Revista ARACÊ
ISSN: 2358-2472

DOES THE RETURN OF MONEY DEPOSITED BY MISTAKE REQUIRE THE PAYMENT OF A REWARD (ACHÁDEGO)? THE RELATIONSHIP BETWEEN UNJUST ENRICHMENT BY PERFORMANCE AND ARTICLE 1.234 OF THE CIVIL CODE

https://doi.org/10.56238/arev7n3-126

Submitted on: 02/14/2025 **Publication date:** 03/14/2025

Mateus Rocha Tomaz[1].

ABSTRACT

This *paper* analyzes, based on a recent concrete case widely reported by the media, the relationship between the Right to Unjust Enrichment by Provision and the right to reward (achadego) for the discovery and return of someone else's lost property (art. 1.234 of the Civil Code). It will be demonstrated that the restitutory claim, as a result of objective good faith, does not give rise to the right of reward for the finding of someone else's thing, an institute applicable to tangible movable assets (and not to intangible assets, such as the right of credit) and which rewards the discoverer for having found, by proactivity or luck, the lost object. On the other hand, in the case of unjust enrichment by a service resulting from an erroneous bank transfer, there is no commissive attitude (even if it is the one resulting from the luck of fortuitously coming across something lost on the street, for example), since the only benefit that effectively exists in these hypotheses is the erroneous transfer of the *solvens* (the one who became impoverished) to *the accipens* (the one who unjustifiably became rich), which generates *per se* a restitutory claim of the former against the latter and no right to find.

Keywords: Unjust Enrichment by Installment. Reward (achádego) for the restitution of a thing found. Article 1,234 of the Civil Code. Objective good faith.

[1] PhD and Master in Law, State and Constitution from the Graduate Program in Law at the University of Brasília (PPGD-UnB)

Revista ARACÊ
ISSN: 2358-2472

INTRODUCTION

As widely reported by the national and international media[2], in June 2023, driver Antônio Pereira do Nascimento, a resident of Palmas/TO, mistakenly received a deposit of R$ 131,870,227.00 (one hundred and thirty-one million, eight hundred and seventy thousand, two hundred and twenty-seven reais) from Banco Bradesco.

Upon realizing the aforementioned exorbitant and unjustified deposit, Antônio Pereira would then have immediately contacted the bank, informing them that he would return the amounts, which occurred.

In July 2024, more than a year after this incident, Antônio Pereira filed a collection action, combined with a claim for compensation for moral damages, against Banco Bradesco, arguing the following, as stated in the initial petition:

> "The defendant bank manager initiated psychological pressure on the plaintiff, insinuating the presence of 'people' at the door of his house to wait for the return of the amount, treating the plaintiff as a criminal.
> Distressed, the plaintiff managed, via contact with the Santander Bank, to return from 'bank to bank' the amount found in his checking account on the same day.
> **Despite his upright and honest attitude**, the plaintiff suffered emotional shocks and embarrassment due to the defendant bank's dealings, in addition to the media repercussion of the case, with speculation and exposure of his intimate life and that of his family, and even had the monthly fee of his account at Santander bank unilaterally increased to the 'select' category.
> **For all that has been reported and supported by the current legislation, the plaintiff appeals to the judiciary to request the reward provided for in article 1,234 of the civil code**, as well as compensation for the moral damage suffered, without having given any cause, being the sole fault of the defendant bank"[3].

As a legal basis for his claim, Antônio Pereira adduced as follows:

> "Although the Civil Code was enacted in 2002, when technological situations such as the present one were not imaginable, **the analogy with the finding of someone else's lost thing is pertinent**. **The Plaintiff found, in a virtual environment, an amount that did not belong to him and promptly took voluntary measures to return it, demonstrating integrity and good faith in such a way that he is entitled to the application of a reward proportional to the effort and honesty shown by the returner**.
> Furthermore, in the present case, there is a quick act by the Plaintiff to return the amount found in his account, being entitled, by Law, to receive a reward that is not less than 5% of the amount. Therefore, the Plaintiff's right to receive the amount

[2] On the subject, see: https://g1.globo.com/to/tocantins/noticia/2023/06/07/milionario-por-um-dia-motorista-leva-susto-ao-abri-conta-bancaria-e-encontrar-mais-de-r-130-milhoes.ghtml (accessed on 12.15.2024). The case also had international repercussions: https://www.dailymail.co.uk/news/article-12174129/Brazilian-driver-sees-balance-spike-46-26-7-million-bank-error.html (accessed on 12.15.2024).

[3] BRAZIL. Court of Justice of the State of Tocantins (6th Civil Court of Palmas). **Common Civil Procedure No. 0030429-44.2024.8.27.2729/TO.** Author: Antônio Pereira do Nascimento. Defendant: Banco Bradesco S.A. Initial Petition. Date: 25.07.2024. Procedural Event No. 1. He stood out.

Revista ARACÊ
ISSN: 2358-2472

> due to the spontaneous and good faith restitution of amounts that did not belong to him is legitimate".[4]

In an order dated September 20, 2024, the judge of the 6th Civil Court of Palmas/TO granted the plaintiff, as requested, the benefits of free justice provided for in article 98 of the Code of Civil Procedure and scheduled a conciliation hearing for February 18, 2025[5], which remained unsuccessful[6].

Thus, the period for the bank's response began, which did not present its defense by the date of completion of this *paper*, so it will not be possible to analyze the financial institution's possible arguments here.

Having exposed the main factual contours of the concrete case for the analysis undertaken here, this article will focus exclusively on the relationship between restitutory obligations for performance and the right to reward for the return of a found thing (article 1,234 of the Civil Code), which constitutes the core of the plaintiff's claim.

BRIEF LINES ON THE RIGHT TO RESTITUTION (IN BRAZIL)

According to Rodrigo da Guia, the "*historical development of the prohibition on unjust enrichment in Brazilian law could be summarized as the chronicle of a discredited institute*".[7] The professor at the Law School of the State University of Rio de Janeiro (UERJ) is right.

This branch of Civil Law is millennial and found robust doctrinal and legislative developments in Roman Law and nineteenth-century Germanic pandecticism, the latter a direct influence of the *Bürgerliches Gesetzbuch* (or BGB), the German Civil Code of 1896 — which largely inspired Clovis Beviláqua's draft Civil Code[8].

---

[4] BRAZIL. Court of Justice of the State of Tocantins (6th Civil Court of Palmas). **Common Civil Procedure No. 0030429-44.2024.8.27.2729/TO.** Author: Antônio Pereira do Nascimento. Defendant: Banco Bradesco S.A. Initial Petition. Date: 25.07.2024. Procedural Event No. 1. He stood out.

[5] BRAZIL. Court of Justice of the State of Tocantins (6th Civil Court of Palmas). **Common Civil Procedure No. 0030429-44.2024.8.27.2729/TO.** Author: Antônio Pereira do Nascimento. Defendant: Banco Bradesco S.A. Order. Date: 20.09.2024. Procedural Event No. 16.

[6] BRAZIL. Court of Justice of the State of Tocantins (6th Civil Court of Palmas). **Common Civil Procedure No. 0030429-44.2024.8.27.2729/TO.** Author: Antônio Pereira do Nascimento. Defendant: Banco Bradesco S.A. Term of Hearing. Date: 18.02.2025. Procedural Event No. 26.

[7] SILVA, Rodrigo da Guia. **Unjust enrichment: restitutory obligations in Civil Law**. 2nd ed. São Paulo: RT, 2022. p. 25.

[8] COSTA-NETO, João. **The Sad Future of Unjustified Enrichment in Brazil: Criticising the Brazilian Civil Code Reform**. Oxford University Comparative Law Forum 3 (2004). Available at: https://ouclf.law.ox.ac.uk/the-sad-future-of-unjustified-enrichment-in-brazil-criticising-the-brazilian-civil-code-reform/ (accessed on 25.01.2025).

Revista ARACÊ
ISSN: 2358-2472

Notwithstanding this, Beviláqua preferred, due to personal doctrinal convictions on the subject, to follow the French tradition of the *Code Napoléon* of 1807[9], which did not discuss the Restitutory Law; which resulted, according to João Costa-Neto, in the astonishing poverty not only legislative, but also doctrinal and jurisprudential on this important branch of Law in Brazil[10].

This "original sin" of civil codification in Brazil attributed to Beviláqua remains, according to Costa-Neto, to the present day, since the Civil Code of 2002 has not evolved much on the subject and, even more astonishingly, the recent Reform of the Civil Code of 2002, undertaken in 2024, also missed the valuable opportunity to correct this anomaly and undertake a more technical and systematic development on the subject, which contributes to deepening, according to the professor of Civil Law at the University of Brasilia, the "*sad fate of Unjust Enrichment in Brazil*".[11]

Contrary to what a considerable portion of Brazilian jurisprudence seems to unreflectively take as a premise, reproducing unsustainable theoretical common sense, Unjust Enrichment is not to be confused with Civil Liability, whether contractual or non-contractual, which studies the so-called indemnity or compensatory [12]claims. On the other hand, the basis of the Restitutory Right is not the damage or the possibility of damage, but the unjust enrichment, without legal justification, that is, the restitutory claim[13].

In other words, this "*right to restitution arises even if there is no damage. It is enough for someone to enrich or indulge himself in an unauthorized way at the expense of others*"[14] and is studied by the so-called Law of Unjust Enrichment, a branch of Civil Law

[9] COSTA-NETO, João. **The Sad Future of Unjustified Enrichment in Brazil: Criticising the Brazilian Civil Code Reform**. Oxford University Comparative Law Forum 3 (2004). Available at: https://ouclf.law.ox.ac.uk/the-sad-future-of-unjustified-enrichment-in-brazil-criticising-the-brazilian-civil-code-reform/ (accessed on 25.01.2025).
[10] COSTA-NETO, João. **The Sad Future of Unjustified Enrichment in Brazil: Criticising the Brazilian Civil Code Reform**. Oxford University Comparative Law Forum 3 (2004). Available at: https://ouclf.law.ox.ac.uk/the-sad-future-of-unjustified-enrichment-in-brazil-criticising-the-brazilian-civil-code-reform/ (accessed on 25.01.2025).
[11] COSTA-NETO, João. **The Sad Future of Unjustified Enrichment in Brazil: Criticising the Brazilian Civil Code Reform**. Oxford University Comparative Law Forum 3 (2004). Available at: https://ouclf.law.ox.ac.uk/the-sad-future-of-unjustified-enrichment-in-brazil-criticising-the-brazilian-civil-code-reform/ (accessed on 25.01.2025).
[12] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed., rev. and current. Rio de Janeiro: Método, 2024. p. 741.
[13] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed., rev. and current. Rio de Janeiro: Método, 2024. p. 741.
[14] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 741.

Revista ARACÊ
ISSN: 2358-2472

widely developed and studied in countries such as Germany, Portugal and England, which dedicate autonomous disciplines in their universities to a thorough analysis of the theme.

As João Costa-Neto and Carlos Elias point out, the Romans, historically recognized for their pragmatism and at least for their classificatory perspicacity of the legal phenomenon, adopted the following *summa divisio* when reasoning about Civil Law: *crimes* (subjective civil liability); *quasi-crimes* (strict civil liability); *contracts* (contractual civil liability) and *quasi-contracts* (unjust enrichment).[15]

Developing this Roman heritage and adapting it to modernity, pandecticism decisively influenced the German Civil Code (BGB), which provides for two categories of unjust enrichment: **by performance** and **by intervention**[16].

João Costa-Neto and Carlos Elias discuss unjust enrichment by provision as follows, which is the type of restitutory right applicable to the specific case involving Antônio Pereira and Banco Bradesco:

> "**In unjust enrichment by performance, the impoverished party transfers advantage to the enriched party. Enrichment arises from some voluntary but mistaken provision by the holder of the right (** Dannemann, 2009, pp. 21 ff.). The most well-known case is the bank transfer by mistake. Suppose M wants to transfer R$ 1 million to K. By mistake, M enters the wrong bank details and transfers the amount to J. In this case, J did not act illicitly. Nor did he adopt any conduct that harmed M.J.'s assets or caused damage to M. It was M who transferred the amount to him. **Even so, there is no legal cause that justifies the receipt by J of R$ 1 million.**
> **The legal system, therefore attributes to M a restitutory claim. M will be able to charge back the amount mistakenly transferred. The main characteristic of unjust enrichment by performance is that it originates from a voluntary conduct (e.g., performance or transfer) on the part of the holder of the right**".[17]

Unjust enrichment by intervention is defined by the same authors as follows:

> "In unjust enrichment by intervention (*Eingriffskondiktion*), the impoverished do not transfer values to those who enrich themselves. It is the enriched person who intervenes on the property of others to obtain an advantage at the expense of the property of others. The intervention may focus on property rights of tangible assets (e.g., use of someone else's property without authorization), intangible property (e.g., use of copyright or industrial property without prior authorization), or any other right of others.
> Imagine the case of a mechanic shop. J leaves his car there to be repaired. The owner of the workshop, M (it could also be one of his agents or employees), takes

[15] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 746.
[16] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 752.
[17] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 752, stood out.

Revista ARACÊ
ISSN: 2358-2472

> the car at night, outside of working hours, and takes a few laps in it. He goes for a ride in the car and takes the opportunity to flaunt a life of luxury.
> The car comes back impeccable. No damage was done. The extra mileage is minimal and has not had any impact on the market value of the asset. In this case, is there any claim of J against M? The answer is yes.
> In the restitutory claim, J is entitled to obtain back what M enriched at his expense. J may, therefore, charge, for example, a daily rate equivalent to the rental of his car. M used the property without authorization. The value of the rent corresponds to what M failed to pay for the use of an asset equivalent to that.
> In the unjust enrichment by intervention, M improperly took J's assets and took advantage of them. It was not J who mistakenly transferred any amount to M. It was M who intervened on the assets of others, in an unauthorized manner, to obtain an undue advantage. The undue profit, in this case, presupposes a proactive conduct on the part of those who enrich themselves.
> In short, the intervenor profits from unauthorized interference or intervention (*Eingriff*) on the property or rights of others. In this case, the holder of the right has a claim for unjust enrichment (also called restitutory). This claim is based on article 884, CC. Using it, the holder of the right (in the example, J) can oblige the intervenor (in the example, M) to deliver back to him the patrimonial advantage obtained or, if unfeasible, the equivalent in money".[18]

The restitutory claim can be requested through the so-called *in rem verso* action, also known as an action for enrichment or an action for unjust enrichment. This is the "*appropriate action for the injured party to obtain the restitution of the amount that the other party has enriched, monetarily corrected*".[19]

The correction of the amount due is "*mandatory, not least because the monetary adjustment is not a plus. It only preserves the real value of the amount*. [...] *The initial term of the correction will be the date of unjust enrichment*".[20]

The main requirements of the in *rem verso action* are, under the terms of articles 884, 885 and 886 of the Civil Code: **(i)** enrichment of those who profited without justification; **(ii)** this enrichment must occur at the expense of those who suffered losses (which does not necessarily mean, under the terms of Statement 35 of the Civil Law Conference, impoverishment, but rather what they no longer earn); **(iii)** causal link between the enrichment of one party and the loss of the other; **(iv)** absence of actual or supervening just cause for enrichment; and **(v)** absence of specific action (subsidiary or residual nature of the action *in rem verso*)[21].

[18] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 752-753.
[19] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 757.
[20] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 757-758.
[21] OLIVEIRA, Carlos E. Elias de, COSTA-NETO, João. **Civil Law: single volume**. 3rd ed. rev. and current. Rio de Janeiro: Método, 2024. p. 758.

Revista ARACÊ
ISSN: 2358-2472

THE RIGHT TO REWARD FOR THE DISCOVERY AND RETURN OF SOMEONE ELSE'S LOST PROPERTY (ART. 1.234 OF THE CIVIL CODE)

Article 1,233 of the Civil Code states that "[w]*hat anyone who finds someone else's lost thing must return it to the owner or legitimate possessor*". In the sole paragraph of the aforementioned normative statement, it is stated that "[*i]n the discoverer's knowledge, he will try to find it, and, if he does not find it, he will deliver the thing found to the competent authority*".

About the aforementioned article, Carlos Roberto Gonçalves discusses as follows:

> "Under no circumstances does the law allow the discoverer to appropriate the property. It is the duty of those who find it to do everything to locate its owner. If he does not succeed, he must seek the police authority who will deliver the thing found".[22]

More vehemently, Fabio Ulhoa Coelho denies the popular adage according to which "a find is not stolen":

> "A popular phrase widely disseminated in Brazil states that 'a find is not stolen. ' He is a liar. Whoever finds something lost by someone has the legal duty to return it to the owner or legitimate possessor. If he keeps it, he commits a criminal offense (CP, art. 1.69, sole paragraph, II). Only if the circumstances surrounding the thing allow us to conclude that there has been abandonment or renunciation can the finder become its owner by occupation"[23].

Article 1,234 of the Civil Code, invoked by Antônio Pereira against Banco Bradesco, provides for the institution of the finding:

> "Article 1,234. The person who returns the thing found, under the terms of the preceding article, will be entitled to a reward of not less than five percent of its value and compensation for the expenses incurred with the conservation and transportation of the thing if the owner does not prefer to abandon it.
> Sole Paragraph. In determining the amount of the reward, the effort made by the discoverer to find the owner, or the legitimate possessor, the possibilities he would have of finding the thing and the economic situation of both, will be considered".

About the activities of the discoverer that effectively fit into the concept of discovery, Sílvio de Salvo Venosa teaches as follows:

> "It must be emphasized that **the devices referring to discovery have application for the spontaneous or fortuitous activity of the discoverer**. **He may have set out in search of something lost precisely in search of adventure or reward, or he may have stumbled upon it fortuitously**. In either situation, you will be entitled to the reward with the specified criteria. Nothing, however, can plead if the owner

[22] GONÇALVES, Carlos Roberto. **Brazilian Civil Law**. v. 5, 7th ed. São Paulo: Saraiva, 2012. p. 252.
[23] COELHO, Fábio Ulhôa. **Civil Law Course**. v. 4. 3rd ed. São Paulo: Saraiva, 2010. p. 132.

Revista ARACÊ
ISSN: 2358-2472

> prefers to abandon the thing, except the right to keep it. If the owner promises a reward for finding the thing, it will be on the principles of this institute that the question of payment to the discoverer will be resolved (art. 854 ff).
> The situation, however, will be different if the owner of the thing has commissioned someone to find it. In this case, the fact will have a contractual nature and, as such, must be interpreted, serving the articles of the Code on discovery only as supplementary provisions of the will of the parties.
> The system effectively does not encourage the inventor *per se* to return the thing found, except for those of small value, as mentioned, and if the owner prefers to abandon it. He will prefer, perhaps, instead of receiving a doubtful reward, to keep the thing in his possession with the spirit of an owner, acquiring the property by adverse possession. **However, no one is obliged to collect the lost item. If he does so, he must, as a rule, submit to the rules of the legal system. By becoming an inventor, he assumes duties and obligations. For the inventor, there was only the obligation to look for the owner or possessor or to hand over the thing to the authority if he collected it. This is the reason why the law rewards him with a reward, in addition to the right to receive transportation and maintenance expenses. In this regard, once again, unjust enrichment is prevented**. The position of the discoverer is similar to that of the depositary but is better identified with the business manager (MIRANDA, 1971, v. 15, p. 200). Thus, if the inventor acts with negligence or willful misconduct, failing to look for the owner of the thing found or to deliver it to the authority, he will be liable for compensation by article 1,235, when that was not enough, by the general principle of Aquilian liability (article 186), without prejudice to criminal penalty. Article 169, sole paragraph, item D, of the Penal Code considers it a crime to total or partially appropriate someone else's property, instead of delivering it to the owner, or legitimate possessor, or the competent authority, within 15 days".[24]

It is noted, therefore, that the reward serves to remunerate the *action* of the one who, *consciously* or *fortuitously*, came across the lost good, momentarily took possession of it, and then returned it to its owner. The reward, therefore, takes care of subjectively rewarding the discoverer for the discovery of something whose fate was uncertain for its real owner – so much so that "*the possibilities that this* [the owner] *would have of finding the thing*" serve as one of the beacons for the arbitration of the reward.

On the other hand, the *caput* of article 1,234 also takes care of the objective aspect of the discovery, that is, to provide for "*compensation for the expenses incurred with the conservation and transportation of the object, if the owner does not prefer to abandon it*".

On the subject, Clóvis Beviláqua states that this "*intervention* [of the discoverer] *is casual and is limited to conservation and, when necessary, also to transport*".[25]

In the specific case analyzed here, there was no difficulty for Banco Bradesco in accurately discovering the exact destination of the money it mistakenly deposited, since Antônio Pereira's bank details and the exorbitant amount transferred became known to the

[24] VENOSA, Sílvio de Salvo. **Civil Code interpreted**. 3rd ed. São Paulo: Atlas, 2013. p. 1.449-1.450.
[25] BEVILÁQUA, Clóvis. **Law of Things**. 1st vol. Rio de Janeiro: Freitas Bastos, 1941. p. 235.

Revista ARACÊ
ISSN: 2358-2472

defendant financial institution at the exact moment of said deposit, including appearing on the respective receipt issued instantly.

Therefore, in addition to the fact that Antônio Pereira did not adopt any proactive, conscious, or fortuitous conduct, typical of an effective discoverer of someone else's lost property, to find the money, there was no difficulty for Banco Bradesco in finding the whereabouts of the amount mistakenly transferred.

In the initial petition, only a single judgment is cited, handed down by the Court of Justice of the State of São Paulo, which dealt with the hypothesis of reward for the discovery and return of a lost dog; that is, from the classic hypothesis of application of article 1,234 of the Civil Code, quite different from the return of money mistakenly deposited in a checking account.

The unexpected deposit of someone, by mistake, in the checking account of a mistaken person could never constitute "discovery" for article 1,234 of the Civil Code, because the one who unjustifiably enriches himself with the sudden deposit in his account has not discovered anything; there was not even fortuitous action on his part. The subject remains impassive, does not adopt any positive attitude, and yet suddenly comes across a quantity of money in his bank account.

A different situation would be if the same amount of money were found in cash, that is, in paper banknotes. In this case, the discoverer, either actively or fortuitously, comes across a suitcase full of money on a public road, for example. This would be money as movable and tangible property, not a right of credit. That is, of physically palpable banknotes that the discoverer found and took possession of them for a moment to seek their true owner.

So much so that, as mentioned, the sole paragraph of article 1,234 states that, for the determination of the value of the reward, **(i)** "*the effort made by the discoverer to find the owner, or the legitimate possessor*" will be considered;**(ii)** "*the possibilities that he would have of finding the thing*"; and **(iii)** "*the economic situation of both*".

In the specific case, there was no "effort made" on the part of Antônio Pereira. He remained inert not because of any of his actions but because of a mistake by Banco Bradesco; he saw a millionaire amount fall into his bank account from one moment to the next. There was no "discovery" of his in the sense adduced by article 1,234 of the Civil Code. It was not Antônio Pereira who went to meet the money, consciously or fortuitously,

Revista ARACÊ
ISSN: 2358-2472

but the money that went to meet him, which reinforces the hypothesis of unjust enrichment by provision and not exactly of "discovery" of someone else's lost thing.

Caio Mário da Silva Pereira states that, "[re]*pruning the* ***object*** *to those who demonstrate the right to it, it is up to the finder a reward, gratification or finding, calculated according to the criteria stipulated by the sole paragraph of article 1,234*".[26] The word "object" was a precise terminological choice of the Minas Gerais civilist to refer to the goods that could be found. These, *par excellence*, are the tangible movable assets, which, in the definition of article 82 of the Civil Code, refer to "*assets susceptible to their movement, or removal by force of others, without alteration of the substance or the economic and social destination*".

In turn, the money deposited in a checking account is very intangible since it is, in fact, a credit right of the account holder against the bank in which the amount is deposited. This is so true that, as it is known, having R$ 1,000,000.00 (one million reais) deposited in a checking account, for example, does not mean that the bank effectively has this amount in paper money always available and reserved at the corresponding bank branch. Even for withdrawals in high amounts, it is necessary to contact the respective bank branch, schedule and provision for withdrawal of such amounts.

On the subject, Carlos Elias discusses it as follows:

> "There is no logical sense in speaking of *ius persequendi* for intangible goods. There is no way for someone to take my credit right (e.g., the right to receive R$ 10,000.00 from a person) and give it to third parties. **There is no logic in saying that I would have to file a claim action to obtain a court order determining that the third party return the credit to me**. **Credit rights are not real property rights. The legal category of real right [was] not developed for these cases**."[27]

Correctly, he concludes by saying that "***the rule is that real rights only apply to tangible assets, unless law to the contrary.***"[28]

Finally, the third element that determines the arbitration of the reward for the discovery of someone else's lost thing is "*the economic situation*" of the owner and the discoverer. This element only makes sense if the other two previous ones are present, that

[26] PEREIRA, Caio Mário da Silva. **Civil Law Institutions**. Vol. IV (Real Rights). 21st ed. Rio de Janeiro: Forense, 2012. p. 143, stood out.
[27] OLIVEIRA, Carlos Eduardo Elias de. **Real rights over intangible property?** *In*: Migalhas Notariais e Registrais, edition of 24.11.2024. Available at: https://www.migalhas.com.br/coluna/migalhas-notariais-e-registrais/420516/direitos-reais-sobre-coisa-incorporea (accessed on 27.01.2025).
[28] OLIVEIRA, Carlos Eduardo Elias de. **Real rights over intangible property?** *In*: Migalhas Notariais e Registrais, edition of 24.11.2024. Available at: https://www.migalhas.com.br/coluna/migalhas-notariais-e-registrais/420516/direitos-reais-sobre-coisa-incorporea (accessed on 27.01.2025).

Revista ARACÊ
ISSN: 2358-2472

is, the effort made by the discoverer and the possibilities that the owner would have to find the lost thing by himself. If the lost thing of others does not exist, it is obvious that the right of reward does not apply simply because the one who claims to have found and returned something is deprived of economic resources and the other party, wealthy.

OBJECTIVE GOOD FAITH AS THE BASIS FOR THE RESTITUTORY CLAIM

As can be seen from the initial petition of the specific case studied here, the main ground raised by the plaintiff for the collection of the reward is based on his honest attitude of having returned a million amount mistakenly deposited in his bank account.

First, it should be reiterated here that the reward for the return of a found object (article 1,234 of the Civil Code) does not reward, *prima facie*, the honesty of the finder for the return of the found movable property. It rewards the *attitude* of the discoverer, his *proactivity* or even his *luck* in having found the lost thing. According to the precise lesson of Clóvis Beviláqua, "[t]he *finder* [...] *is entitled to a reward, for the simple fact of having found the lost thing* [...]" [29]element.

Honesty in returning someone else's lost object is not, therefore, the object of the award, since the return is an obligation of the person who takes possession of the missing object of others, under penalty of incurring the crime of appropriation of something found (art. 169 of the Penal Code).

Secondly, in the case of unjust enrichment by performance, there is even more reason to speak of an award for honesty, because there is not, in these cases of mistaken bank transfers, any proactive conduct of the one who receives the amount: he does not adopt any attitude to receive the money; The amount simply appeared, all of a sudden, in his bank account. Returning this amount, including monetary adjustment, is an express requirement of article 884 of the Civil Code, which does nothing more than densify the postulate of objective good faith.

As well pointed out by Mário Luiz Delgado "[t]he *sole paragraph of article 884 clarifies that if the enrichment has as its object a specific thing, the person who received it is obliged to return it and after the return of the thing the matter will be resolved,* ***and nothing more can claim***".[30] As discussed above, the *solvens* (the one who disbursed the amount by mistake) may demand from the *accipiens* (the one who received the money

[29] BEVILÁQUA, Clóvis. **Law of Things**. 1st vol. Rio de Janeiro: Freitas Bastos, 1941. p. 235.
[30] DELGADO, Mario Luiz. **Comment on art. 884**. *In*: SCHREIBER, Anderson [et al.]. Civil Code commented: doctrine and jurisprudence. 6th ed. rev. atual. ampl. Rio de Janeiro: Forense, 2025. p. 734, he highlighted.

Revista ARACÊ
ISSN: 2358-2472

without cause) to return the amount with incidence of monetary correction since the date of unjust enrichment. Also, according to Delgado:

> "The purpose of the institute is to reestablish the equity balance of the parties (hence the reason for making express reference to the incidence of monetary adjustment on the amount to be refunded), removing enrichment or enrichment. **Its main foundation is equity**. Unlike civil liability, whose goal to be achieved is the 'indemnity', removing the damage by indemnity, reparatory or compensatory, in unjust enrichment it is intended to prevent the enrichment of someone at the expense of another person's assets, that is, unjustified benefit".[31]

The logic of justice underlying this is the necessary objective good faith that should guide the relations between individuals, who have duties of loyalty, cooperation, truth and honesty about each other[32]. More specifically, in the concrete case, it would be the prohibition on someone enriching himself without cause and at the expense of others, the one who effectively generated the wealth.

Objective good faith is not a choice of the individual that can be rewarded if optionally contemplated. It is an unavoidable and founding requirement of the legal system, a general and implicit clause that should guide any attitudes of individuals in their life in society[33]. And, if it is not respected, there will even be the possibility of civil and even criminal sanctions for those who act in bad faith.

In addition to the right to the reward, Antônio Pereira **(a)** protests against the alleged sudden increase in his bank fee as a result of the millionaire mistaken transaction and **(b)** vindicates moral damages for alleged psychic shocks suffered by him in the face of the pressure exerted by the bank for the money to be returned and for the invasion of privacy resulting from the media pressure around the case. These two claims will not be analyzed here because they go beyond the scope of reflection proposed here, since they engage in claims for damages proper to civil liability, a field that, as already decided by the Superior Court of Justice[34], has an independent relationship with the Law of Unjust Enrichment, which is the object *par excellence* of this work.

---

[31] DELGADO, Mario Luiz. **Comment on art. 884**. *In*: SCHREIBER, Anderson [et al.]. Civil Code commented: doctrine and jurisprudence. 6th ed. rev. atual. ampl. Rio de Janeiro: Forense, 2025. p. 733-7344, stood out.
[32] SILVA, Clovis V. do Couto e. **Obligation as a process**. 6th reimp. Rio de Janeiro: FGV, 2012. p. 91-98.
[33] MARTINS-COSTA, Judith. **Private law as a "system under construction": the general clauses in the project of the Brazilian civil code**. Revista de Informação Legislativo, v. 35, n. 139, p. 5-22, jul./set. 1998. p. 14-16.
[34] "[...] The subsidiarity of the action for unjust enrichment does not prevent the promotion of the accumulation of actions, each governed by a specific institute of Civil Law, and it is perfectly plausible to formulate a request for compensation for damages through the application of the rules of civil liability, limited to the actual damage suffered by the victim, cumulated with the claim for restitution of the unduly earned, without just cause, at the

Revista ARACÊ
ISSN: 2358-2472

CONCLUSION

The specific case analyzed here deals with an evident hypothesis of unjust enrichment by installment, in which Banco Bradesco mistakenly transferred a millionaire amount to Antônio Pereira, who, due to this mistaken deposit, enriched himself without any cause, since there was no reason, current or supervening, capable of justifying the R$ 131,870,227.00 (one hundred and thirty-one million, eight hundred and seventy thousand, two hundred and twenty-seven reais) creditor by mistake in his bank account.

This unjust enrichment of Antônio Pereira gave rise to a restitutory claim for Banco Bradesco, under the terms of articles 884 to 866 of the Civil Code.

If the plaintiff had not voluntarily returned the referred amount, Banco Bradesco could have filed an action against him *in rem verso*, whose statute of limitations is three (3) years (article 206, paragraph 3, IV, of the Civil Code),[35] to collect his lawful restitutory claim — even being entitled to monetary adjustment since the occurrence of unjust enrichment.

Thus, any promptness and honesty involved in the return of the amount should not necessarily be rewarded, since, being a necessary result of objective good faith, the restitution is shown to be an obligation of the one who enriches himself without cause and not as a necessarily rewardable choice by chance consummated.

Contrary to what Antônio Pereira maintains, the right of reward (achádego) does not apply to unjust enrichment by payment since this institute applies only to tangible movable property and rewards the discoverer for having found, by proactivity or luck, the lost object. On the other hand, in the case of unjust enrichment by a service resulting from an erroneous bank transfer, there is no commissive attitude (even if it is the one resulting from the luck of fortuitously coming across something lost on the street, for example), since the only benefit that effectively exists *in casu* is the erroneous transfer of the *solvens* (the one that impoverished, Banco Bradesco) to the *accipens* (the one who gets unjustifiably rich,

plaintiff's expense" (BRASIL. Superior Court of Justice. Special Appeal No. 1.698.701/RJ, Judge Ricardo Villas Bôas Cueva, Third Panel, judged on 10.2.2018, DJe of 10.8.2018).

[35] On the subject, see the judgment of the Second Section of the Superior Court of Justice: "[...] Both unilateral acts of will (promise of reward, articles 854 et seq.; business management, articles 861 et seq.; undue payment, articles 876 et seq.; and unjust enrichment itself, article 884 et seq.) and business acts, as the case may be, involve the filing of an action based on unjust enrichment, whose claim is covered by the three-year statute of limitations provided for in article 206, § 3, IV, of the Civil Code of 2002" (BRASIL. Superior Court of Justice. Special Appeal No. 1.361.182/RS, Appeal of Justice Marco Buzzi, Judgment of Justice Marco Aurélio Bellizze, Second Section, judged on 8.10.2016, Official Gazette of 9.19.2016).

Revista ARACÊ
ISSN: 2358-2472

Antônio Pereira). The money went (unmotivatedly) to meet Antônio Pereira and not the other way around. Therefore, it is not mandatory to pay a fee for the return of the amount.

Revista ARACÊ
ISSN: 2358-2472

REFERENCES

1. Beviláqua, C. (1941). *Law of things* (Vol. 1). Freitas Bastos.

2. Brazil. Superior Court of Justice. (2016). *Special Appeal No. 1.361.182/RS* (Justice Marco Buzzi, Rapporteur; Justice Marco Aurélio Bellizze, Judgment). Second Section. Judged on October 8, 2016. *Official Gazette*, September 19, 2016.

3. Brazil. Superior Court of Justice. (2018). *Special Appeal No. 1.698.701/RJ* (Justice Ricardo Villas Bôas Cueva, Rapporteur). Third Panel. Judged on February 10, 2018. *DJe*, October 8, 2018.

4. Brazil. Court of Justice of the State of Tocantins. (2024). *Common Civil Procedure No. 0030429-44.2024.8.27.2729/TO* (6th Civil Court of Palmas). Author: Antônio Pereira do Nascimento. Defendant: Banco Bradesco S.A.

5. Coelho, F. U. (2010). *Civil law course* (Vol. 4, 3rd ed.). Saraiva.

6. Costa-Neto, J. (2004). The sad future of unjustified enrichment in Brazil: Criticising the Brazilian Civil Code reform. *Oxford University Comparative Law Forum, 3*. https://ouclf.law.ox.ac.uk/the-sad-future-of-unjustified-enrichment-in-brazil-criticising-the-brazilian-civil-code-reform/

7. Delgado, M. L. (2025). Comment on art. 884. In A. Schreiber & et al. (Eds.), *Civil Code commented: Doctrine and jurisprudence* (6th ed., rev. and expanded, pp. [page range]). Forense.

8. Gonçalves, C. R. (2012). *Brazilian civil law* (Vol. 5, 7th ed.). Saraiva.

9. Martins-Costa, J. (1998). Private law as a "system under construction": The general clauses in the project of the Brazilian Civil Code. *Revista de Informação Legislativo, 35*(139), 5–22.

10. Oliveira, C. E. E. de, & Costa-Neto, J. (2024). *Civil law: Single volume* (3rd ed., rev. and updated). Método.

11. Oliveira, C. E. E. de. (2024, November 24). Real rights over intangible property? *Migalhas Notariais e Registrais*. https://www.migalhas.com.br/coluna/migalhas-notariais-e-registrais/420516/direitos-reais-sobre-coisa-incorporea

12. Pereira, C. M. da S. (2012). *Civil law institutions: Vol. IV (Real rights)* (21st ed.). Forense.

13. Silva, C. V. do C. e. (2012). [Title not provided] (6th reprint). FGV.

14. Silva, R. da G. (2022). *Unjust enrichment: Restitutory obligations in civil law* (2nd ed.). RT.

15. Venosa, S. de S. (2013). *Civil Code interpreted* (3rd ed.). Atlas.