

The Modern Law of Restitution

Gerard McMeel



Modern Law Of Restitution

**Jason W. Neyers, Mitchell
McInnes, Stephen G.A. Pitel**



Modern Law Of Restitution:

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.

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.

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 Theory and Practice of Private International Law Ludwig von Bar, 1892. 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 disimprovement, 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 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

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 **Enrichment at the Claimant's Expense** Eli

Ball, 2016-12-15 This book presents an account of attribution in unjust enrichment Attribution refers to how and when two parties a claimant and a defendant are relevantly connected to each other for unjust enrichment purposes It is reflected in the familiar expression that a defendant be enriched at the claimant's expense This book presents a structured account of attribution consisting of two requirements first the identification of an enrichment to the defendant and a loss to the claimant and secondly the identification of a connection between that enrichment and that loss These two requirements must be kept separate from other considerations often subsumed within the expression enrichment at the claimant's expense which in truth have nothing to do with attribution and which instead qualify unjust enrichment liability for reasons that should be analysed in their own terms The structure of attribution so presented fits a normative account of unjust enrichment based upon each party's exchange capacities A defendant is enriched when he receives something that he has not paid for under prevailing market conditions while a claimant suffers a loss when he loses the opportunity to charge for something under the same conditions A counterfactual test asking whether enrichment and loss arise but for each other provides the best generalisation for testing whether enrichment and loss are connected thereby satisfying the requirements of attribution in 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

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

Rethinking Unjust Enrichment Warren Swain,Sagi Peari,2024-01-07 This inter disciplinary 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

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 **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 **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 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 Equity and Trusts Alastair Hudson, 2013

Alastair Hudson's *Equity and Trusts* is an ideal textbook for undergraduate courses on the law of trusts and equitable remedies It provides a clear current and comprehensive account of the subject through which the author's enthusiasm and expertise shine through helping to bring to life an area of the law which students often find challenging Fully updated and revised this Seventh Edition contains an analysis of *Jones v Kernott* and trusts of homes a new treatment of dishonest assistance and unconscionable receipt a full treatment of the law on super injunctions coverage of all of the trusts law cases precipitated by the collapse of Lehman Brothers a reflection on women and equity and the politics of trusts law a new treatment of the Hastings Bass principle and analysis of over 200 new cases and the Perpetuities and Accumulations Act 2009 *Equity and Trusts* remains the most comprehensive and up to date coverage of the law of Equity and Trusts while still a lively and thoughtful account of the issues raised by it This book has been cited as being authoritative in the courts of numerous countries The seventh edition is supported by a companion website which includes over 50 short podcast lectures by the author discussing and clarifying key topics from within the book which cover an entire course a set of brief video documentaries filmed on location which provide context and bring to life selected key topics a brief introductory video presentation from the author introducing the viewer to the subject of Equity and Trusts and to the book in particular

Reviewing **Modern Law Of Restitution**: Unlocking the Spellbinding Force of Linguistics

In a fast-paced world fueled by information and interconnectivity, the spellbinding force of linguistics has acquired newfound prominence. Its capacity to evoke emotions, stimulate contemplation, and stimulate metamorphosis is actually astonishing. Within the pages of "**Modern Law Of Restitution**," an enthralling opus penned by a very acclaimed wordsmith, readers embark on an immersive expedition to unravel the intricate significance of language and its indelible imprint on our lives. Throughout this assessment, we shall delve in to the book is central motifs, appraise its distinctive narrative style, and gauge its overarching influence on the minds of its readers.

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Table of Contents Modern Law Of Restitution

1. Understanding the eBook Modern Law Of Restitution
 - The Rise of Digital Reading Modern Law Of Restitution
 - Advantages of eBooks Over Traditional Books
2. Identifying Modern Law Of Restitution
 - 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 Modern Law Of Restitution
 - User-Friendly Interface
4. Exploring eBook Recommendations from Modern Law Of Restitution
 - Personalized Recommendations
 - Modern Law Of Restitution User Reviews and Ratings
 - Modern Law Of Restitution and Bestseller Lists

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

Modern Law Of Restitution Introduction

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