

RESTITUTION

Past, Present & Future

ESSAYS IN HONOUR OF GARETH JONES

Edited by
W R Cornish, Richard Nolan,
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Restitution Past Present And Future

Helen Scott



Restitution Past Present And Future:

Restitution: Past, Present and Future William Cornish, Richard C Nolan, Janet O'Sullivan, G J Virgo, 1998-07-01 The essays in this volume are dedicated to Gareth Jones the retiring Downing Professor of English Law at the University of Cambridge His contribution to legal scholarship has been immense particularly in the fields of legal history the law of trusts charities law and most famously the law of restitution The publication of the first edition of the Law of Restitution which he co authored with Lord Goff stimulated a renaissance in the study of a subject which had previously lain dormant The effect of its publication on English legal scholarship has been profound and enduring In these essays written by a group of the world s leading restitution scholars the opportunity is taken to conduct a fresh appraisal of the development of the subject to look in other words at the past present and future of the law of restitution Contributors John Baker Peter Birks Justice Finn Roy Goode Ewan McKendrick Justice McLachlin Sir Peter Millett Lord Nicholls of Birkenhead Richard Nolan Janet O Sullivan Graham Virgo as well as shorter contributions from invited commentators *Restitution* University of Cambridge. Faculty of Law, University of Cambridge. Board of Continuing Education, 1998

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 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

The German Law of Contract Basil S Markesinis, Hannes Unberath, Angus C Johnston, 2006-02-27 Recently the contract section of the German Civil Code was amended after one hundred years of un

altered existence The German Law of Contract radically recast enlarged and re written since its first edition now details and explains for the first time these changes for the benefit of Anglophone lawyers One hundred and twenty translated contract decisions also make this work a unique source book for students academics and practitioners Along with its companion volume The German Law of Torts the two volumes provide one of the fullest accounts of the German Law of Obligations available in the English language Through its method of presentation of German law the book represents an original contribution to the art of comparison An additional feature of the Contract volume is the way in which it reveals the growing impact which European Directives are having upon the traditional liberal contract model thereby bringing German and English law closer to each other especially in the area of consumer protection

Understanding Unjust Enrichment Jason W Neyers, Mitchell McInnes, Stephen G.A. Pitel, 2004-04-20 This book is a collection of articles based on Understanding Unjust Enrichment a symposium held at the University of Western Ontario in January 2003 The articles written from the perspective of English Australian Canadian German and Jewish law deal with numerous theoretical and practical issues that surround restitution and unjust enrichment The articles outline recent developments across the Commonwealth explain the unjust enrichment principle and its component parts and address discrete issues such as tracing choice of law disgorgement damages for breach of contract and the use of unjust enrichment in the cohabitation context The contributors are Kit Barker Peter Benson Jeffrey Berryman Michael Bryan Andrew Burrows Robert Chambers Gerald Fridman Peter Jaffey Dennis Klimchuk Thomas Krebs John McCamus Mitchell McInnes Stephen Pitel Stephen Waddams and Ernest Weinrib

The Structure of Property Law Ben McFarlane, 2008-07-09 Shortlisted for the Peter Birks Prize for Outstanding Legal Scholarship 2009 In its essence property law has to provide answers to two very difficult questions who is entitled to use property and how are they entitled to use it Property law is therefore inherently difficult but not impossibly so It consists of an ordered and logical system which aims to take the sting out of fierce disputes This book provides a new perspective on property law By setting out an underlying structure it allows the reader to understand the fundamental principles of this difficult subject By providing detailed coverage of individual topics it shows how those principles apply in practice and provides a comprehensive resource for anyone studying teaching researching or practising in property law The book is written in an accessible style with frequent summaries and in both its pages and companion web site it makes use of helpful visual aids It is ideal reading for law students seeking a rock solid understanding of how property law and land law work and contains sufficient detail for use as a course book in Property Law Land Law Personal Property Law The book also provides detailed analysis of core topics in Equity Trusts Commercial Law Unjust Enrichment Restitution See the companion website for this book www.hartpub.co.uk/companion/propertylaw.html

Australian Restitution Law Sharon Erbacher, 2012-09-10 This book is the first casebook on restitution law to be published in Australia It contains comprehensive extracts from the most significant Australian and English cases together with some Canadian cases which indicate the possible direction which Australian law

will take The author has included substantial commentaries following the extracts in order to further explain the decisions from overseas jurisdictions to place those decisions in an Australian context In the last decade there has been a significant number of Australian decisions which deal with important concepts in restitution and which supplement qualify or refine the English law of restitution The focus in this book on the Australian position makes it an invaluable resource for anyone who is studying or researching restitution law in Australia

Measuring Damages in the Law of Obligations Sirko

Harder,2010-07-12 This book challenges certain differences between contract tort and equity in relation to the measure in a broad sense of damages Damages are defined as the monetary award made by a court in consequence of a breach of contract a tort or an equitable wrong In all these causes of action damages usually aim to put the claimant into the position the claimant would be in without the wrong Even though the main objective of damages is thus the same for each cause of action their measure is not While some aspects of the measure of damages are more or less harmonised between contract tort and equity e g causation in fact and mitigation significant differences exist in relation to 1 remoteness of damage which is the question of whether when and to which degree damage needs to be foreseeable to be recoverable 2 the compensability of non pecuniary loss such as pain and suffering distress and loss of reputation 3 the effect of contributory negligence which is the victim s contribution to the occurrence of the wrong or the ensuing loss through unreasonable conduct prior to the wrong 4 the circumstances under which victims of wrongs can claim the gain the wrongdoer has made from the wrong and 5 the availability and scope of exemplary or punitive damages For each of the five topics this book examines the present position in contract tort and equity and establishes the differences between the three areas It goes on to scrutinise the arguments in defence of existing differences The conclusion on each topic is that the present differences between contract tort and equity cannot be justified on merits and should be removed through a harmonisation of the relevant principles

Unjust

Enrichment in South African Law Helen Scott,2013-07-10 Conventional thinking teaches that the absence of liability in particular contractual invalidity is itself the reason for the restitution of transfers in the South African law of unjustified enrichment However this book argues that while the absence of a relationship of indebtedness is a necessary condition for restitution in such cases it is not a sufficient condition The book takes as its focus those instances in which the invalidity thesis is strongest namely those traditionally classified as instances of the *condictio indebiti* the claim to recover undue transfers It seeks to demonstrate that in all such instances it is necessary for the plaintiff to show not only the absence of his liability to transfer but also a specific reason for restitution such as mistake compulsion or incapacity Furthermore this book explores the reasons for the rise of unjust factors in South African law attributing this development in part to the influence of the Roman Dutch *restitutio in integrum* an extraordinary equitable remedy that has historically operated independently of the established enrichment remedies of the civilian tradition and which even now remains imperfectly integrated into the substantive law of enrichment Finally the book seeks to defend in principled terms the mixed approach to enrichment by

transfer an approach based both on unjust factors and on the absence of a legal ground which appears to characterise modern South African law. It advocates the rationalisation of the causes of action comprised within the *condictio indebiti* many of which are subject to additional historically determined requirements in light of this mixed analysis. 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. Research Handbook on Remedies in Private Law Roger Halson, David Campbell, 2019. This Research Handbook comprehensively and authoritatively reviews the contemporary challenges in research regarding remedies in private law. The *Research Handbook on Remedies in Private Law* focuses on the most important issues throughout contract, equity, restitution and tort law as they have arisen in the major common law jurisdictions touching upon those of other jurisdictions where pertinent. **Rethinking Unjust Enrichment** Warren Swain, Sagi Peeri, 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

The Scope and Structure of Unjust Enrichment Duncan Sheehan, 2024-02-22 This ambitious book grapples with the complex debates ongoing on the structure of unjust enrichment proving to be a major contribution to the field Responding to the subject's critics it presents a clearly articulated structure for this branch of private law arguing that while unjust enrichment has the function of reversing defective enrichments whether by performance or in another way there is scope for normative pluralism in how the law achieves this Drawing heavily on comparative material from Germany Scotland and South Africa the book then argues for a legal framework which combines elements of the absence of basis and unjust factors approaches It assesses how that structure can be mapped against the causes of action that make up unjust enrichment arguing that some are performance claims reversing a deliberate intentional performance and some are non performance claims Other claims often included in books on unjust enrichment such as necessity should be excluded from the subject area The book concludes with a treatment of defences

The Law of Contract Janet O'Sullivan, Jonathan Hilliard, 2014 The Core Text Series takes the reader straight to the heart of the subject providing an invaluable and reliable guide for students of law at all levels Written by leading academics and renowned for their clarity these concise texts explain the intellectual challenges of each area of the law The Law of Contract provides you with a clear straightforward and comprehensive account of the core principles of contract law to give you a sound understanding of the subject Written by Janet O Sullivan Director of Studies at Selwyn College Cambridge and Jonathan Hilliard barrister at Wilberforce Chambers this text covers all the key topics on LLB and GDL courses and introduces you to current debates in the field The authors break down complex problems into manageable steps and self test questions are provided at the end of each chapter to help you reinforce your learning and aid revision You can find answer guidance to these questions as well as additional support for your studies including author podcasts discussing key cases additional chapters and web links on the accompanying Online Resource Centre

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

From House of Lords to Supreme Court James Lee, 2011-01-06 2009 saw the centenary of the Society of Legal Scholars and the transition from the House of Lords to the new Supreme Court The

papers presented in this volume arise from a seminar organised jointly by the Society of Legal Scholars and the University of Birmingham to celebrate and consider these historic events The papers examine judicial reasoning and the interaction between judges academics and the professions in their shared task of interpretative development of the law The volume gathers leading authorities on the House of Lords in its judicial capacity together with academics whose specialisms lie in particular fields of law including tort human rights restitution European law and private international law The relationship between judge and jurist is therefore investigated from a variety of perspectives and with reference to different jurisdictions The aim of the volume is to reflect upon the jurisprudence of the House of Lords and to consider the prospects for judging in the new Supreme Court Great Debates in Contract Law Jonathan Morgan,2020-04-02 This textbook is an engaging introduction to the more advanced writings on contract law primarily designed to allow students to get under the skin of the topic and begin to build their critical thinking and analysis skills Each chapter is structured around key questions and debates that provoke deeper thought and ultimately a clearer understanding This edition has been extensively rewritten to include new cases and scholarship throughout New sections include no oral modification clauses substantive fairness regulation of standard form contracts and remoteness of damage in contract An excellent book for students of contract law who wish to know more the aim of the book is not to present a complete overview of theoretical issues in contract law but rather to illustrate the current debates which are currently going on among those working in shaping the area The text features summaries of the views of notable experts on key topics and each chapter ends with a list of guided further reading New to this Edition Extensively rewritten to include new cases and scholarship throughout New sections and debates include no oral modification clauses substantive fairness regulation of standard form contracts and remoteness of damage in contract

Re-examining Contract and Unjust Enrichment Paula Giliker,2007 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

The Enigmatic Realm of **Restitution Past Present And Future**: Unleashing the Language is Inner Magic

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Table of Contents Restitution Past Present And Future

1. Understanding the eBook Restitution Past Present And Future
 - The Rise of Digital Reading Restitution Past Present And Future
 - Advantages of eBooks Over Traditional Books
2. Identifying Restitution Past Present And Future
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Restitution Past Present And Future
 - User-Friendly Interface
4. Exploring eBook Recommendations from Restitution Past Present And Future
 - Personalized Recommendations
 - Restitution Past Present And Future User Reviews and Ratings

- Restitution Past Present And Future and Bestseller Lists
- 5. Accessing Restitution Past Present And Future Free and Paid eBooks
 - Restitution Past Present And Future Public Domain eBooks
 - Restitution Past Present And Future eBook Subscription Services
 - Restitution Past Present And Future Budget-Friendly Options
- 6. Navigating Restitution Past Present And Future eBook Formats
 - ePub, PDF, MOBI, and More
 - Restitution Past Present And Future Compatibility with Devices
 - Restitution Past Present And Future Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Restitution Past Present And Future
 - Highlighting and Note-Taking Restitution Past Present And Future
 - Interactive Elements Restitution Past Present And Future
- 8. Staying Engaged with Restitution Past Present And Future
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Restitution Past Present And Future
- 9. Balancing eBooks and Physical Books Restitution Past Present And Future
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Restitution Past Present And Future
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Restitution Past Present And Future
 - Setting Reading Goals Restitution Past Present And Future
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Restitution Past Present And Future
 - Fact-Checking eBook Content of Restitution Past Present And Future
 - Distinguishing Credible Sources

13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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