims have found their way into modern legal parlance, they are best understood as variations of quasi-contract, which is itself a subset of the law of unjust enrichment.⁷⁹

2. *Unjust Enrichment at Equity and Constructive Trust.* — The second pillar of the law of unjust enrichment came from the equity courts.⁸⁰ The equity courts responded to unjust enrichment in much the same way as the law courts did: by analogizing to an area of law over which they already exercised control.⁸¹ In this case, equity courts leveraged trust law, which they created, to fashion the remedy of constructive trust.⁸²

liable through court-imposed fictional debt resembling contract and stating “manufactured similarity of these ‘quasi-contracts’ was deemed sufficient to fit such cases within the *assumpsit* form of action”).

72. *Moses v. Macferlan*, (1760) 97 Eng. Rep. 676 (K.B.) 681; 2 Burr. 1005, 1012; see 1 Dobbs, *supra* note 3, § 4.2(3), at 581 (discussing *Moses*).

73. 1 Dobbs, *supra* note 3, § 4.2(3), at 581; see 1 Palmer, *supra* note 45, § 1.2, at 9 (“Although Mansfield’s description of quasi contract as ‘equitable’ has been repeated many times, this refers merely to the way in which a case should be approached, since it is clear that the action is at law . . .”); Sherwin, *supra* note 19, at 2086–87 (“Although quasi-contract remedies . . . were historically granted by law courts rather than equity courts, restitution and unjust enrichment have often been associated with equity in a broader sense.”).

74. A claim for money had and received may arise when the defendant receives money that belongs in good conscience to the plaintiff, such as for money paid to the defendant by mistake, under duress, or by fraud. 1 Dobbs, *supra* note 3, § 4.2(3), at 582.

75. A claim for money paid may arise when the plaintiff, by mistake or otherwise, pays a debt of the defendant. *Id.* § 4.2(3), at 581–82.

76. A claim for quantum meruit may arise when the plaintiff provides services that benefit the defendant in some way, even if there is no valid contract between the parties. *Id.* § 4.2(3), at 583.

77. A claim for quantum valebat may arise when the plaintiff provides goods to the defendant. *Id.* § 4.2(3), at 583–84.

78. Collectively, these claims are often referred to as the common counts in general *assumpsit*. See, e.g., 1 Palmer, *supra* note 45, § 1.2, at 7.

79. 1 Dobbs, *supra* note 3, § 4.2(3), at 581.

80. See Kull, *Rationalizing*, *supra* note 1, at 1192 (terming quasi-contract and constructive trust “the twin pillars” of unjust enrichment).

81. See Dittfurth, *supra* note 21, at 230 (“The courts of equity were as adept as the common law courts at expanding their judicial power. They did so in a similar fashion as

A plaintiff may only obtain a constructive trust when the defendant holds legal title to a particular asset to which the plaintiff has a superior moral or equitable claim.⁸³ If the court agrees that equitable title rests in the plaintiff, it will declare the defendant a constructive trustee of the asset and require her to convey the property to the plaintiff.⁸⁴ If the defendant sells the property, the plaintiff may be able to recover substituted property; if the defendant transfers the property, the plaintiff may be able to recover from the transferee, at least when the transferee is not a bona fide purchaser.⁸⁵ In either case, the plaintiff must be able to trace the original property to the property she seeks to recover.⁸⁶ Depending on the particular facts and equities of a case, though, a court may invoke another equitable remedy closely associated with constructive trust, such as equitable lien, subrogation, or accounting.⁸⁷

Courts first applied constructive trust narrowly, in cases where a trustee violated trust law or abused a fiduciary relationship, such as by misappropriating trust assets.⁸⁸ For example, if a trustee used trust funds to buy land outside of the trust, a court of equity would remedy the unjust enrichment by imposing a constructive trust on the land; that is, it would trace the trust funds to the purchase of the land, declare the defendant a constructive trustee, and subject the land to the trust.⁸⁹ Despite this narrow beginning, courts have expanded the use of constructive trusts to a wide variety of factual settings.⁹⁰ Courts have, for example, imposed constructive trusts in cases involving, among others, embezzlement of money; conversion of goods; and benefits transferred because of fraud, duress, or undue influence.⁹¹ Wrongdoing is not necessarily a prerequisite for the imposition of a constructive trust, however;

well; they used legal fictions to create superficial similarities between new rights and more established rights.”).

82. See 1 Dobbs, *supra* note 3, § 2.3(2), at 75–78 (recounting development of law of trusts in equity courts).

83. *Id.* § 4.3(2), at 591.

84. Doug Rendleman & Caprice L. Roberts, *Remedies* 514–15 (8th ed. 2011).

85. See 1 Dobbs, *supra* note 3, § 4.3(2), at 589–90. As a general rule, if legal title passes to a bona fide purchaser for value, the purchaser’s title will prevail over the plaintiff’s equitable interest in the property. See *id.* § 4.7(1), at 659–62.

86. Rendleman & Roberts, *supra* note 84, at 514–15.

87. See 1 Dobbs, *supra* note 3, § 4.3(1), at 587 (“These are sister remedies. They have several elements in common and all of them [bear] strong resemblance to, or can even be considered as forms of the constructive trust.”); *id.* § 4.3(3)–(5), at 600–14 (describing listed equitable remedies in greater detail).

88. See 1 Palmer, *supra* note 45, § 1.3, at 10–12 (describing development of constructive trust in English and American courts).

89. See *id.* § 1.3, at 10–11 (providing similar example from early English cases).

90. See 1 Dobbs, *supra* note 3, § 4.3(2), at 597–98 (comparing constructive trust’s early limitations with application today).

91. *Id.*

constructive trust has also been applied to recover property transferred by mistake and to divide familial assets.⁹²

3. *Key Differences and Implications.* — These two responses to unjust enrichment parallel each other in purpose and evolution, but each is different, owing in part to the unique nature of each court. Even though the courts of law and equity long ago merged,⁹³ courts continue to distinguish between actions and remedies that originated in law and those that originated in equity.

In the law courts, quasi-contract evolved as a collection of “common counts” allowing the plaintiff to plead one of several forms of unjust enrichment.⁹⁴ If a count was successful, the plaintiff could then recover the quintessential remedy at law—a money judgment against the defendant.⁹⁵ In the equity courts, judges developed constructive trust and related equitable remedies to restore specific property to the plaintiff when the equities of the case favored her.⁹⁶

Several reasons persist for a plaintiff to prefer an equitable remedy—here, constructive trust—over a legal remedy—a money judgment. First, a constructive trust gives all gains on the property to the plaintiff. This is particularly meaningful if the property appreciates in value while in the defendant’s custody or if the defendant profitably exchanges the property for other property.⁹⁷ Second, judgments from a court of equity are enforceable in personam—the court can force the defendant to comply with the judgment and hold her in contempt if she does not do so.⁹⁸ Money judgments from a court of law, however, are only enforceable by seizing and selling the defendant’s assets.⁹⁹ Third, getting a property

92. *Id.* § 4.3(2), at 598.

93. See, e.g., Laycock, Remedies, *supra* note 55, at 6 (“The United States inherited separate courts of law and equity and their separate bodies of law. By now, the separate courts have been merged in nearly all the states . . .”); Caprice L. Roberts, The Restitution Revival and the Ghosts of Equity, 68 Wash. & Lee L. Rev. 1027, 1030 (2011) (“Court systems are no longer separated. The Federal Rules of Civil Procedure merged in 1938. Almost all states have merged law and equity courts.” (footnote omitted)).

94. See *supra* notes 72–79 and accompanying text (discussing quasi-contract and common counts in general assumption).

95. See 1 Dobbs, *supra* note 3, § 4.2(3), at 580 (“Quasi contract is merely one way of discussing restitution based on unjust enrichment. Its function is to give the plaintiff a money judgment that will recover the defendant’s unjust benefits.”); see also Laycock, Remedies, *supra* note 55, at 6 (“Damages are the most important legal remedy; in general, compensatory and punitive remedies are legal.”).

96. See *supra* notes 83–87 and accompanying text (discussing requirements of constructive trust and mentioning related equitable remedies).

97. See Rendleman & Roberts, *supra* note 84, at 515 (explaining constructive trust entitles plaintiff to capture defendant’s appreciation on subject property).

98. See 1 Dobbs, *supra* note 3, § 4.3(2), at 591 (“The power to issue coercive or injunctive orders thus lies at the basis of the constructive trust.”); *id.* § 1.4, at 16–17 (explaining ability of equity courts to enforce coercive remedies).

99. See *id.* § 1.4, at 16 (“[L]aw courts adjudicated rights and liabilities but they issued no commands. Instead they preferred to enforce judgments *in rem.*”).

interest in equity gives the plaintiff priority over other creditors; a money judgment puts the plaintiff in the defendant's general pool of creditors.¹⁰⁰

A plaintiff may not always be able to choose her remedy, however. A constructive trust is only available when the plaintiff can trace what is equitably hers to property held legally by the defendant.¹⁰¹ Even where a plaintiff can choose between a legal and equitable remedy, there may be other reasons to choose one over the other, such as the availability of a jury to hear the claim,¹⁰² possible defenses,¹⁰³ and the statute of limitations.¹⁰⁴ Thus, even though the same courts generally hear all unjust-enrichment claims,¹⁰⁵ the source of the claim in law or equity may influence substantive and procedural aspects of the case.

D. *The Irreparable Injury Rule*

A plaintiff's choice of remedy may also be restricted by limitations on equitable jurisdiction. Hundreds of years ago, equity courts restricted their jurisdiction to those cases in which law courts could not offer

100. See David I. Levine et al., *Remedies: Public and Private* 773 (5th ed. 2009) ("Because the constructive trust gives the plaintiff the subject property *in specie*, the plaintiff acquires an advantage over an insolvent defendant's other creditors.").

101. See *supra* notes 83–86 and accompanying text (outlining requirements of claim for constructive trust).

102. See *Curtis v. Loether*, 415 U.S. 189, 192–94 (1974) (indicating Seventh Amendment extends to "actions enforcing statutory rights . . . if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law"). As a general matter, juries do not hear equitable claims. See 1 *Dobbs*, *supra* note 3, § 2.6, at 148–79, § 4.3(2), at 595 (describing jury's role in equity cases, law-and-equity cases, and with respect to constructive-trust claims); see also *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002) (characterizing constructive trust as equitable); *Snepp v. United States*, 444 U.S. 507, 509, 515–16 (1980) (per curiam) (reinstating district court's grant of constructive trust without jury trial). See generally Martin H. Redish, *Seventh Amendment Right to Jury Trial: A Study in the Irrationality of Rational Decision Making*, 70 *Nw. U. L. Rev.* 486 (1975) (analyzing Seventh Amendment jurisprudence and noting difficulties in applying historical test to discern which cases are legal and which are equitable).

103. See 1 *Dobbs*, *supra* note 3, § 2.4(1)–(4), at 90–108, §§ 4.6–4.9, at 656–706 (describing equitable defenses and defenses to unjust-enrichment claims specifically).

104. See *Restatement (Third) of Restitution & Unjust Enrichment* § 70 (2011) (discussing interplay of statutes of limitations and laches with unjust-enrichment claims at law and equity); 1 *Dobbs*, *supra* note 3, § 2.4(4), at 107–08 (discussing statutes of limitations in law and equity). As a general matter, though, an equitable claim may be barred if the statute of limitations for a similar legal claim, if one exists, has passed. *Id.*; see *Baker v. Cummings*, 181 U.S. 117, 128 (1901) (stating plaintiff could have pursued claim in court of law, where statute of limitations would have passed, so "irrespective of the equitable doctrine of laches . . . the relief which the bill seeks to obtain ought not to be allowed by a court of equity").

105. See *supra* note 93 and accompanying text (discussing merger of law and equity).

adequate relief.¹⁰⁶ In particular, equity limited its reach to two categories of cases: those in which the cause of action was equitable, regardless of the remedy sought, and those in which the cause of action was legal but the remedy sought was equitable.¹⁰⁷ The irreparable injury rule operates only on the latter group.¹⁰⁸ That is, to restate the rule more fully, when a plaintiff has a legal cause of action, she may only seek an equitable remedy from an equity court if the remedy she could otherwise obtain from a law court—typically money damages—would not afford adequate relief.¹⁰⁹

The rule is perhaps most frequently invoked when courts weigh whether to grant an injunction,¹¹⁰ but it rears its head in numerous contexts.¹¹¹ The strength of the rule is largely determined by the definition of adequacy: “A legal remedy is adequate only if it is as complete, practical, and efficient as the equitable remedy.”¹¹² This may be true when, for example, damages are difficult to prove; specific property is the subject of the dispute and a substitute is not readily available; the plaintiff may have trouble collecting damages; or the dispute may result in a mul-

106. See Candace S. Kovacic-Fleischer et al., *Equitable Remedies, Restitution and Damages* 5–7 (8th ed. 2011) (discussing development of self-imposed limitation on equitable jurisdiction). This restriction arose to settle an ongoing turf battle between the equity courts and the law courts that came to a head in the early 1600s. *Id.* Professor Laycock explains that this restriction also ensured the primacy of the law courts, which was desirable because the law courts existed first and, at the time, there was a preference for decentralized power and a fear of royal prerogative. Laycock, *Irreparable Injury Rule*, *supra* note 11, at 20.

107. 1 Pomeroy, *supra* note 63, §§ 217–219, at 367–69. Said differently, an equity court had *exclusive* jurisdiction over the first group of cases and *concurrent* jurisdiction over the second group. *Id.* The topics of substantive equity, which have historically fallen outside of the scope of the irreparable injury rule, include trusts, mortgages, and liens. See *id.* § 219, at 369–72 (explaining scope of rule); Kovacic-Fleischer et al., *supra* note 106, at 11 (listing topics of substantive equity).

108. 1 Pomeroy, *supra* note 63, § 219, at 369–72.

109. See *supra* note 11 and accompanying text (delineating formulations of irreparable injury rule); see also *supra* note 95 and accompanying text (noting money damages are typical remedy at law).

110. See Doug Rendleman, *The Inadequate Remedy at Law Prerequisite for an Injunction*, 33 U. Fla. L. Rev. 346, 346 (1981) (“During the past century and a half, American courts have repeatedly articulated a uniform standard for the granting of an injunction [T]he plaintiff must show that his injury is irreparable with money or that money is an inadequate remedy.”); see also *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (“According to well-established principles of equity, a plaintiff seeking a permanent injunction . . . must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury”).

111. See, e.g., *infra* note 191 (listing cases from various courts invoking rule).

112. Laycock, *Irreparable Injury Rule*, *supra* note 11, at 22; see also *Citizens & S. Nat'l Bank v. Taylor*, 191 So. 2d 866, 867 (Fla. Dist. Ct. App. 1966) (“The mere existence of a legal remedy does not prevent a suit in equity unless the legal remedy be plain, certain, prompt, speedy, sufficient, full and complete, practical and efficient in attaining the ends of justice.”).

tiplicity of suits.¹¹³ Historically, equity courts determined, on a discretionary basis, whether available legal remedies would be adequate in a particular case and, thus, whether equity would assert jurisdiction.¹¹⁴

Yet, even though law and equity courts have merged in the United States, the irreparable injury rule persists.¹¹⁵ Some commentators have suggested that the rule has outlived its usefulness¹¹⁶ or that it does not actually explain the outcome of the cases that ostensibly rely on it.¹¹⁷ Other scholars defend the rule.¹¹⁸ Whether the rule continues to have purchase as a general matter is beyond the scope of this Note. However, the propriety of using the rule in the context of precluding unjust-enrichment claims will be examined in the next Part.

II. TREATMENT OF ALTERNATIVE CLAIMS OF UNJUST ENRICHMENT

In providing a potential response to the “serious question” presented on appeal in *United States v. Bame*, the Eighth Circuit invoked the irreparable injury rule, relying on a number of cases interpreting Minnesota law, which it found dispositive of the claims at issue.¹¹⁹ These cases do indeed support the notion that an unjust-enrichment claim may be precluded by a statutory or common-law cause of action that would afford similar relief. However, this understanding of the Minnesota case law may be incomplete. Part II.A reviews the case law and offers a

113. See Edward Yorio & Steve Thel, *Contract Enforcement: Specific Performance and Injunctions* § 2.4 (2d ed. 2011 & Supp. 2014) (explaining factors for determining adequacy of legal remedy).

114. See Laycock, *Irreparable Injury Rule*, supra note 11, at 21 (“[E]quity was the sole judge of the common law’s adequacy The rules of the common law were enforceable only so long as the equity judges did not become dissatisfied with them.”); see also 1 Dobbs, supra note 3, § 1.2, at 12 (“[E]quitable relief is discretionary.”).

115. See supra note 93 and accompanying text (discussing merger of law and equity); supra notes 110–111 and accompanying text (discussing modern uses of rule).

116. See, e.g., R. Grant Hammond, *Interlocutory Injunctions: Time for a New Model?*, 30 U. Toronto L.J. 240, 276 (1980) (calling irreparable injury rule “grossly overstated” and “one of the contemporary shibboleths of the law”); cf. Owen M. Fiss, *The Civil Rights Injunction* 6 (1978) (“There is no reason why the injunction should be disfavored as a remedy, why it should be subject to restrictions not applied to other remedies.”).

117. See generally Laycock, *Irreparable Injury Rule*, supra note 11 (reviewing cases in which rule was invoked and concluding most invocations of rule are better explained by other reasons).

118. See generally Yorio & Thel, supra note 113, § 2.3 (indicating irreparable injury rule serves to communicate information on benefits of providing equitable relief, which must be weighed against costs of doing so); Rendleman, supra note 110, at 348–58 (offering economic, moral, and administrative factors underpinning courts’ invocation of rule); Gene R. Shreve, *Federal Injunctions and the Public Interest*, 51 Geo. Wash. L. Rev. 382, 389–90, 392–94 (1983) (suggesting burdens on defendants and courts provide continuing rationale for rule).

119. 721 F.3d 1025, 1030–31 & n.4 (8th Cir. 2013); supra note 6 (explaining Eighth Circuit’s rationale for evaluating claims under state, instead of federal, common law).

different interpretation allowing an unjust-enrichment claim to survive as an alternative basis for recovery. Part II.B suggests that this interpretation may be more in accord with the precepts of unjust enrichment, which courts have recognized in analogous situations. Part II.C demonstrates that the approach touted by the Eighth Circuit is not limited to Minnesota and showcases the disparate treatment given unjust-enrichment claims in several other jurisdictions.

A. *Minnesota Case Law*

1. *Bame Revisited*. — In *Bame*, Fred Bame erroneously received a tax refund of over \$500,000.¹²⁰ Shortly after receiving the money from the Internal Revenue Service, Mr. Bame transferred a significant portion of the refund to Jo Anna Bame, his purported ex-wife.¹²¹ The government sued Mr. Bame to recover the funds, but he died during the pendency of the lawsuit and his estate stipulated to the entry of judgment.¹²² The government then sued Ms. Bame to recover the funds transferred to her, making a statutory claim under the Minnesota Uniform Fraudulent Transfer Act (MFTA) and a common-law unjust-enrichment claim, among others.¹²³

On summary judgment, the district court ordered Ms. Bame to repay the government.¹²⁴ In deciding the case, the court noted that the government's statutory claims raised several thorny issues.¹²⁵ Instead of resolving those issues, the court found that even if the statutory claims failed, the government would still be entitled to recoup the funds under the theory of unjust enrichment.¹²⁶ On appeal, the Eighth Circuit reversed, finding that there were genuine issues of material fact that needed to be determined at trial in order to resolve the unjust-enrichment claim.¹²⁷

Ms. Bame separately advanced the argument that the government's unjust-enrichment claim should fail as a matter of law: Since a remedy at law—a claim under the MFTA—was available, relief could not be had

120. *United States v. Bame*, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,528, at 86,492–93 (D. Minn. 2012), rev'd, 721 F.3d 1025.

121. While the Bames had a “paper divorce,” they largely kept the divorce a secret and later filed for social-security benefits as a married couple. *Id.* at 86,492. Moreover, Mr. Bame's obituary listed Ms. Bame as his wife. *Id.*

122. *Id.* at 86,493; see *United States v. Estate of Bame*, No. 0:07-cv-03527-PAM-JSM (D. Minn. Aug. 27, 2008) (order for judgment).

123. See *supra* note 6 and accompanying text (describing government's claims in greater detail).

124. *Bame*, 2012-2 U.S. Tax Cas. (CCH) at 86,495.

125. See *id.* at 86,494 (“The Government's statutory claims raise several issues concerning statutes of limitation, insider status, the effect of the Bames' antenuptial agreement, possible estoppel, and more . . .”).

126. See *id.* (“Even if Defendants' arguments were to prevail, equity dictates that they return the erroneously distributed funds under the doctrine of unjust enrichment.”).

127. *United States v. Bame*, 721 F.3d 1025, 1028–29 (8th Cir. 2013); see *supra* note 9 (describing genuine issues of material fact).

under an equitable theory like unjust enrichment.¹²⁸ The Eighth Circuit indicated that this argument “presents a serious question that we need not resolve at this time because we remand the case for further consideration.”¹²⁹ Nevertheless, the court made several observations regarding Minnesota law on the subject, which strongly hinted that it believed Ms. Bame’s arguments had merit.¹³⁰

In discussing the issue, the Eighth Circuit synthesized the case law into a deceptively simple chain of reasoning. First, “[u]njust enrichment is an equitable remedy.”¹³¹ “In Minnesota, ‘[a] party may not have equitable relief where there is an adequate remedy at law available.’”¹³² As a result, relief under an unjust-enrichment theory is unavailable when “there is an adequate legal remedy or where statutory standards for recovery are set by the legislature.”¹³³ Courts have found that a claim under the MFTA provides an adequate remedy at law that can displace an unjust-enrichment claim.¹³⁴ While the *Bame* court did not explicitly say so, it logically follows that the district court should have denied relief stemming from the government’s unjust-enrichment claim or dismissed the claim outright.¹³⁵ The Eighth Circuit went on to note that, although some courts have permitted parties to plead an unjust-enrichment claim as an alternative to another legal claim,¹³⁶ “[i]t would be anomalous to allow unjust enrichment recovery . . . merely because the plaintiff fash-

128. *Bame*, 721 F.3d at 1029–30; see Appellants’ Brief at 15–21, *Bame*, 721 F.3d 1025 (No. 12-3417), 2013 WL 209430 (discussing argument).

129. *Bame*, 721 F.3d at 1029.

130. *Id.* at 1029–32; see *supra* note 10 (noting courts’ reactions to Eighth Circuit’s dictum in *Bame*).

131. *Bame*, 721 F.3d at 1030. The *Bame* court did not cite a case, but courts often rely on *Lundstrom Construction Co. v. Dygert*, 94 N.W.2d 527, 533 (Minn. 1959), to support this proposition. See, e.g., *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. Ct. App. 1992) (citing *Lundstrom Constr.*, 94 N.W.2d at 533); *infra* notes 156–159 and accompanying text (noting *Southtown Plumbing’s* reliance on *Lundstrom Construction* and irrelevance of stated proposition to outcome).

132. *Bame*, 721 F.3d at 1030 (alteration in original) (footnote omitted) (quoting *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 305 (Minn. 1996)).

133. *Id.* (quoting *Southtown Plumbing*, 493 N.W.2d at 140) (internal quotation mark omitted).

134. *Id.* at 1030–31 (citing *Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1132 (D. Minn. 2012)).

135. The court discussed case law but did not decide the issue, as it instead reversed on a narrower ground. *Id.* at 1029–30. At the end of its opinion, the court indicated that “all matters relating to the unjust enrichment claim are for the district court’s further consideration on remand.” *Id.* at 1032; see also *supra* note 10 (discussing how courts have responded to Eighth Circuit’s reasoning in *Bame*).

136. *Bame*, 721 F.3d at 1031 (listing two cases and suggesting result based on ability to alternatively plead under Federal Rules of Civil Procedure).

ioned the pleadings a certain way.”¹³⁷ As the court noted, numerous other courts have applied these principles.¹³⁸

2. *An Incomplete Application of Precedent.* — The reasoning articulated by the *Bame* court treats the issue of displacement of the government’s unjust-enrichment claim as a straightforward application of precedent to a not-so-unique set of facts.¹³⁹ However, a closer look at the case law suggests that courts may have expanded the meaning of several cases dealing with statutory mechanics’ liens beyond their core holdings while neglecting older cases—including several from the Minnesota Supreme Court—that suggest a different result.

The *Bame* opinion—among others—cites *ServiceMaster of St. Cloud v. GAB Business Services, Inc.*¹⁴⁰ and *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*¹⁴¹ to support the proposition that unjust enrichment is an equitable remedy that cannot be granted if there is an adequate remedy at law.¹⁴² In *ServiceMaster*, a contractor sought reimbursement from a homeowner’s insurer for repairs done to the home after a fire.¹⁴³ The insurer had already paid the property’s mortgagee the amount owed the contractor and, thus, refused to pay the contractor directly.¹⁴⁴ *ServiceMaster* sued the insurer, alleging that it was unjustly enriched by *ServiceMaster*’s work.¹⁴⁵ The Minnesota Supreme Court found the unjust-enrichment claim unavailing because *ServiceMaster* could have obtained relief by other means, in particular a statutory mechanic’s lien or consti-

137. *Id.* at 1032.

138. *Id.* at 1030 (“This principle has often been applied by the Federal District Court for the District of Minnesota.”); see, e.g., *Cummins Law Office, P.A. v. Norman Graphic Printing Co.*, 826 F. Supp. 2d 1127, 1132 (D. Minn. 2011) (“Minnesota courts repeatedly have held that the availability of statutory claims (whether state or federal) will preclude the assertion of an unjust-enrichment or other equitable claim seeking the same relief.”); *Maranda v. Grp. Health Plan, Inc.*, 156 Lab. Cas. (CCH) ¶ 35,442, at 59,202–03 (D. Minn. 2008) (dismissing unjust-enrichment claim because of availability of claim under Fair Labor Standards Act); *Levine v. N. Am. Mortg.*, No. Civ.98-556(JRT/RLE), 2000 WL 34494823, at *5 (D. Minn. May 17, 2000) (concluding plaintiff could not maintain unjust-enrichment claim because of availability of claim under Real Estate Settlement Procedures Act).

139. See *supra* notes 131–138 and accompanying text (examining reasoning offered by *Bame* court).

140. 544 N.W.2d 302 (Minn. 1996).

141. 493 N.W.2d 137 (Minn. Ct. App. 1992).

142. See *Bame*, 721 F.3d at 1030 (citing *ServiceMaster*, 544 N.W.2d at 305; *Southtown Plumbing*, 493 N.W.2d at 140); see also *Qwest Commc’ns Co. v. Free Conferencing Corp.*, 990 F. Supp. 2d 953, 982–83 (D. Minn. 2014) (same); *Cummins Law Office*, 826 F. Supp. 2d at 1130–31 (same); *Voss v. Johnson & Johnson (In re Levaquin Prods. Liab. Litig.)*, 752 F. Supp. 2d 1071, 1081 (D. Minn. 2010) (same); *Eischen Cabinet Co. v. New Tradition Homes, Inc.*, No. A06-220, 2006 WL 3593051, at *6 (Minn. Ct. App. Dec. 12, 2006) (same).

143. 544 N.W.2d at 303.

144. *Id.* at 304–05. The insurer could not collect against the homeowner, as she had filed for Chapter 11 bankruptcy. *Id.* at 305.

145. *Id.* *ServiceMaster* also claimed breach of contract, estoppel, and negligence. *Id.*

tutional lien.¹⁴⁶ The contractor did not, however, adequately pursue those avenues.¹⁴⁷

The facts of *Southtown Plumbing* are similar. In that case, subcontractors performed substantial work on a residential construction project but were not paid by the developer.¹⁴⁸ At the end of the project, the mortgagee refused to provide the developer additional funds, and the developer in turn failed to pay the subcontractors.¹⁴⁹ The lender eventually foreclosed on the property, incurring a substantial loss.¹⁵⁰ While the subcontractors initially filed for mechanics' liens on the property, they relinquished them and entered into an agreement with the developer to file a lawsuit against the lender, claiming unjust enrichment.¹⁵¹ The Minnesota Court of Appeals found that, because they voluntarily gave up their statutory mechanics' liens, the subcontractors could not then recover under an unjust-enrichment theory.¹⁵²

Bame and other cases interpret *ServiceMaster* and *Southtown Plumbing* to mean that the mere *existence* of a statute offering a mechanic's lien—purportedly an adequate legal remedy—is enough to preclude an unjust-enrichment claim.¹⁵³ That understanding is undermined by two earlier opinions from the Minnesota Supreme Court. First, in *Karon v. Kellogg*, the court permitted recovery in quasi-contract¹⁵⁴ after a contractor's lien failed for having been untimely filed.¹⁵⁵ Second, in *Lundstrom Construction Co. v. Dygert*, a case cited by *Southtown Plumbing* for the aforementioned proposition that “[t]he right of recovery for unjust enrichment is equitable,”¹⁵⁶ the court denied relief in unjust enrichment to the plaintiff and

146. *Id.* at 305–06.

147. *Id.* The basis for denying unjust-enrichment relief is not entirely clear from the opinion. The court noted the plaintiff sought two equitable remedies, unjust enrichment and estoppel, and invoked the irreparable injury rule to bar *ServiceMaster*'s “claims for equitable relief.” *Id.* However, later in the opinion it also suggested the unjust-enrichment claim had no merit. *Id.* at 306–07; see also *infra* notes 226–228 and accompanying text (suggesting hostility to merits of plaintiff's case was true reason for invoking irreparable injury rule).

148. *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 139 (Minn. Ct. App. 1992).

149. *Id.*

150. See *id.* (noting \$50,000 loss on \$240,000 loan).

151. *Id.*

152. *Id.* at 140–41.

153. See *United States v. Bame*, 721 F.3d 1025, 1031 (8th Cir. 2013) (“[I]t is the *existence* of an adequate legal remedy that precludes unjust enrichment recovery.” (emphasis added)).

154. Quasi-contract is one manifestation of unjust enrichment. See *supra* Part I.C.1 (discussing development of quasi-contract in law courts); cf. *Paschall's, Inc. v. Dozier*, 407 S.W.2d 150, 154 (Tenn. 1966) (“Actions brought upon theories of unjust enrichment, quasi contract, contracts implied in law, and quantum meruit are essentially the same.”).

155. 261 N.W. 861, 862 (Minn. 1935).

156. *Southtown Plumbing*, 493 N.W.2d at 140 (citing *Lundstrom Constr. Co. v. Dygert*, 94 N.W.2d 527, 533 (Minn. 1959)).

distinguished *Karon*.¹⁵⁷ It did so, however, on the basis that the contractor in *Karon* was unjustly enriched, whereas the contractor in *Lundstrom Construction* was not.¹⁵⁸ But the court suggested that, had unjust enrichment been present, it might have permitted recovery even though the subcontractors in the case had waived their statutory mechanics' liens.¹⁵⁹

In a similar vein, both *ServiceMaster* and *Southtown Plumbing* rely on another case, *United States Fire Insurance Co. v. Minnesota State Zoological Board*, to support the notion that, with respect to unjust enrichment, "[a] party may not have equitable relief where there is an adequate remedy at law available."¹⁶⁰ However, in *U.S. Fire Insurance*, the Minnesota Supreme Court actually made two less controversial points when discussing the plaintiffs' unjust-enrichment claim. First, it stated that "equitable relief cannot be granted where the rights of the parties are governed by a valid contract,"¹⁶¹ a proposition endorsed by modern unjust-enrichment doctrine.¹⁶² Second, the court found that allowing an unjust-enrichment claim would permit the plaintiffs, who were creditors of a state agency, to subvert constitutional and statutory provisions regarding the state appropriations process, as the legislature had not earmarked funds for the plaintiffs' contract.¹⁶³

In at least one case, the Minnesota Court of Appeals recognized that the availability of a mechanic's lien did not preclude recovery under an

157. *Lundstrom Constr.*, 94 N.W.2d at 532–33.

158. *Id.* at 533 (finding "no unjust enrichment as a basis for a recovery in quasi-contract").

159. See *id.* The court reiterated that the result in *Karon* was correct and went on to state that subcontractors "have no right to a personal judgment against the owner where there is no contractual relation between them," except a mechanic's lien or special statutory remedy, "[a]side from unjust enrichment, which is an element not involved here." *Id.* (emphasis omitted). Thus, by negative implication, the court indicated that if unjust enrichment had been present in the case, it might have permitted recovery in quasi-contract. The Minnesota Supreme Court in *ServiceMaster* also appeared to recognize that extraordinary circumstances might result in the allowance of an unjust-enrichment claim despite the availability of a statutory lien. See *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) ("Should a contractor elect not to seek the protection of the clear and effective method available under the statute, this court will not come to its aid, *absent compelling circumstances not present here.*" (emphasis added)).

160. *ServiceMaster*, 544 N.W.2d at 305 (citing *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981)); accord *Southtown Plumbing*, 493 N.W.2d at 140 (same).

161. *U.S. Fire Ins.*, 307 N.W.2d at 497 (citing *Cady v. Bush*, 166 N.W.2d 358, 362 (Minn. 1969)).

162. See Restatement (Third) of Restitution & Unjust Enrichment § 2(2) (2011) ("A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment."); *supra* note 33 and accompanying text (noting contractual enrichments not deemed "unjust" and listing cases).

163. *U.S. Fire Ins.*, 307 N.W.2d at 494, 497. One reason to disallow an equitable or common-law claim is when allowing the claim would directly contravene the legislative will. See *infra* Part III.A.2 (exploring denial of unjust-enrichment claim when claim is better resolved under another policy rubric and discussing *U.S. Fire Insurance*).

unjust-enrichment theory.¹⁶⁴ At most, *ServiceMaster* and *Southtown Plumbing* appear to stand for a narrower proposition: A plaintiff must pursue the available statutory remedy, when one is available, but may be able to recover under unjust enrichment if that remedy fails.¹⁶⁵ The district court judge who granted the government's motion for summary judgment in *Bame* likely understood this distinction; in a later opinion, he distinguished *Bame* as not presenting the question of whether an adequate legal remedy precludes resort to unjust enrichment as a matter of law.¹⁶⁶ However, even that narrower understanding may not entirely comport with the precepts and practices of unjust enrichment.

B. *The Use and Misuse of the Irreparable Injury Rule*

Underpinning the courts' reasoning is, of course, the irreparable injury rule. While courts accurately state the rule, a proper understanding of it shows that, in most cases, it should not by itself bar an unjust-enrichment claim pled alternatively to a statutory cause of action.¹⁶⁷ Moreover, other permitted practices—the waiver of tort and the alternative pleading of contract and quasi-contract (unjust-

164. See *Pete's Water & Sewer, Inc. v. Alkalai*, No. C8-96-1587, 1997 WL 20291, at *2 (Minn. Ct. App. Jan. 21, 1997) (finding "unusual" circumstances appropriate to allow recovery in quantum meruit despite availability of statutory mechanic's lien); see also *Skjod v. Hofstede*, 402 N.W.2d 839, 841 (Minn. Ct. App. 1987) (stating "supreme court [of Minnesota] has suggested that subcontractors *might* be allowed to recover against property owners when there are 'unusual' circumstances 'which would result in unjust enrichment unless subcontractors were permitted to recover in quasi-contract'" but finding no unjust enrichment (quoting *Lundstrom Constr.*, 94 N.W.2d at 533)).

165. But see *supra* note 164 and accompanying text (placing no such restriction on availability of unjust-enrichment claim). To be sure, the Eighth Circuit rejected this understanding of *ServiceMaster* and *Southtown Plumbing*: "[D]espite courts' occasional emphasis of the failure to pursue a legal remedy, it is the existence of an adequate legal remedy that precludes unjust enrichment recovery." *United States v. Bame*, 721 F.3d 1025, 1031 (8th Cir. 2013). However, as previously described, the Eighth Circuit's opinion largely drew from other cases—principally recent federal cases—that did not fully analyze the case law. See *supra* notes 139–164 and accompanying text (dissecting Minnesota cases).

166. *Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1132–33 & n.5 (D. Minn. 2012) (Kyle, J.) (dismissing unjust-enrichment claim when relief may have been available under MFTA). In his opinion, Judge Kyle distinguished *Bame* but agreed with an earlier case he presided over, *Cummins Law Office, P.A. v. Norman Graphic Printing Co.*, 826 F. Supp. 2d 1127, 1130–31 (D. Minn. 2011) (Kyle, J.), in which the court dismissed an unjust-enrichment claim when a law firm voluntarily dismissed its action to establish a statutory attorney's lien. The *Kelley* opinion also suggested that permitting the plaintiff's unjust-enrichment claim would "make an end-run around the recent amendments to the MFTA, which appear to have been designed to preclude precisely the types of claims brought in this case." 901 F. Supp. 2d at 1132; see *infra* Part III (noting courts may bar unjust-enrichment claim when deferring to more particular policy and suggesting courts parse statutory language to determine propriety of doing so).

167. Cf. Restatement (Third) of Restitution & Unjust Enrichment § 4.2 & cmt. d (endorsing idea that plaintiff need not demonstrate inadequacy of remedy at law to recover in unjust enrichment).

enrichment) claims—show that courts do not rigidly deny unjust-enrichment claims when other legal causes of action are available.

1. *Legal Claims, Legal Remedies.* — Despite the oft-repeated notion that “[t]he right of recovery for unjust enrichment is equitable,”¹⁶⁸ unjust enrichment is not strictly equitable: Courts and lawyers routinely commit the “equity fallacy” by confusing equity’s ordinary meaning—fairness—with the technical differences between law and equity.¹⁶⁹ The Minnesota Supreme Court has recognized unjust enrichment’s dual legal–equitable nature: In *Lundstrom Construction*, the case cited by *Southtown Plumbing* for the aforementioned proposition, the court more fully explained that “the right to recover is governed by principles of equity, but the remedy—the obligation upon which the right of recovery rests—is created and imposed *by law* to prevent unjust enrichment.”¹⁷⁰ In a more recent case, the Minnesota Supreme Court acknowledged the mixed legal–equitable nature of unjust enrichment, stating:

Another problem with identifying the remedy sought here as restitution, and therefore equitable, is that restitution was not exclusively an equitable remedy. “In the days of the divided bench, restitution was available in certain cases at law, and in certain others in equity.” When a restitution claim sought a judgment imposing personal liability on the defendant to pay a sum of money, it was considered legal, viewed essentially as an action for breach of contract. We therefore do not agree with the court of appeals that the remedy sought . . . in this case is a form of restitution, and even if it is a form of restitution, it is not equitable in nature.¹⁷¹

In this case, the court rejected the notion that the action—which the court essentially viewed as one in quasi-contract—was equitable and thus held that the parties had a right to a jury trial.¹⁷²

The Minnesota Supreme Court has not, however, been entirely consistent on this point. In an earlier case, the court found an action predicated on a claim for promissory estoppel to be essentially equitable,

168. *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. Ct. App. 1992); see *infra* note 191 (listing cases in numerous jurisdictions invoking irreparable injury rule to preclude unjust-enrichment claims).

169. See Rendleman & Roberts, *supra* note 84, at 493–94 (explaining “equity fallacy”); *supra* Part I.C (exploring foundations of unjust enrichment in law and equity).

170. 94 N.W.2d 527, 533 (Minn. 1959) (emphasis added).

171. *United Prairie Bank–Mountain Lake v. Haugen Nutrition & Equip., LLC*, 813 N.W.2d 49, 58 (Minn. 2012) (citations omitted) (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 212–13 (2002)). While the opinion uses the language of restitution, it applies equally to unjust enrichment. See *supra* Part I.B (explaining restitution and unjust enrichment).

172. *United Prairie Bank*, 813 N.W.2d at 63; see *Roske v. Ilykanyics*, 45 N.W.2d 769, 774 (Minn. 1951) (“The legal remedy being adequate, the court may not decide the case as one sounding in equity and thereby deprive the parties of a right to a jury trial in the absence of a waiver of such jury.”); *supra* note 102 (discussing right to jury trial).

foreclosing the possibility of a jury trial,¹⁷³ even though, according to a concurring justice, “[q]uasi-contract is grounded even more firmly in equity than promissory estoppel.”¹⁷⁴ In a recent case, the court stated more flatly: “Unjust enrichment is an *equitable doctrine* that allows a plaintiff to recover a benefit conferred upon a defendant when retention of the benefit is not legally justifiable.”¹⁷⁵

2. *The Irreparable Injury Rule’s Limited Role.* — Even if one assumed that unjust enrichment is strictly an equitable principle, the irreparable injury rule would not bar relief. Unjust enrichment is best understood as a basis for liability, a cause of action, or perhaps a family of related causes of action; it is not a remedy.¹⁷⁶ As a historical matter, the irreparable injury rule was intended to ensure primacy of the law courts for matters within their scope if the *remedy* they were able to provide—generally, money damages—was adequate.¹⁷⁷ If the cause of action was equitable, however, the law courts had no jurisdiction, and the equity courts asserted jurisdiction regardless of the remedy sought.¹⁷⁸ Thus, if unjust enrichment is an equitable cause of action, the irreparable injury rule should have no force.

Of course, unjust enrichment is not an exclusively equitable cause of action.¹⁷⁹ Thus, the irreparable injury rule may continue to have a role to

173. *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 152–53 (Minn. 2001) (denying right to jury trial under state constitution because plaintiff’s “cause of action . . . is an equitable action”).

174. *Id.* at 156–58 (Anderson, Russell, J., concurring specially). Justice Anderson thought the action essentially grew out of assumpsit, a legal action, but there was no right to a jury trial because the remedy sought was equitable. *Id.*

175. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012) (emphasis added); see also *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981) (“[W]e must now consider appellants’ claim for equitable relief based on unjust enrichment.”). This split may be partially attributable to a difference of opinion among the court’s jurists. Compare *Caldas*, 820 N.W.2d at 829–39 (Dietzen, J.) (calling unjust enrichment an equitable doctrine), and *United Prairie Bank*, 813 N.W.2d at 63–68 (Dietzen, J., dissenting) (concluding right to jury trial does not attach to claim for attorney’s fees arising under contract in part because “when courts resolve [such] claims, they follow rules of equity”), with *id.* at 58 (majority opinion) (Stras, J.) (allowing jury trial of claim for attorney’s fees in part because “even if it is a form of restitution, it is not equitable in nature”).

176. See *supra* note 55 and accompanying text.

177. See *supra* notes 106–109 and accompanying text (discussing role of irreparable injury rule in limiting equity’s jurisdiction).

178. *Supra* note 107 and accompanying text; see *Beneficial Haw., Inc. v. Kida*, 30 P.3d 895, 918 (Haw. 2001) (“[T]he general principle [is] that equity will not take jurisdiction when the complainant has a complete and adequate remedy at law. That rule does not apply, however, . . . when the claim of the complainant is of an equitable nature and admits of a remedy in a court of equity only.” (alterations in original) (quoting *Henry Waterhouse Trust Co. v. King*, 33 Haw. 1, 9 (1934))).

179. See *supra* Part I.C (discussing origin of unjust enrichment in courts of law and equity).

play¹⁸⁰ if two conditions are met: The cause of action in unjust enrichment originated in the law courts, and the remedy sought is traditionally considered equitable.¹⁸¹ A review of the Minnesota cases discussed shows that plaintiffs principally brought claims originating at law—typically, claims in quasi-contract or quantum meruit—but sought money damages, the quintessential legal remedy.¹⁸² Under those circumstances, the irreparable injury rule should not preclude the plaintiff from seeking relief in unjust enrichment.

3. *Waiver or Failure of Legal Claim Not Always a Bar to Unjust Enrichment.* — Moreover, courts have recognized that a plaintiff may waive a legal claim and recover in unjust enrichment or may claim unjust enrichment when her legal claim fails. Plaintiffs have long been able to “waive the tort and sue in assumpsit”—that is, where a plaintiff has a cause of action for a common-law tort, she may instead plead an action sounding in unjust enrichment.¹⁸³ A plaintiff will typically choose to plead this way when the potential recovery for the unjust-enrichment claim—measured by the defendant’s gain—is greater than the recovery for the underlying tort claim—measured by the plaintiff’s loss.¹⁸⁴ For example, in the classic case of *Otwell v. Nye & Nissen Co.*, in which the defendant essentially converted the plaintiff’s egg-washing machine, the plaintiff recovered \$900 from the defendant—based on labor costs saved

180. But see *supra* notes 116–118 and accompanying text (mentioning commentators’ varying opinions about utility of rule).

181. See *supra* text accompanying note 109.

182. E.g., *United States v. Bame*, 721 F.3d 1025, 1028 (8th Cir. 2013) (asserting unjust-enrichment claim similar to common-law action of money had and received and seeking money damages); *Cummins Law Office, P.A. v. Norman Graphic Printing Co.*, 826 F. Supp. 2d 1127, 1130 (D. Minn. 2011) (asserting unjust-enrichment claims sounding in quasi-contract and principally seeking money damages); *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 305 (Minn. 1996) (same); *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 139–40 (Minn. Ct. App. 1992) (same).

183. See, e.g., *Friedmann*, *supra* note 28, at 504 (“[T]he law has long recognized the right of the injured party to ‘waive the tort’ . . .”). See generally 1 *Palmer*, *supra* note 45, § 2.1, at 50–53 (explaining waiver of tort); Arthur L. Corbin, *Waiver of Tort and Suit in Assumpsit*, 19 *Yale L.J.* 221 (1910) (same). Minnesota courts recognize waiver of tort. See, e.g., *Kubat v. Zika*, 242 N.W. 477, 478 (Minn. 1932) (“[T]here is, it is true, a right of action for the tort; but there is also clearly a right of action in assumpsit on the implied contract . . .”). Not every tort can be waived. See *id.* (“[W]here plaintiff has not obtained or taken any of defendant’s money or property, as for instance where the tort is personal injury, slander, libel, seduction, or other similar wrong, there is no room for the application of the rule of waiver of the tort . . .”).

184. See 1 *Palmer*, *supra* note 45, § 2.3, at 60 (“In many instances the most important difference between quasi contract and the tort remedy lies in the measure of recovery . . . [T]he damage action is designed to provide money compensation for harm . . . whereas quasi contract is aimed at awarding [the plaintiff] the money value of the benefit . . .”); *supra* notes 27–29 and accompanying text (noting in successful unjust-enrichment claim, defendant must receive gain linked to plaintiff’s loss and liability measured by amount of defendant’s gain).

by using the machine—even though the plaintiff had previously offered to sell the machine for less.¹⁸⁵

Relatedly, when one party breaches a contract, courts may allow the nonbreaching party to recover under the terms of the contract or under an unjust-enrichment theory.¹⁸⁶ Even in situations where one party does not substantially perform its obligations under a contract, a court may permit a limited recovery based on the value of the work done.¹⁸⁷ More commonly, a plaintiff will invoke unjust enrichment as an alternative to contract when the existence of the contract is in doubt, such as if the contract is silent with respect to the question at issue, or if the contract—a basis for recovery at law—fails due to minority or incapacity.¹⁸⁸ If unjust-enrichment claims were categorically prohibited when a legal cause of action is available, then unjust-enrichment recovery in these situations would also be barred.¹⁸⁹

185. 173 P.2d 652, 653–55 (Wash. 1946); see also Rogers, *supra* note 16, at 72–74 (discussing case). The award could have been even larger, but the court limited the recovery to the amount prayed for in the plaintiff's complaint. *Olwell*, 173 P.2d at 655.

186. See, e.g., *Whitehead v. Arthur K. Hagen, Inc.*, No. A03-5, 2003 WL 22846290, at *2 (Minn. Ct. App. Dec. 2, 2003) (“Where one party repudiates or breaches a substantial part of the contract, the aggrieved party may recover the reasonable value of his performance.” (citing *Dunkley Surfacing Co. v. George Madsen Constr. Co.*, 173 N.W.2d 420, 422 (Minn. 1970); *Stark v. Magnuson*, 2 N.W.2d 814, 815 (Minn. 1942))); *Rendleman & Roberts*, *supra* note 84, at 531–32 (mentioning election of remedies in contract but suggesting courts have diluted it); Andrew Kull, *Restitution as a Remedy for Breach of Contract*, 67 S. Cal. L. Rev. 1465, 1468–84 (1994) (discussing use of restitution as remedy for breach). Forcing a plaintiff to elect a remedy should prevent duplicative recovery for the same claim. See, e.g., *Rendleman & Roberts*, *supra* note 84, at 532 (“A court may attempt to avoid duplication by requiring the plaintiff to make an ‘election.’”). Courts do not always permit a plaintiff to plead quasi-contract as an alternative to contract if there is an express agreement covering the subject at issue, even if the defendant breached the contract. See, e.g., *Morris Pumps v. Centerline Piping, Inc.*, 729 N.W.2d 898, 906 (Mich. Ct. App. 2006) (“These rules . . . no longer appear to be good law when both claims are asserted against the same defendant, with whom the plaintiff has an express contractual relationship . . . [I]n such situations Michigan courts now hold that the existence of the express contract bars the quantum meruit claim.” (emphasis omitted)); cf. *supra* note 33 and accompanying text (discussing inability to plead unjust-enrichment claim when express contract covers subject matter at issue).

187. See, e.g., *Evans & Assocs., Inc. v. Dyer*, 615 N.E.2d 770, 778 (Ill. App. Ct. 1993) (“When a builder does not substantially perform under a contract, he is limited to claiming damages under a theory of *quantum meruit*. These damages are equal to the reasonable value of his services minus the amount of damages suffered by the buyers.”).

188. See *supra* note 33 (discussing use of unjust enrichment when existence of contract is at issue).

189. For a neat illustration of the power of an unjust-enrichment claim in this setting, see *Seifert v. Union Brass & Metal Mfg. Co.*, 254 N.W. 273, 273 (Minn. 1934). In the case, the trial court dismissed the plaintiff's contract claim, the plaintiff amended his complaint to add a quasi-contract claim, and the trial court then granted relief to the plaintiff on quasi-contract grounds. *Id.*

C. *The Pervasive Confusion Surrounding Unjust-Enrichment Claims*

While, up to this point, this Note has focused on Minnesota case law, confusion about the availability of unjust-enrichment claims abounds.¹⁹⁰ Indeed, numerous courts in many jurisdictions have invoked the irreparable injury rule to displace unjust-enrichment claims.¹⁹¹ This section

190. See, e.g., Rendleman & Roberts, *supra* note 84, at 529 (calling restitution and unjust enrichment “too confusing and often inadequate to allow law students, their professors, lawyers, judges and juries to focus critical judgment on the issues involved”).

191. See, e.g., Fed. Treasury Enter. Sojuzplodoimport v. Spirits Int’l N.V., 400 F. App’x 611, 613 (2d Cir. 2010) (“Unjust enrichment is an equitable claim that is unavailable where an adequate remedy at law exists.”); New v. CitiFinancial Auto Credit, Inc., No. 1:10-CV-905-WKW, 2012 WL 2415532, at *5 (M.D. Ala. June 26, 2012) (“[U]nder Alabama law, unjust enrichment, as an equitable remedy, may only be relied upon when there is no adequate remedy at law.”); Indiana ex rel. Zoeller v. Pastrick, 696 F. Supp. 2d 970, 981 n.7 (N.D. Ind. 2010) (“Under Indiana law, equitable principles such as unjust enrichment will not apply where there exists a remedy at law.”); Bongat v. Fairview Nursing Care Ctr., Inc., 341 F. Supp. 2d 181, 189 (E.D.N.Y. 2004) (“Since plaintiffs’ FLSA claim and any viable claim for breach of contract would provide an adequate remedy at law, plaintiffs’ claims based upon unjust enrichment and quantum meruit are dismissed.”); Collins v. eMachines, Inc., 134 Cal. Rptr. 3d 588, 596–97 (Ct. App. 2011) (“[E]quitable relief (such as restitution) will not be given when the plaintiff’s remedies at law are adequate. In light of the adequate legal remedies, we conclude the complaint does not state a claim for restitution based on unjust enrichment.” (citations omitted)); Aberdeen-Springfield Canal Co. v. Peiper, 982 P.2d 917, 923 (Idaho 1999) (“Since there are adequate legal remedies available . . . there is no need to employ the equitable doctrine of unjust enrichment . . .”); Nesby v. Country Mut. Ins. Co., 805 N.E.2d 241, 243 (Ill. App. Ct. 2004) (“Because it is an equitable remedy, unjust enrichment is only available when there is no adequate remedy at law.”); Deeds v. Waddell & Reed Inv. Mgmt. Co., 280 P.3d 786, 795 (Kan. Ct. App. 2012) (“[A] claim for unjust enrichment is an equitable claim, and generally an equitable remedy is not available when an adequate remedy exists under another legal claim.”); Santagate v. Tower, 833 N.E.2d 171, 176 (Mass. App. Ct. 2005) (“An equitable remedy for unjust enrichment is not available to a party with an adequate remedy at law.”); Karaus v. Bank of N.Y. Mellon, 831 N.W.2d 897, 901 (Mich. Ct. App. 2012) (per curiam) (noting trial court found adequate remedy at law, which was “pivotal in denying [plaintiffs’] unjust enrichment claim”); Nat’l Amusements, Inc. v. N.J. Tpk. Auth., 619 A.2d 262, 267 (N.J. Super. Ct. Law Div. 1992) (“Assuming, arguendo, that plaintiff could prove a substantive claim of unjust enrichment, plaintiff would still not recover under a theory of quasi-contractual liability. Restitution for unjust enrichment is an equitable remedy, available only when there is no adequate remedy at law.”); Samiento v. World Yacht Inc., 883 N.E.2d 990, 996 (N.Y. 2008) (“As to plaintiffs’ third cause of action for unjust enrichment, this action does not lie as plaintiffs have an adequate remedy at law and therefore this claim was likewise properly dismissed.”); Lochthowe v. C.F. Peterson Estate, 692 N.W.2d 120, 125 (N.D. 2005) (“[A] party is not entitled to equitable relief in the form of unjust enrichment if there is an adequate remedy provided by law . . .”); Hydro Turf, Inc. v. Int’l Fid. Ins. Co., 91 P.3d 667, 673 (Okla. Civ. App. 2004) (“Because an adequate remedy at law is available . . . it was not necessary for the trial court to invoke its equitable jurisdiction on the unjust enrichment issue.”); Barrett v. Miller, 321 S.E.2d 198, 199 (S.C. Ct. App. 1984) (calling unjust enrichment “equitable doctrine” and reversing in part because parties should have sought relief under statute and “[w]here a plaintiff has an adequate remedy at law, equitable relief is not normally in order”); Big-D Signature Corp. v. Sterrett Props., LLC, 288 P.3d 72, 75 (Wyo. 2012) (dismissing unjust-enrichment claim “because there is an adequate remedy at law”).

does not purport to capture all the nuance in any state's unjust-enrichment law or exhaustively compare state laws. Instead, it attempts to briefly distill a few themes in order to illustrate different approaches taken by courts.

1. *Clear Counterpoints to Minnesota's Case Law.* — In two states, Maryland and Illinois, courts have pushed back against the logic offered by the Minnesota cases. In one Maryland case, *Alternatives Unlimited, Inc. v. New Baltimore City Board of School Commissioners*, the plaintiff sought to nullify the precedential effect of an earlier case by arguing that the precedent did not bar its unjust-enrichment claim because unjust enrichment sounds in equity.¹⁹² The Maryland Court of Special Appeals attacked this premise of the plaintiff's argument and spent over a dozen pages of its published opinion reviewing the history and nature of unjust enrichment, a similar account of which was provided in Part I.¹⁹³ The court explained that the form of relief sought determines whether an unjust-enrichment claim is "purely legal" or "purely equitable" and concluded that "restitution in the form of a money judgment for unjust enrichment based on quasi-contract is . . . clearly a remedy at law."¹⁹⁴ It thus held that the precedent could not be distinguished on the basis offered by the plaintiff.¹⁹⁵ The court went on to use its explication of unjust enrichment to dispose of most of the plaintiff's case.¹⁹⁶

While *Alternatives Unlimited* did not directly confront the question of whether an unjust-enrichment claim is barred by the existence of a statute offering similar relief, other cases demonstrate that Maryland does not follow a categorical rule on the matter. Recently, in response to a question certified to it, the Maryland Court of Appeals—the state's highest court—announced that the state continues to recognize a common-law action for money had and received—a species of unjust enrichment¹⁹⁷—and clarified that the action lies for money paid in excess of statutory limits "[u]nless otherwise precluded by statute."¹⁹⁸ In a much older case, the same court, in a move similar to the one made by the district court in *Bame*, found it unnecessary to determine whether the plaintiff could recover under a statute because "[e]ven if we should as-

192. 843 A.2d 252, 276 (Md. Ct. Spec. App. 2004).

193. See *id.* at 274–80, 284–91.

194. *Id.* at 278–80 (internal quotation marks omitted).

195. *Id.* at 280.

196. See *id.* at 291–305 (rejecting plaintiff's claim for quantum meruit as either barred by precedent or duplicative of unjust-enrichment claim and finding unjust-enrichment claim likely barred by precedent). The court found that the "literal holding of [the precedent case] would have foreclosed absolutely any restitutionary recovery" but that the plaintiff had a small window of opportunity for success if its unjust-enrichment claim could be reconciled with the underlying rationale of the earlier case. *Id.* at 298.

197. See *supra* notes 74–79 and accompanying text.

198. *Bourgeois v. Live Nation Entm't, Inc.*, 59 A.3d 509, 527–31 (Md. 2013); cf. *infra* Part III.B (suggesting statutory language should control whether statute crowds out unjust-enrichment claim).

sume, without deciding, that recovery . . . would not lie under the statute, we find nothing in the statute that would deny recovery . . . under common law principles.”¹⁹⁹ The court found in favor of the plaintiff under the principle of unjust enrichment in lieu of analyzing the possibility of statutory recovery.²⁰⁰

Illinois courts have similarly disabused plaintiffs of the notion that unjust enrichment is strictly an equitable doctrine subject to limitation by the irreparable injury rule. In *Partipilo v. Hallman*, the plaintiff sought to recover real-estate taxes he had erroneously paid on behalf of the defendant.²⁰¹ The defendant argued that the Illinois Revenue Act provided an adequate legal remedy and that the plaintiff’s equitable unjust-enrichment claim must therefore fail.²⁰² The Illinois Appellate Court clarified that the equitable basis of unjust enrichment “merely refers to the way in which a claim should be approached” but that an action for money damages in unjust enrichment “is the product of a long tradition in law, and is an action at law.”²⁰³ The court thus found that the defendant’s “equitable defense based upon an adequate remedy at law is unavailable since this is an action at law for a monetary recovery.”²⁰⁴ Other Illinois courts have reinforced this point.²⁰⁵

2. *Tailoring the Irreparable Injury Rule. — Alternatives Unlimited and Partipilo* underscore that the irreparable injury rule may have some role to play in situations in which the plaintiff seeks an equitable remedy for a legal cause of action.²⁰⁶ Some courts have taken greater care when wielding the rule. In one case, the Alabama Supreme Court discussed competing viewpoints as to whether an adequate legal remedy should bar the

199. State ex rel. Emp. Sec. Bd. v. Rucker, 126 A.2d 846, 849 (Md. 1956).

200. Id.

201. 510 N.E.2d 8, 9–10 (Ill. App. Ct. 1987).

202. Id. at 10–11.

203. Id. at 11.

204. Id. The court, having found that the claim was legal in nature, also barred the equitable defense of laches. Id. at 12.

205. See, e.g., *Frederickson v. Blumenthal*, 648 N.E.2d 1060, 1062 (Ill. App. Ct. 1995) (calling unjust enrichment remedy at law); *Dickerson Realtors, Inc. v. Frewert*, 307 N.E.2d 445, 448 (Ill. App. Ct. 1974) (“[T]he right to recover on a . . . quasi-contract is governed by the principles of equity although the action is at law, and the action is maintainable in all cases where one party has received a benefit which it would be inequitable for that party to retain.”). But see *Indep. Voters of Ill. v. Ill. Commerce Comm’n*, 510 N.E.2d 850, 854 (Ill. 1987) (“Restitution is an equitable remedy . . . [based on] unjust enrichment to the defendant. Restitution is compelled against one who has obtained money or property without authority and usually where an adequate legal remedy does not exist for the aggrieved party.” (citation omitted)). *Independent Voters* came out very shortly after *Partipilo*, and its holding did not rest on the irreparable injury rule; instead, the Illinois Supreme Court ruled that an order for restitution based on unjust enrichment was incompatible with the statutory scheme at issue. Id. at 854–55; see *infra* Part III.A (discussing alternative reasons for invoking irreparable injury rule).

206. See *supra* Part II.B.2 (analyzing proper use of irreparable injury rule).

imposition of a constructive trust.²⁰⁷ The court determined that a constructive trust could be imposed if the defendant violated a fiduciary duty—associated with trust law, a subject over which equity historically retained exclusive dominion—or if there was an inadequate legal remedy.²⁰⁸ The court has not, however, applied the irreparable injury rule to claims sounding in unjust enrichment more generally.²⁰⁹

Other courts have similarly shown that it is possible to confine application of the irreparable injury rule to unjust-enrichment claims seeking an equitable remedy like constructive trust or equitable lien.²¹⁰ Still other courts envision a more robust version of constructive trust. One California court suggested that the plaintiff need *never* show the inadequacy of legal remedies to obtain a constructive trust, even if the cause of action is legal in nature, since constructive trust originated in trust law.²¹¹ Thus, even on this relatively narrow point, courts are not entirely in agreement.

207. See *Am. Family Care, Inc. v. Irwin*, 571 So. 2d 1053, 1060–61 (Ala. 1990) (discussing competing viewpoints from two academic experts in field).

208. See *id.* at 1061 (adopting viewpoint espoused in Note, *Must the Remedy at Law Be Inadequate Before a Constructive Trust Will Be Impressed?*, 25 St. John's L. Rev. 283, 295 (1951)); see also 1 Pomeroy, *supra* note 63, § 155, at 209–11 (describing constructive trust in context of fiduciary duty as one subject of exclusively equitable jurisdiction).

209. To be sure, federal district courts interpreting Alabama law have found that an adequate remedy at law is enough to preclude an unjust-enrichment claim. See, e.g., *N. Assurance Co. of Am. v. Bayside Marine Constr., Inc.*, No. 08-222-KD-B, 2009 WL 151023, at *4 (S.D. Ala. Jan. 21, 2009) (“In Alabama, the doctrine of unjust enrichment is an equitable remedy which issues only where there is no adequate remedy at law.” (footnote omitted)). However, the cases cited in *Northern Assurance* are not quite on point. The first quoted another case that called unjust enrichment equitable, but also reinstated the plaintiff's unjust-enrichment and quantum meruit claims without mentioning the irreparable injury rule. See *Mantipty v. Mantipty*, 951 So. 2d 638, 654–57 (Ala. 2006). The second merely recited the irreparable injury rule as part of the test for granting an injunction. See *Teleprompter of Mobile, Inc. v. Bayou Cable TV*, 428 So. 2d 17, 20 (Ala. 1983); see also *supra* note 110 and accompanying text (discussing use of rule with respect to injunctions).

210. See, e.g., *Amerigas Propane, L.P. v. BP Am., Inc.*, 691 F. Supp. 2d 844, 854 (N.D. Ill. 2010) (distinguishing *Partipilo* since *Amerigas* plaintiffs were “seeking a constructive trust, an equitable remedy . . . [that] is available to a plaintiff where he has no adequate remedy at law”); *Ypsilanti Charter Twp. v. Kircher*, 761 N.W.2d 761, 782 (Mich. Ct. App. 2008) (“A party that has an adequate remedy at law is not entitled to an equitable lien.”); *Kuhlman v. Cargile*, 262 N.W.2d 454, 458–59 (Neb. 1978) (recognizing irreparable injury rule as bar to constructive-trust claim but finding defendants did not attempt to show plaintiff had adequate remedy at law); *Chase Home Fin., LLC v. Risher*, 746 S.E.2d 471, 475–77 (S.C. Ct. App. 2013) (recognizing adequate legal remedy as bar to equitable lien but not to unjust-enrichment claim); Grace Murphy Long, Comment, *The Sunset of Equity: Constructive Trusts and the Law–Equity Dichotomy*, 57 Ala. L. Rev. 875, 889–90 (2006) (discussing treatment of irreparable injury rule with respect to constructive trust in various states).

211. See *Heckmann v. Ahmanson*, 214 Cal. Rptr. 177, 187–88 (Ct. App. 1985) (“In California . . . an action in equity to establish a constructive trust does not depend on the absence of an adequate legal remedy ‘The court, as a court of equity, acquires jurisdiction of the action . . . because it is an action to enforce a trust’” (third alteration in original) (quoting *Bacon v. Grosse*, 132 P. 1027, 1032 (Cal. 1913))).

3. (*Reluctantly*) *Doing Away with the Law–Equity Divide*. — Some scholars argue that using the irreparable injury rule is entirely artificial, since most modern courts have merged their law and equity branches.²¹² In its stead, they generally advocate a functional approach to the choice of remedy in a particular case.²¹³ The Alaska Supreme Court started down this path long ago. In one case, the plaintiff brought a cause of action that the trial court characterized as one for money had and received—a legal action based on unjust enrichment²¹⁴—and sought restitution, which the trial court called an equitable remedy.²¹⁵ The lower court then dismissed the action for lack of equity jurisdiction.²¹⁶ The Alaska Supreme Court reversed, finding it “eminently sensible” to consider a restitutionary remedy in light of the merger of law and equity.²¹⁷ However, the court has since backtracked. In a more recent case, the court attempted to guide lower courts by reiterating the applicability of the irreparable injury rule.²¹⁸ It has also invoked the rule in the context of a claim based on unjust enrichment.²¹⁹

212. See Rendleman & Roberts, *supra* note 84, at 492 (“To divide restitution into legal and equitable branches is artificial and not functional.”); see also Laycock, *Irreparable Injury Rule*, *supra* note 11, at 12 (“Most of the characteristics associated with equity are sometimes available at law, and most of the characteristics associated with law are sometimes available in equity.”); *supra* note 93 and accompanying text (discussing merger).

213. See Laycock, *Irreparable Injury Rule*, *supra* note 11, at 11–16 (“It is time to quit thinking in terms of the law–equity proxy, and to begin thinking directly in terms of the functional choices among remedies.”); cf. Rendleman & Roberts, *supra* note 84, at 492 (“The practical issue is what form the plaintiff’s remedy . . . should take.”); *id.* at 493 (“A modern court ought to concentrate on the defendant’s alleged unjust enrichment instead of borrowing fictions from contract.”).

214. See *supra* notes 74–79 and accompanying text.

215. *Copper Valley Trading Co. v. Kratz*, 513 P.2d 1113, 1114–15 (Alaska 1973).

216. *Id.* at 1114.

217. *Id.* at 1114–15. The court noted that Alaska Civil Rule 2, like Federal Rule of Civil Procedure 2, prescribes “one form of action to be known as a ‘civil action’” and openly approved of commentary on the Federal Rules of Civil Procedure stating that there is “no purpose” to an objection to equitable jurisdiction based on the existence of an adequate legal remedy. See *id.* (quoting and approving of commentary from 1 William W. Barron & Alexander Holtzoff, *Federal Practice and Procedure* § 141, at 614–17, 621–22 (1960)).

218. See *Knaebel v. Heiner*, 663 P.2d 551, 553 (Alaska 1983) (“One who seeks the interposition of equity must generally show that he either has no remedy at law or that no legal remedy is adequate.”).

219. See *Peter v. Progressive Corp.*, No. S-11416, 2006 WL 438658, at *7 (Alaska Feb. 22, 2006) (“[D]isgorgement is not a cause of action but an equitable remedy which requires a defendant to give up an amount of money equal to the defendant’s unjust enrichment. We have held that equitable relief is available only when there is no adequate remedy at law.” (footnote omitted)).

III. UNDERSTANDING AND REPLACING THE IRREPARABLE INJURY RULE SHORTCUT

It may seem surprising that courts display such varied understandings of unjust enrichment and the applicability of the irreparable injury rule in the context of unjust-enrichment claims. The inconsistency is perhaps all the more striking given that unjust-enrichment claims across jurisdictions share a common history in the English courts.²²⁰ While part of the variability in application may stem from genuine confusion about the contours of unjust-enrichment doctrine,²²¹ this Part suggests other explanations. It then goes on to offer a different way to resolve the “serious question” posed in *United States v. Bame*: Should an unjust-enrichment claim be barred because of potential relief under a statute?²²² Part III.A draws upon prior literature analyzing the use of the irreparable injury rule by courts and analogizes several reasons why courts may apply the rule to unjust-enrichment claims. Part III.B posits an alternative that is firmly rooted in statutory-interpretation principles and suggests that this approach may be superior.

A. *The Irreparable Injury Rule as a Judicial Shortcut*

In a 1991 book, Professor Laycock surveyed hundreds of cases invoking the irreparable injury rule and determined that, while “courts talk about irreparable injury all the time,” they use the rule when denying relief for other reasons.²²³ That is, courts may use the rule as a shortcut to justify disposing of a case in a particular way when there is another motivating factor.²²⁴ While the book focuses on the irreparable injury rule as used when deciding whether to grant an injunction or specific performance of a contract,²²⁵ some of the same reasons apply equally when courts invoke the rule to preclude unjust-enrichment claims when an alternative path for relief may be available. This section discusses two such reasons.

1. *Hostility to the Merits of the Plaintiff's Case.* — Perhaps the most obvious reason to use such a shortcut is that the court believes the plaintiff

220. See *supra* Part I.C (discussing history of unjust enrichment in courts of law and equity).

221. See *supra* notes 1–2 and accompanying text (relaying commentators' viewpoints that many consider unjust enrichment to be confusing); see also Rendleman & Roberts, *supra* note 84, at 492–94 (describing three fallacies courts and lawyers draw upon in context of unjust enrichment and restitution).

222. 721 F.3d 1025, 1029–30 (8th Cir. 2013).

223. Laycock, *Irreparable Injury Rule*, *supra* note 11, at 21–24; see *id.* at 5 (“I conclude that the irreparable injury rule is dead. It does not describe what the cases do, and it cannot account for the results.”).

224. See *id.* at 7 (“Irreparable injury rhetoric has survived only as a label, to be affixed to opinions after the court has chosen the remedy on other grounds.”).

225. See *id.* at 23–24, 36 n.84 (describing case-selection methodology and West Key Numbers used).

will not or should not succeed in her unjust-enrichment claim.²²⁶ This is one way of thinking about the Minnesota cases underpinning the use of the irreparable injury rule as a blunt tool to preclude unjust-enrichment claims.²²⁷ For example, in *ServiceMaster of St. Cloud v. GAB Business Services, Inc.*, the Minnesota Supreme Court invoked the rule but also expressly stated that it did not believe one of the defendants, an insurance company, had been unjustly enriched: It had actually paid the insurance claim, but to a party other than the plaintiff.²²⁸ The court in *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.* did not explicitly comment on the merits of the unjust-enrichment claim but established that the defendant, a lender, actually suffered a loss on its loan and distinguished the case from others as not presenting similar indicia of unjustness.²²⁹ Nor are Minnesota courts alone in this behavior.²³⁰ In a more curious move, the Idaho Supreme Court essentially conflated the adequacy of the legal remedy and the merits of the claim, stating that the claimant's statutory right both precluded "employ[ing] the equitable doctrine of unjust enrichment" and rendered any benefit received by the counterclaimant not unjust.²³¹

2. *Deference to More Particular Policy.* — Another reason courts may use the irreparable injury rule, and one perhaps more relevant to the present subject, is to excise an unjust-enrichment claim when the case is better resolved under another policy rubric, such as by statute.²³² This idea reared its head in *United States Fire Insurance Co. v. Minnesota State*

226. *Id.* at 196–99.

227. See *supra* Part II.A (discussing line of Minnesota cases in greater detail).

228. 544 N.W.2d 302, 306–07 (Minn. 1996) ("If [insurer] must now pay damages to ServiceMaster in the amount of the repairs, it will have paid not just once, but twice. We therefore believe that the trial court's award was not supported by evidence of unjust enrichment."); see also *supra* note 147 (mentioning basis for denial of unjust-enrichment claim not entirely clear from opinion). See generally *supra* notes 24–26 and accompanying text (explaining "enrichment" element of unjust-enrichment claim).

229. 493 N.W.2d 137, 139, 141 (Minn. Ct. App. 1992) (establishing loss amount and distinguishing two earlier cases). See generally *supra* Part I.A (explaining elements of unjust-enrichment claim).

230. See, e.g., *Season Comfort Corp. v. Ben A. Borenstein Co.*, 655 N.E.2d 1065, 1071 (Ill. App. Ct. 1995) (finding plaintiff had adequate legal remedy precluding unjust-enrichment claim but also "[t]here is nothing in this case to demonstrate that [defendants] were unjustly enriched").

231. *Aberdeen-Springfield Canal Co. v. Peiper*, 982 P.2d 917, 922–23 (Idaho 1999); cf. *Indep. Voters of Ill. v. Ill. Commerce Comm'n*, 510 N.E.2d 850, 854–55 (Ill. 1987) (denying unjust-enrichment claim for excessive charges by telephone utility because utility must charge rates set by public commission and, thus, retention of those charges could not be unjust).

232. See Laycock, *Irreparable Injury Rule*, *supra* note 11, at 193–96 ("Litigants sometimes invoke the court's general equity powers to evade more particular rules of law [C]ourts often add that the more particular law provides an adequate remedy that precludes equity jurisdiction."); see also Goff & Jones: *Unjust Enrichment*, *supra* note 3, at 29 ("The courts may refuse to allow a claim in unjust enrichment where this would lead to the enforcement of a transaction that a statute deems to be unenforceable.").

Zoological Board, one of the Minnesota cases relied upon by *ServiceMaster* and *Southtown Plumbing*.²³³ In the case, the plaintiffs sued a state agency to recover money due under a contract and also added a claim for unjust enrichment.²³⁴ The Minnesota Supreme Court found the plaintiffs' unjust-enrichment claim unavailing in part because the legislature did not allocate funds for the contract and allowing the claim would have circumvented constitutional and statutory restrictions on appropriations.²³⁵ Other courts have, in the same breath, invoked policy considerations behind a statute and the availability of that statute as an adequate legal remedy to preclude unjust-enrichment claims.²³⁶ In these situations, courts may seek to protect a legislatively determined policy from encroachment by an unjust-enrichment claim.²³⁷

B. *Confronting the Conflict Between a Statute and an Unjust-Enrichment Claim*

With respect to these conflicts between statutory policy and unjust enrichment, "the real question . . . is whether the more particular law controls, and the answer to that question is the proper ground of decision."²³⁸ That is, resting a judicial decision on the irreparable injury rule is not only often inappropriate, but also obfuscates analysis of substantive policy considerations.²³⁹ A fairer method of determining whether

233. See *supra* notes 160–163 and accompanying text (discussing *U.S. Fire Insurance* and its later application more fully).

234. *U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 492–94 (Minn. 1981).

235. *Id.* at 497. In the case, a company had contracted to build the Zoo Ride, which was supposed to generate revenues sufficient to meet its costs. *Id.* at 492–94. The Minnesota Supreme Court held that the contract was valid and that the Zoological Board was in default. *Id.* at 497. Even though the agency was in default, constitutional and statutory provisions restricted the ability of state officials to incur debts without a specific legislative authorization. *Id.* at 495. The court found that allowing an unjust-enrichment claim would have permitted recovery against the state's general fund without legislative authorization, violating those rules. *Id.* at 497.

236. See, e.g., *Sheets v. Yamaha Motors Corp., U.S.A.*, 849 F.2d 179, 184 (5th Cir. 1988) (agreeing unjust-enrichment claim would "contravene the more particularized requirements of the Louisiana Uniform Trade Secrets Act" and invoking irreparable injury rule); *VCS, Inc. v. La Salle Dev., LLC*, 293 P.3d 290, 299–300 (Utah 2012) (requiring exhaustion of legal remedies before permitting unjust-enrichment claim and stating "[exhaustion] requirement ensures that the calibrated policies balanced in our legal rules are not upended").

237. See Laycock, *Irreparable Injury Rule*, *supra* note 11, at 195 ("If plaintiff's . . . theory undermines a policy that the court or legislature is committed to preserving, relief should be denied."); see also, e.g., *Peterson v. Cellco P'ship*, 80 Cal. Rptr. 3d 316, 324 (Ct. App. 2008) ("To permit plaintiffs to pursue their claim under the label 'unjust enrichment' would allow them to circumvent the law and public policy reflected in [statute and legislative determinations] . . .").

238. Laycock, *Irreparable Injury Rule*, *supra* note 11, at 193.

239. See *id.* at 195 (suggesting courts will fulfill substantive equitable goals best by "focus[ing] directly on the competing substantive policies," and relying on irreparable

an unjust-enrichment claim is crowded out by a statute would confront the underlying policy directly and treat the unjust-enrichment claim on a par with traditional common-law claims.

1. *Importing Concepts from Tort Law and Statutory Construction.* — Courts regularly face the same issue when resolving conflicts between statutes and tort claims, and they have developed tools that apply equally well in this setting. It is an accepted canon of statutory interpretation that “statutes are consistent with the common law, and if a statute abrogates the common law, the abrogation must be by express wording or necessary implication.”²⁴⁰ In Minnesota, for example, legal actions based on common-law “heart balm” claims—“alienation of affections, criminal conversation, seduction, and breach of contract to marry”—are barred by statute.²⁴¹ A more common scenario deals with workers’ compensation programs:²⁴² When a worker is compensated under such a statutory scheme, she generally is expressly precluded from filing a negligence action against her employer or coworker related to the claim.²⁴³ To be sure, this concept is not entirely foreign to unjust-enrichment claims. In one case, for example, the court applied the irreparable injury rule, but also noted that a recent statutory amendment likely sought to preclude such claims.²⁴⁴

Although an express abrogation of the common law leaves no doubt as to the intent of the statute, courts also routinely examine conflicts between the policy of a statute and the effect of a common-law cause of action. In one case, for example, the Minnesota Supreme Court evalu-

injury rule “is likely to mislead”); supra Part II.B (discussing misuse of irreparable injury rule).

240. *Hoang Minh Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000); see Karl N. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed, 3 Vand. L. Rev. 395, 401 (1950) (listing similar canons of construction); cf. *Bourgeois v. Live Nation Entm’t*, 59 A.3d 509, 528–31 (Md. 2013) (holding action for money had and received lies to recover money paid in excess of amount permitted by statute unless otherwise precluded by statute).

241. Minn. Stat. Ann. §§ 553.01–553.03 (West 2010); accord *M.N. v. D.S.*, 616 N.W.2d 284, 286–87 (Minn. Ct. App. 2000) (illustrating effect of statute).

242. See, e.g., Minn. Stat. Ann. §§ 176.001–176.862 (West 2006 & Supp. 2014) (setting forth Minnesota workers’ compensation scheme).

243. See *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005) (explaining workers’ compensation as exclusive source of employer liability and inability to sue coworker except in cases of gross negligence); accord, e.g., Del. Code Ann. tit. 19, § 2304 (2013) (“Every employer and employee . . . shall be bound . . . respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment . . . to the exclusion of all other rights and remedies.”); Wis. Stat. Ann. § 102.03(2) (West 2010 & Supp. 2013) (“[T]he right to the recovery of compensation . . . shall be the exclusive remedy against the employer, any other employee of the same employer and the worker’s compensation insurance carrier.”).

244. See *Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1132 (D. Minn. 2012) (suggesting unjust-enrichment claim would “make an end-run around the recent amendments to the MFTA, which appear to have been designed to preclude precisely the types of claims brought in this case”).

ated the recognition of a tort for negligent credentialing by a hospital against the policy underpinning a statute providing for confidentiality and limited immunity in credentialing proceedings.²⁴⁵ The court concluded that the tort did not present an insuperable policy conflict with the statute, even though the statute may pose an obstacle to proving the tort.²⁴⁶ Courts have addressed such policy conflicts with respect to unjust-enrichment claims as well.²⁴⁷

Relatedly, courts may seek to determine whether a common-law claim must yield in the face of an overriding statutory scheme.²⁴⁸ That is, if the legislature has extensively regulated a particular subject, it may indicate that the legislature intended to displace related common-law claims.²⁴⁹ For example, several cases have evaluated whether unjust-enrichment claims may be precluded by claims that could also have been brought under provisions of the Uniform Commercial Code (UCC), an overarching statutory scheme, and they have come to different conclusions.²⁵⁰

On the flip side, a statute may seek to *preserve* the remedies available at common law. One of the UCC cases, in upholding an unjust-enrichment claim, gave particular weight to language in the UCC that leaves legal and equitable remedies intact unless displaced by the statute.²⁵¹ A different court allowed a quantum meruit claim—which it

245. *Larson v. Wasemiller*, 738 N.W.2d 300, 309, 312–13 (Minn. 2007).

246. *Id.* at 313.

247. See *Golt v. Phillips*, 517 A.2d 328, 333 (Md. 1986) (holding landlord of unlicensed building could not recover back rent under quantum meruit regardless of any unjust enrichment to other party because allowing claim would “defeat the efficacy of the regulatory statute”); *supra* notes 236–237 and accompanying text (discussing other examples of conflicts between statute and unjust-enrichment claim); cf. *Alts. Unlimited, Inc. v. New Balt. City Bd. of Sch. Comm’rs*, 843 A.2d 252, 298–300 (Md. Ct. Spec. App. 2004) (“When the two conflicting values cannot be reconciled, the policy of protecting the governmental treasury from unauthorized obligations will override other considerations even if the governmental entity is thereby unjustly enriched.”).

248. See *Llewellyn*, *supra* note 240, at 401 (“The common law gives way to a statute which is in consistent [sic] with it and when a statute is designed as a revision of a whole body of law applicable to a given subject it supersedes the common law.”).

249. This is also similar to the concept of “field preemption,” in which state law must give way to areas that Congress has extensively regulated. See generally, e.g., Viet D. Dinh, *Reassessing the Law of Preemption*, 88 *Geo. L.J.* 2085, 2105–07 (2000) (explaining field preemption).

250. Compare *Great W. Bank & Trust v. Nahat*, 674 P.2d 323, 328 (Ariz. Ct. App. 1983) (finding unjust-enrichment claim not incompatible with purpose of UCC), with *Brannon v. First Nat’l Bank of Atlanta*, 223 S.E.2d 473, 476 (Ga. Ct. App. 1976) (finding allowing unjust-enrichment claim would undermine purposes and policies of UCC and make certain provisions meaningless).

251. See *Great W. Bank & Trust*, 674 P.2d at 326–29 (“We begin by recognizing that common law principles are incorporated into the commercial law . . . unless displaced by a particular statutory provision.”). *Brannon* also recognized this principle, but found the unjust-enrichment claim displaced by the statute. 223 S.E.2d at 476–77 (“It is true that the

recognized as a common-law claim—when the plaintiff could have recovered against a statutory payment bond because “[w]hen a statute provides a remedy for enforcement of a common-law right, the statutory scheme is merely cumulative and not exclusive.”²⁵² In yet another case, the court permitted an unjust-enrichment claim to go forward because a statute expressly envisioned restitution as a remedy and “restitution and unjust enrichment . . . are basically interchangeable.”²⁵³

2. *Moving the Analysis from Adequacy to Interpretation.* — The legislative prerogative embodied in a particular statute may intend to prevent a plaintiff from recovering in unjust enrichment for a similar claim, or it may seek to leave that road to recovery in place. By calling a statute an adequate remedy and declaring unjust-enrichment claims off limits, a court instead may prioritize the statutory claim over the unjust-enrichment claim without carefully examining the relationship between the two.²⁵⁴ Said differently, a court may elevate its discretion to declare a particular remedy adequate or inadequate over a legislative determination about whether a claim should be permitted.²⁵⁵

This can lead to problematic results. Returning to an earlier subject, recall that Minnesota courts have invoked the irreparable injury rule to preclude unjust-enrichment claims when a contractor could have had a statutory mechanic’s lien.²⁵⁶ In contrast, Illinois courts have found that a statutory mechanic’s lien is an *additional* remedy on top of other remedies offered by the common law.²⁵⁷ This permits a contractor to recover

UCC provides that, unless displaced by its particular provisions, the principles of law and equity shall supplement its provisions” (emphasis omitted)).

252. *Morris Pumps v. Centerline Piping, Inc.*, 729 N.W.2d 898, 907 (Mich. Ct. App. 2006) (citing *Pompey v. Gen. Motors Corp.*, 189 N.W.2d 243, 251 (Mich. 1971)).

253. *Hood ex rel. State v. BASF Corp.*, No. 56863, 2006 WL 308378, at *13 (Miss. Ch. Jan. 17, 2006); cf. *Roach*, supra note 2, at 276–77 (describing how statutes may create unjust-enrichment claims).

254. Cf., e.g., *Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1132 (D. Minn. 2012) (suggesting unjust-enrichment claim would make “end-run” around statute); *OneSky Litig. Trust v. Sullivan*, No. 10-cv-344-LM, 2012 WL 124739, at *11–*13 (D.N.H. Jan. 17, 2012) (granting judgment as matter of law on unjust-enrichment claim because same facts supported different claim preempted by statute).

255. Cf. *Laycock*, Irreparable Injury Rule, supra note 11, at 22–23 (suggesting definition of adequacy is most important limit on irreparable injury rule); *Shreve*, supra note 118, at 398–99 (describing conflict presented in *Hecht Co. v. Bowles*, 321 U.S. 321 (1944), as between Congress’s substantive law-enforcement power to prescribe mandatory injunctions and federal courts’ power to decide when to issue injunctions); supra note 114 and accompanying text (discussing role of discretion in equity).

256. See supra Part II.A (discussing Minnesota cases).

257. See *Fieldcrest Builders, Inc. v. Antonucci*, 724 N.E.2d 49, 59 (Ill. App. Ct. 1999) (“The special remedy afforded to contractors under the Act is in addition to ordinary common law remedies”). However, courts have refused to impose an equitable lien on property when the contractor failed to secure a statutory mechanic’s lien. See *Midcoast Aviation, Inc. v. Gen. Elec. Credit Corp.*, 907 F.2d 732, 740 (7th Cir. 1990) (finding Illinois cases show subcontractor who fails to perfect mechanic’s lien may not secure equitable

for work performed in quantum meruit, a claim sounding in unjust enrichment, even if her lien—her legal remedy—fails.²⁵⁸ By applying the irreparable injury rule, Minnesota courts may thus prevent such contractors from recovering on an unjust-enrichment theory, even though a mechanic's lien is not an exclusive remedy.²⁵⁹

Along similar lines, foisting a nonexclusive statutory remedy onto a plaintiff could result in a lower award, at least when an unjust-enrichment claim would offer a better recovery.²⁶⁰ More practically, the erroneous characterization of an unjust-enrichment claim could implicate important aspects of the case, such as the right to a jury trial²⁶¹ or the statute of limitations on the claim.²⁶² Although courts may be rightly concerned about using an unjust-enrichment claim to circumvent a statutory claim,²⁶³ it is not necessarily true that the former will be uni-

lien but may recover against owner if contractual or quasi-contractual relationship exists between subcontractor and owner).

258. See *Fieldcrest Builders*, 724 N.E.2d at 60; see also *Weydert Homes, Inc. v. Kammes*, 917 N.E.2d 64, 72–73 (Ill. App. Ct. 2009) (reversing trial court's dismissal of breach-of-contract and quantum meruit claims even though plaintiff failed to meet requirements of mechanic's lien statute).

259. See Minn. Stat. Ann. § 514.13 (West 2014) (“The rights granted by this chapter are nonexclusive.”). The explicit nonexclusivity language was added to the statute in 1995 and may not have been binding on the *ServiceMaster* or *Southtown Plumbing* courts, since those cases were decided in 1996 and 1992, respectively. See 1995 Minn. Laws 79, 79–80. Prior to the amendment, the mechanic's lien statute did not specify whether the statute provided an exclusive or a nonexclusive remedy, but did include the present language stating that failure to comply with the mechanic's lien statute would not affect contract rights. *Id.* In any event, the *ServiceMaster* and *Southtown Plumbing* courts did not attempt to parse the statutory language to determine whether the statute provided an exclusive remedy or not. See *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 303–08 (Minn. 1996); *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 138–41 (Minn. Ct. App. 1992).

260. See *supra* note 97 and accompanying text (discussing potential benefit of capturing gain-based recovery in unjust enrichment).

261. See *supra* note 102 and accompanying text (explaining right to jury trial for equitable claims and unjust-enrichment claims).

262. See *supra* note 104 and accompanying text (noting statute of limitations for equitable claim typically limited by statute of limitations for analogous legal claim). If an equitable unjust-enrichment claim is mischaracterized as legal in nature, though, the statute of limitations may be erroneously lengthened. *Rendleman & Roberts*, *supra* note 84, at 494; see, e.g., *Schreibman ex rel. Schreibman v. Chase Manhattan Bank*, 224 N.Y.S.2d 977, 980–82 (App. Div. 1962) (*per curiam*) (recognizing money had and received as legal claim and finding six-year statute-of-limitations period not reduced because of concurrent legal claim with three-year statute-of-limitations period). See generally Victor House, *Unjust Enrichment: The Applicable Statute of Limitations*, 35 *Cornell L.Q.* 797 (1950) (discussing interplay between claims pleaded and statute of limitations).

263. See, e.g., *Southtown Plumbing*, 493 N.W.2d at 140 (“Relief under the theory of unjust enrichment is not available where there is an adequate legal remedy or where statutory standards for recovery are set by the legislature.”).

laterally easier to prove than the latter, in part because there are special defenses to unjust-enrichment claims.²⁶⁴

3. *Back to Bame*. — The existence of possible valid defenses to the unjust-enrichment claim led to the Eighth Circuit’s reversal of summary judgment in *Bame*.²⁶⁵ Had the court given fresh thought to the “serious question” presented in the case—whether the unjust-enrichment claim was crowded out by the MFTA—it might have guided the lower court differently on remand.²⁶⁶ It might have started by finding that the provisions of the MFTA are nonexclusive; the statute reiterates that principles of law and equity supplement it unless displaced.²⁶⁷ The court might have noted that fraudulent-transfer law is squarely within the realm of unjust enrichment.²⁶⁸ It also might have suggested that the prevalence of statutes on the subject “occupies the field,” displacing unjust-enrichment claims dealing with potentially fraudulent transfers.²⁶⁹ The court might then have recognized that this could lead to anomalous results: If a plaintiff wants to take her unjust-enrichment claim outside the ambit of the MFTA, she might decide to *not* plead certain factors, such as insider status or intent to hinder, delay, or defraud,²⁷⁰ that make her claim particularly unjust. Or it could have taken a different tack. In any event, the Eighth Circuit should have confronted the question directly instead of casually invoking the irreparable injury rule to duck it entirely.

CONCLUSION

As Justice Holmes once wrote, “To rest upon a formula is a slumber that, prolonged, means death.”²⁷¹ By reflexively reciting the irreparable injury rule, courts confuse the nature of unjust-enrichment claims. In using the rule when precluding such claims because of potential statutory relief, courts may misconstrue or ignore legislatively determined policy. Fortunately, courts have familiar tools at their disposal to interpret statutes and decide whether or not particular legislation precludes

264. See *supra* note 103 (noting existence of special defenses and citing sources).

265. *United States v. Bame*, 721 F.3d 1025, 1028–29 (8th Cir. 2013); see *supra* note 9 (describing genuine issues of material fact as to defenses).

266. See *Bame*, 721 F.3d at 1029–32 (offering guidance to lower court but preserving “all matters relating to the unjust enrichment claim . . . for the district court’s further consideration on remand”).

267. Minn. Stat. Ann. § 513.50 (West 2014).

268. See Restatement (Third) of Restitution & Unjust Enrichment § 1 cmt. g (2011) (“[T]he law of fraudulent conveyance . . . is obviously based on principles of unjust enrichment . . .”).

269. See *id.* (omitting section on fraudulent transfers “[b]ecause the topic is primarily regulated by both state and federal statutes”); see also *supra* notes 248–250 and accompanying text (noting pervasive regulation of subject may displace common-law claims).

270. Minn. Stat. Ann. § 513.44 (listing factors making transfer fraudulent).

271. Oliver Wendell Holmes, *Ideals and Doubts*, 10 Ill. L. Rev. 1, 3 (1915).

relief on an unjust-enrichment theory. To be sure, that result may not always be different from that reached by invoking the irreparable injury rule. By doing so, though, courts will directly confront the underlying policy issues and decide based on the relevant arguments, rather than resting on a formula that has lost much of its original force and meaning.

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