Inductive vs Deductive Reasoning in the Common Law of Obligations

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How can we assert a common law of obligations when the approximately forty “common law” nations each has its own substantive doctrines and principles regarding property, contract, unjust enrichment, and tort? Furthermore, it is no longer the case that legal precedents from the birthplace of the common law bind its colonial offspring. Since neither substance nor authority unites the common law, this paper suggests that a more promising ground for common law unity lies in its characteristic form of reasoning, namely, inductive reasoning. It is commonly said that the basic difference between civil and common law jurisdictions lies in their respective methods: civilians proceed deductively (from the top down), arriving at correct results syllogistically by applying discrete facts to general (codified) principles, but common lawyers and common law judges proceed inductively, comparing specific instances in order to generate (from the bottom up) the general principles that coherently unite them.

Through an examination of one particular branch of the law of obligations, the law of unjust enrichment, in one particular common law jurisdiction, Canada, this paper explores the truth of this common assumption about legal reasoning. In recent years, the Supreme Court of Canada has adopted a civilian approach to the law of unjust enrichment, positing a general principle – lack of juristic reason – as uniting the field. By contrast, the common law approach still dominant in England understands unjust enrichment through a non-exhaustive list of unjust factors articulated by judges over time. The paper posits that, notwithstanding its endorsement of the top-down juristic reason approach, the Supreme Court of Canada in recent jurisprudence has returned to something resembling the traditional common law approach, evidencing perhaps an ineluctable affinity between common law judges and inductive reasoning.

More ambitiously, the paper engages with the relevant philosophical literature from the fields of logic and epistemology and attempts to come to terms with the often-recognized problem of inductive reasoning, namely, that one cannot arrive at a true result from inductive argument alone. Rather than stand as a knock against inductive (common law) reasoning, the paper explores whether, in the context of the law of obligations, this more relaxed attitude toward truth is better understood as a virtue.