

# The Modern Law of Restitution

Gerard McMeel



# Modern Law Of Restitution

**Simone Degeling, Michael JR  
Crawford, Nicholas Tiverios**



## **Modern Law Of Restitution:**

**Understanding Unjust Enrichment** Jason W. Neyers, Mitchell McInnes, Stephen G.A. Pitel, 2004-04 The articles based on a symposium held in 2003 deal with numerous theoretical and practical issues that surround restitution and unjust enrichment

*Structure and Justification in Private Law* C.E.F. Rickett, Ross Grantham, 2008-02-27 Peter Birks's tragically early death and his immense influence around the world led immediately to the call for a volume of essays in his honour by scholars who had known him as a colleague teacher and friend One such volume published in 2006 contained essays largely from scholars working in England Mapping the Law Essays in Memory of Peter Birks edited by Andrew Burrows and Lord Rodger This volume contains the essays of those outside England who chose to honour Peter and appears later than the English volume reflecting the far flung habitations of its authors The essays contained in this volume are focussed around the law of unjust enrichment but are not narrowly preoccupied instead they move freely from unjust enrichment to some of the most profound questions in private law concerning taxonomy the relationship between contract property and unjust enrichment and the place of remedies within private law This volume featuring the work of some of the world's great private lawyers provides a fitting tribute to a great scholar and a series of thought provoking essays inspired by his example

Contributors Kit Barker Michael Bryan Peter Butler Hanoch Dagan Simone Degeling Daniel Friedmann Mark Gergen Ross Grantham Steve Hedley John McCamus Mitchell McInnes Eoin O Dell Charles Rickett Struan Scott Emily Sherwin Stephen Smith Richard Sutton Michael Tilbury Stephen Waddams Peter Watts Ernest Weinrib Eric Descheemaeker

**Unjust Enrichment** James Edelman, Elise Bant, 2016-08-25 Unjust enrichment is one of the least understood of the major branches of private law This book builds on the 2006 work by the same authors which examined the developing law of unjust enrichment in Australia The refinement of the authors thinking responding to novel issues and circumstances that have arisen in the maturing case law has required many chapters of the book to be completely rewritten The scope of the book is also much broader It concerns the principles of the law of unjust enrichment in Australia New Zealand England and Canada Major decisions of the highest courts of these jurisdictions in the last decade provide a fertile basis for examining the underlying principles and foundations of this subject The book uses the leading cases particularly in England and Australia to distil and explain the fundamental principles of this branch of private law The cases discussed are current as of 1 May 2016 although the most recent could only be included in footnotes

*Subrogation and Marshalling* Rory Gregson, 2024-10-31 This innovative and thought provoking book studies how subrogation and marshalling should be understood in the context of private law Subrogation and marshalling are legal rules which give a person new rights with prima facie the same content as someone else's extinguished rights There is little examination of why the law does this This book argues that the key to understanding subrogation is the distinctive form of the rights that it creates The form of rights created reflects a particular role in ensuring interpersonal justice subrogation's role is to properly distribute the burden of debts Taking this model the

book goes on to resolve persistent controversies in the case law including when subrogation should occur what rights it should create the relationship between subrogation and marshalling and whether subrogation is a remedy for unjust enrichment

Gain-Based Damages James Edelman, 2002-04-19 On July 27 2000 the House of Lords delivered a decision where for the first time in English law it explicitly recognised that damages for civil wrongs can be assessed by reference to a defendant wrongdoer's gain rather than a claimant's loss The circumstances in which such gain based damages might be available were left for development incrementally This book considers the nature of gain based damages and explains when they have historically been available and why and provides a framework for appreciating the operation of such damages awards The first part of the book justifies the existence of these damages which focus upon a defendant wrongdoer's gain made as a result of a civil wrong explaining the nature and need for such a remedy and the scope of civil wrongs The core thesis of the book is that two different forms of such gain based damages exist the first is concerned with restitution of a defendant's gains wrongfully transferred from a claimant the second is concerned only with stripping profits from the defendant's hands Once these two gain based damages awards are separated they can be shown to be based upon different rationales and the basis for their availability can be easily understood The second part of the book considers and applies this approach demonstrating its operation throughout the cases of civil wrongs The operation of the two forms of gain based damages is demonstrated in cases in the area of tort chapter 4 contract chapter 5 equitable wrongs chapter 6 and intellectual property wrongs chapter 7 It is shown that these gain based damages awards have long been available in these areas and their operation has conformed to clear principle The difficulty that has obscured the principle is the nomenclature which has hidden the true gain based nature of many of these damages awards

*ERISA and Health Insurance Subrogation in all 50 States - 5th Edition* Gary L. Wickert, 2013-01-01 ERISA and Health Insurance Subrogation In All 50 States is the most complete and thorough treatise covering the complex subject of ERISA and health insurance subrogation ever published NEW TO THE FIFTH EDITION Updated To Include All The Newest Case Law Updated To Include Medicaid Subrogation and Preemption of FEHBA New Plan Language Recommendations Complete Health Insurance Subrogation Laws In All 50 States Covers The Application of ERISA In Every Federal Circuit The Fifth Edition of ERISA and Health Insurance Subrogation In All 50 States has been completely revised edited and reorganized This was partly to reflect the new direction recent case decisions have taken regarding health insurance subrogation as well as the crystallization of formerly uncertain and nebulous areas of the law which have now received some clarity An entirely new chapter entitled What Constitutes Other Appropriate Equitable Relief has been added and replaces the old Chapter 9 which merely dealt with Knudson and Sereboff The new edition introduces new state court decisions addressing the issue of causation and whether and when a subrogated Plan seeking reimbursement must prove that the medical benefits it seeks to recover were causally related to the original negligence of the tortfeasor An entirely new section was added concerning the subrogation and reimbursement rights of

Medicare Advantage Plans a statutorily authorized Plan which provides the same benefits an individual is entitled to recover under Medicare This includes recent case law which detrimentally affects the rights of such Plans to subrogate Also added to the new edition is additional law and explanation regarding Medicaid subrogation including the differentiation between cost avoidance and pay and chase when it comes to procedures for paying Medicaid claims Significant improvements have been made to suggested Plan language which maximizes a Plan s subrogation and reimbursement rights The suggested language stems from recent decisions and developments in ERISA and health insurance subrogation from around the country since the last edition The new edition has been completely reworked both in substance and organization Recent case law has necessitated consolidation of several portions of the book and elimination or editing of others A new section entitled Liability of Plaintiff s Counsel has been added which provides a clearer exposition on the laws applicable and remedies available when plaintiff s attorneys and Plan beneficiaries settle their third party cases and fail to reimburse the Plan Also new to the book are recently passed anti subrogation measures such as Louisiana s Senate Bill 169 1881 which states that no health insurer shall seek reimbursement from automobile Med Pay coverage without first obtaining the written consent of the insured The new edition also goes into much greater detail on the procedures for and law underlying the practice of removal of cases from state court to federal court and the possibility of remand back to state court This includes the Federal Courts Jurisdiction and Venue Clarification Act of 2011 effective Jan 6 2012 which amended federal removal venue and citizenship determination statutes in very significant ways The new edition also delves into for the first time the role which the federal Anti Injunction Act plays when beneficiaries sue in state court to enforce the terms of an ERISA Plan while the Plan files suit in federal court seeking an injunction against the state court action New case law and discussion on preemption of FEHBA subrogation and reimbursement claims have been added to Chapter 10 in the wake of new decisions regarding same

**Maritime Salvage Operations and Environmental Protection** Durand Cupido, 2023-01-20 This book questions the use of salvage law as legal regulatory framework for the remuneration of environmental services in salvage operations proposing that such services should be based on direct contracting between commercial salvors and coastal States Adopting an environment first approach it argues that direct contracting better serves and promotes environmental protection outcomes It also takes a functional view of the law as a tool to promote values and sought outcomes Salvage operations are recognised as the first line of defence against pollution following shipping incidents Although regulated under the law of salvage these operations form an integral component of a framework of environmental protection measures regulated under different legal instruments or laws The law of salvage fails to effectively integrate salvage operations into broader pollution response mechanisms because it does not align comfortably with this framework of laws Despite the emphasis on environmental protection in the 1989 London Salvage Convention the Convention maintains the traditional notion of salvage operations as a service to property while environmental outcomes and the remuneration of environmental services are

positioned as a secondary outcome of the law of salvage This book argues that directly contracting for environmental services bolsters the primacy of environmental protection and the functional use of law to further environmental protection and policy formulation Direct contracting between coastal States and salvors for environmental services complements existing practices and pollution response mechanisms and provides a sound legal basis for the effective realisation of salvage operations as the first line of defence against pollution following shipping incidents without fundamentally altering the established commercial identity of the traditional law of salvage This book will be key reading for students academics and practitioners working at the intersection of shipping and environmental law *Re-examining Contract and Unjust*

*Enrichment* Paula Giliker, 2007-06-30 This collection of essays addresses some of the fundamental questions facing the law of contract and of unjust enrichment in the twenty first century from a comparative perspective Leading academics from Canada and the United Kingdom analyse the nature and development of the principles of unjust enrichment their relationship with contract and fiduciary obligations and their impact upon traditional contractual doctrines such as mistake undue influence frustration and the assessment of damages The text provides an insightful contemporary and provocative examination of this fast developing area of law **Lessons of the Swaps Litigation** Peter Birks, Francis Rose, 2020-11-25

This is the first comprehensive review of the extent of remedies and impact of contractual agreements on restitution claims for void unenforceable and discharged contracts Unjustified Enrichment David Johnston, Reinhard

Zimmermann, 2005-01-28 Unjustified enrichment has been one of the most intellectually vital areas of private law There is however still no unanimity among civil law and common law legal systems about how to structure this important branch of the law of obligations Several key issues are considered comparatively in this 2002 book including grounds for recovery of enrichment defences third party enrichment as well as proprietary and taxonomic questions Two contributors deal with each topic one a representative of a common law system the other a representative of a civil law or mixed system This approach illuminates not just similarities or differences between systems but also what different systems can learn from one another In an area of law whose territory is still partially uncharted and whose borders are contested such comparative perspectives will be valuable for both academic analysis of the law and its development by the courts **The Defence of Passing On**

Michael Rush, 2006-07-11 The identity and existence of a loss based defence in the law of unjust enrichment is disputed Widely known as passing on but better identified as disimpoverishment this defence has generated confusion and disagreement across and within England Australia Canada and the United States of America This book seeks to address these problems in three ways First by providing a solution to the defence's terminological problems and presenting a coherent picture of the current state of the law Secondly by examining whether a defendant's unjust enrichment can be said to have come at the expense of a claimant when a third party has borne the cost of that enrichment Put another way whether awards of restitution are or should be restricted by the value of a claimant's loss And finally by analyzing the reasons in favour of

accepting or rejecting a loss based defence in the law of unjust enrichment Numerous scholarly textbooks and law journals have devoted space to these issues This work however has tended to focus narrowly on either particular cases or sets of issues This book seeks to address this deficiency by collating and providing total coverage of the controversies and questions pertaining to a loss based defence in the law of unjust enrichment This work will be essential reading for anyone interested in the law of restitution and in its relationship with other areas of private law

**A History of English Law** Sir William Searle Holdsworth,1926

**A History of English Law: Book IV (1485-1700). The common law and its rivals** Sir William Searle Holdsworth,1926

**The Idea of Property in Law** James E. Penner,1997 In The Idea of Property in Law Penner considers the concept of property and its place in the legal environment Penner proposes that the idea of property as a bundle of rights the right to possess the right to use the right to destroy etc is deficient as a concept failing to effectively characterise any particular sort of legal relation and evading attempts to decide which rights are critical to the bundle Through a thorough exploration of property rules property rights and the interests which property serves and protects Penner develops an alternative interpretation and goes on to consider how property interacts with the broader legal system

Restitutionary Rights to Share in Damages Simone Degeling,2003-06-12 Rights and obligations can arise amongst other things in tort or in unjust enrichment Simone Degeling deals with the phenomenon whereby a stranger to litigation is entitled to participate in the fruits of that litigation Two prominent examples of this phenomenon are the carer entitled to share in the fund of damages recovered by a victim of tort and the indemnity insurer entitled to participate in the fruits of the insured s claim against the wrongdoer Degeling demonstrates that both are rights raised to reverse unjust enrichment Careful examination of these two categories reveals the existence of a novel policy motivated unjust factor called the policy against accumulation Degeling argues that this is an unjust factor of broad application applying to configurations other than that of the carer and the indemnity insurer This will interest restitution and tort lawyers both academic and practitioner as well as academic institutions and court libraries

**Principles of Equity and Trusts** Alastair Hudson,2016-06-10 Principles of Equity and Trusts is a concise new textbook from Alastair Hudson the author of the definitive classic Equity and Trusts Through clear and careful analysis the author explains what the law is its foundational principles and its social and economic effect By beginning with the core principles on which this field is based even the most complex academic debates concerning express resulting and constructive trusts the family home charities law and other equitable doctrines become comprehensible and interesting This book offers a fresh lively and often humorous account of Equity and Trusts Through easy to follow worked examples and analysis of the case law Alastair helps you to answer problem questions and to prepare coursework The author shows how the law affects real people in real situations Each chapter begins with a clear and concise introduction to the core principles It contains numbered headings for ease of navigation and advice on studying this subject Students also have access to Professor Hudson s ever popular supporting website which has had hundreds of thousands of

hits over the years It has over 50 brief podcasts on key issues which have been specially re recorded to coincide with the publication of this book That website also contains detailed lectures a variety of videos explaining the law and guidance on tackling assessments Characterised by the passion and enthusiasm for his subject matter that make Alastair Hudson s classic textbook so popular *Principles of Equity and Trusts* is sure to be a winner with both academics and students alike

***Resulting Trusts*** Robert Chambers,1997 The resulting trust has received little attention in recent years and this may be because until relatively recently the law relating to resulting trusts was thought to be settled and uncontroversial Most of the current academic writing about resulting trusts is found in the established textbooks on equity and trusts but these tend to provide little more than catalogues of the situations in which resulting trusts arise There is however very little consensus on the principle by which the resulting trust operates including the fundamental question whether it arises by operation of law or depends on the presumed intention to create a trust This book examines the true nature of the resulting trust and the question whether the trusts brought into being to reverse unjust enrichment should not include resulting trusts It then considers whether when resulting trusts are properly understood it does turn out that it is through the resulting trust that equity makes its principle contribution to reversing unjust enrichment This book examines principally the case law of the UK Canada and Australia and it also makes reference to the views of academic commentators as found in the standard texts and law journals

**Defences in Unjust Enrichment** Andrew Dyson,James Goudkamp,Frederick Wilmot-Smith,2016-01-14 This book is the second in a series of essay collections on defences in private law It addresses defences to liability arising in unjust enrichment The essays are written from a range of perspectives and methodologies Some are doctrinal others are theoretical and several offer comparative insights The most important defence in this area of the law change of position is addressed in detail but many other defences are treated too as well as the interrelations between these defences within the law of unjust enrichment The essays offer novel claims and ways of looking at problems in this challenging area of legal study

***Rethinking Unjust Enrichment*** Warren Swain,Sagi Peari,2024-01-07 This interdisciplinary volume brings together scholars from across the globe to challenge the dominant position of unjust enrichment and suggest more satisfactory alternatives *Rethinking Unjust Enrichment* includes a broad range of voices from the UK US Australia Canada China Singapore Germany Ireland New Zealand Hong Kong and South America The book includes voices of sceptics who think that the current unjust enrichment doctrine must be seriously qualified and others who think that it should be eliminated altogether The contributions cast doubt on the various parameters of unjust enrichment from an analytical standpoint representing four interrelated perspectives history sociology doctrine and theory The four limb structure of the book provides readers with a clear understanding of the current problems of unjust enrichment at the deepest levels of its history sociological forces doctrinal fallacies and normative deficiencies This treatment of the subject serves as the basis for a comprehensive reform across jurisdictions Comprehensive and multi faceted *Rethinking Unjust Enrichment* is interesting to



both sceptics and supporters of the unjust enrichment It facilitates a critical and constructive dialogue between the two

**Justifying Private Rights** Simone Degeling, Michael JR Crawford, Nicholas Tiverios, 2021-02-11 Many of the most influential contributions to private law scholarship in the latter part of the twentieth century go beyond purely doctrinal accounts of private law A distinctive feature of these analyses is that they straddle the divide between legal philosophy on the one hand and the sort of traditional doctrinal analysis applied by the courts on the other The essays contained in this collection continue in this tradition The collection is divided into two parts The essays contained in the first part consider the nature of and justification for private rights generally The essays in the second part address the justification for particular private law rights and doctrines Offering insightful and innovative analyses this collection will appeal to scholars in all fields of private law and legal theory

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