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**THE LAW
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by

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PREFACE

In the four and a half years since the publication of the 5th edition there have been very important developments in the law of restitution, necessitating significant revision of the text. The House of Lords has been very active. In *Kleinwort Benson Ltd v. Lincoln City Council*, the House held that money paid under a mistake of law was recoverable; consequently, Chapter 5 has had to be completely rewritten. Just as radical but less predictable was the decision in *Att.-Gen. v. Blake*, where the House accepted that exceptionally a defendant may be required to account for profits made from a breach of contract. (Not surprisingly, after *Att.-Gen. v. Blake*, defendants in breach of their contractual obligations have been exposed to claims that they should account for their profits. In *Esso Petroleum Company Ltd v. Niad* an account was ordered, but was denied in arbitration proceedings, reported as *Sine Nomine*.) The Chapter on *Proprietary Claims* has been rewritten yet again in the light of *Foskett v. McKeown*: it asks whether the restitutionary proprietary claim is still alive. *Banque Financière de la Cité v. Parc (Battersea) Ltd* (on subrogation) was reported when the fifth edition was in proof and now receives fuller treatment. *Caledonia North Sea Ltd v. British Telecommunications plc*, although on appeal from Scotland, clarifies the inter-relationship in English law of subrogation and contribution; and *Royal Brompton Hospital National Health Service Trust v. Hammond* properly reflects the Court of Appeal's expansive interpretation, most prominently in *Friends' Provident Life Office v. Hillier Parker May and Rowden (A Firm)*, of section 2 of the Civil Liability (Contribution) Act 1978. The speeches in *Barclays Bank plc v. Boulter and Royal Bank of Scotland v. Etridge (No. 2)* explore the law of undue influence and describe the steps, which third party creditors, such as banks, should take to avoid liability when C seeks to guarantee a loan advanced to T.

Other decisions of the House, which are discussed in the text, include: *Cave v. Robinson Jarvis & Rolf (A Firm)* (limitation of action); *Kuwait Airways Corporation v. Iraqi Airways Company* (change of position and conversion); *Heaton v. AXA Equity and Law Life Assurance Society plc* (settlement of claims against joint tortfeasors); *On Demand Information plc v. Michael Gerson (Finance) plc* (relief from forfeiture); *Twinsectra Ltd v. Yardley* (dishonest assistance); *BCCI International SA (in liquidation) v. Ali* (release of claims); *Prince Jefri Bolkiah v. KPMG (A Firm)* (the scope of fiduciary relationships) and *Dimond v. Lovell* (consumer credit).

Other noteworthy decisions include: *Box v. Barclays Bank plc* (proprietary claims); *Collings v. Lee* (constructive trust); *Khan v. Permayer* (subrogation); *Nurdin & Peacock plc v. D B Ramsden & Co. Ltd* and *Lloyds Bank plc v. Independent Insurance Co.* (mistake); *Crantrave Ltd v. Lloyds Bank plc* (mistake and payment of another's debt); *Hayton SA v. Peter Cremer GmbH & Co.*, *Carillion Construction Ltd v. Felix (UK) Ltd*, *DSND Subsea Ltd v. Petroleum Geo-Services ASA*, and *Alf Vaughan & Co. Ltd v. Royscot Trust plc* (economic

duress); *Countrywide Communications plc v. ICL Pathway Ltd* (anticipated contract); *Lowson v. Coombes* and *Mohamed v. Alaga (A Firm)* (illegality); *Costello v. Chief Constable of Derbyshire Constabulary* and *Webb v. Chief Constable of Merseyside Police* (possessory title to stolen goods and money); *Yaxley v. Gotts* (Law of Property (Miscellaneous Provisions) Act 1989 and constructive trusts); *Nottingham University v. Fishel* (breach of fiduciary duty by an employee); *Fyffes Group Ltd v. Templeman* and *Petrograde Inc. v. Smith* (bribes); *Houghton v. Fayers and Day*, *Satnam Investments Ltd v. Dunlop Heywood & Co. Ltd*, and *BCCI (Overseas) Ltd v. Akindele* (knowing receipt); *Portman Building Society v. Hamlyn Taylor Neck (A Firm)* (restitution from agents); *Re DWS* (deceased) (forfeiture and homicide); *Marks and Spencer plc v. Commissioners of Customs and Excise* (passing on); *National Bank of New Zealand Ltd v. Waitaki International Processing (NI) Ltd* (Court of Appeal of New Zealand), *Scottish Equitable plc v. Derby*, *National Westminster Bank plc v. Somer International UK Ltd*, *Phillip Collins Ltd v. Davis*, *Amoco (UK) Exploration Co. v. Imperial Chemical Industries plc* and *Hinckley and Bosworth BC v. Shaw* (change of position); *Paragon Finance plc v. D.B. Thakerar & Co. (A Firm)* (limitation of actions); *Satnam Investments Ltd v. Dunlop Heywood & Co. Ltd* (confidential information).

The substantial revision of the Chapter on *Change of Position and Estoppel* discusses whether change of position is a defence to a claim in conversion and explores the inter-relationship of the two defences. It is highly appropriate that the advice of the Judicial Committee of the Privy Council, tendered by Lord Goff of Chieveley (jointly with Lord Bingham of Cornhill), in *Dextra Bank and Trust Co. v. Bank of Jamaica*, should do so much to clarify the scope of the defence of change of position, which *Lipkin Gorman (A Firm) v. Karpnale Ltd*, and in particular Lord Goff's speech, had established as a defence to all restitutionary claims. Robert Goff's judgments and speeches have ensured that unjust enrichment is no longer dismissed as "well meaning sloppiness of thought", but is the principle underlying the law of restitution and that the law of restitution is a central part of the English law of obligations.

Finally, it is once more a pleasure to thank the publishers and their representatives for their courteous and patient assistance.

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June 22, 2002

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