

CONTENTS

<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xi

PART I THE FUNDAMENTAL PRINCIPLES OF THE LAW OF RESTITUTION

1. THE ESSENCE OF RESTITUTION	3
1. What is the Law of Restitution About?	3
2. What is the Nature of Restitutionary Remedies?	3
3. When Will Restitutionary Remedies Be Awarded?	7
4. What is the Justification for Recognizing an Independent Law of Restitution?	17
5. The Principal Types of Restitutionary Remedy	18
2. THEMES AND CONTROVERSIES	34
1. The Relevance of Fault	34
2. Risk-Taking	36
3. Respecting Autonomy	37
4. The Nature of the Relationship Between the Parties	38
5. The Principle Against Fictions	39
6. The Role of Public Policy	39
7. The Relationship Between Law and Equity	40
8. Rules Versus Discretion	41

PART II UNJUST ENRICHMENT

3. THE PRINCIPLE OF UNJUST ENRICHMENT	45
1. A Brief History of the Law of Unjust Enrichment	45
2. Justifying the Unjust Enrichment Principle	51
3. The Function of the Unjust Enrichment Principle	55
4. The Role of the Unjust Enrichment Principle in Practice	58
4. ENRICHMENT	62
1. The Relevance of Enrichment	62
2. Particular Types of Enrichment	73
3. Methods of Defeating Subjective Devaluation	78
4. Restitution Without Enrichment	90
5. Part Performance of a Contract	94
6. The Valuation of the Enrichment	95

5. AT THE EXPENSE OF THE CLAIMANT	104
1. General Principles	104
2. Direct and Indirect Enrichment	105
3. Correspondence of Gain and Loss	116
6. PRINCIPLES UNDERLYING THE RECOGNITION OF THE GROUNDS OF RESTITUTION	120
1. Claimant-Oriented Grounds of Restitution	121
2. Defendant-Oriented Grounds of Restitution	122
3. Policy-Oriented Grounds of Restitution	124
4. Four Additional Considerations	125
5. Absence of Basis	127
7. LAWFUL BASES	133
1. Contract	133
2. Discharge of a Debt	144
3. Statutory Authority	146
4. <i>Res Judicata</i>	147
5. Natural Obligations	147
6. Gifts	148
7. Voluntary Transfers	149
8. IGNORANCE	152
1. Is Ignorance a Ground of Restitution?	152
2. Relying on Ignorance as a Ground of Restitution	153
3. Election Between Principles	155
4. The Role of Ignorance as a Ground of Restitution	156
9. MISTAKE	157
1. General Principles	157
2. Mistake as a Ground of Restitution	165
3. Relief from Transactions Entered into Under Mistake	192
10. COMPULSION	203
1. General Principles	203
2. Duress	206
3. Undue Pressure	229
4. Legal Compulsion	233
5. Threats to Secure the Performance of a Statutory Duty	253
11. EXPLOITATION	255
1. General Principles	255
2. Undue Influence	257
3. Abuse of Fiduciary Relationships of Confidence	275
4. Unconscionable Conduct	278
5. The Parties Are Not <i>Par Delictum</i>	286

12. NECESSITY	289
1. General Principles	289
2. Necessitous Intervention by a Stranger	296
3. Agency and Other Pre-Existing Legal Relationships	301
4. Necessity in the Context of Maritime Adventures	305
13. FAILURE OF BASIS	308
1. General Principles	308
2. Establishing Total Failure of Basis	313
3. The Operation of Total Failure of Basis	332
4. Partial Failure of Basis	355
5. Void Transactions	367
14. INCAPACITY	379
1. General Principles	379
2. The Categories of Incapacity	381
15. RESTITUTION FROM PUBLIC AUTHORITIES	389
1. General Issues	389
2. The Grounds of Restitution	394
3. Particular Statutory Provisions	406
4. Defences	408

PART III RESTITUTION FOR WRONGS

16. GENERAL PRINCIPLES	415
1. The Essence of Restitution for Wrongs	415
2. The Principles Underlying the Award of Restitutionary Remedies for Wrongs	420
3. The Types of Gain-Based Remedy for Wrongdoing	424
4. Causation and Remoteness	434
5. The Relationship Between Gain-Based and Compensatory Remedies for Wrongdoing	438
6. The Available Defences for Restitution for Wrongs	441
7. Recommendations for Reform	443
17. RESTITUTION FOR TORTS	444
1. General Principles	444
2. Torts for Which Gain-Based Remedies are Available	453
3. Is There a General Principle in Favour of the Award of Gain-Based Remedies for Torts?	466
18. RESTITUTION FOR BREACH OF CONTRACT	468
1. General Principles	468
2. Should Gain-Based Remedies Generally Be Available for Breach of Contract?	481

19. RESTITUTION FOR EQUITABLE WRONGDOING	486
1. General Principles	486
2. The Categories of Equitable Wrongdoing	488
20. CRIMINAL OFFENCES	526
1. General Principles and Policies	526
2. Restitutionary Claims Brought by the Victim	526
3. Restitutionary Claims Brought by the State	534
4. Denial of Benefits Arising from the Commission of Crimes	542

PART IV PROPRIETARY RESTITUTIONARY CLAIMS

21. ESTABLISHING PROPRIETARY RESTITUTIONARY CLAIMS	557
1. The Nature of Proprietary Restitutionary Claims	557
2. Identification of the Proprietary Interest	569
3. Following and Tracing	607
22. RESTITUTIONARY CLAIMS AND REMEDIES TO VINDICATE PROPERTY RIGHTS	631
1. General Principles	631
2. Proprietary Claims and Remedies	632
3. Personal Claims and Remedies	641
23. THE DEFENCE OF <i>BONA FIDE</i> PURCHASE	656
1. The Function of the Defence	656
2. Ambit of the Defence	657
3. Conditions for Establishing the Defence	658
4. Operation of the Defence	659

PART V GENERAL DEFENCES TO RESTITUTIONARY CLAIMS

24. FUNDAMENTAL PRINCIPLES	663
1. The Function and Ambit of General Defences	663
25. DEFENCES ARISING FROM CHANGES IN THE DEFENDANT'S CIRCUMSTANCES	666
1. Estoppel by Representation	666
2. Transfer of a Benefit by an Agent to His or Her Principal	674
3. Change of Position	678
26. PASSING ON AND MITIGATION OF LOSS	702
1. Passing On	702
2. Mitigation of Loss	705

27. ILLEGALITY	708
1. General Principles	708
2. The Policies Underpinning the Illegality Defence	713
3. Defining Turpitude	716
4. Mechanisms for Excluding the Illegality Defence	717
5. Serious Criminal Culpability	723
6. The Preferred Approach	724
28. INCAPACITY	726
1. Questions of Policy	726
2. Minority	727
3. Mental Incapacity	730
4. Institutional Incapacity	731
5. Should a Defence of Incapacity Be Recognized?	733
29. LIMITATION PERIODS AND LACHES	734
1. Limitation Periods	734
2. Laches	741
3. Reform of the Law on Limitation Periods	743
<i>Bibliography</i>	745
<i>Index</i>	761