THE DEFENCE OF PASSING ON

Michael Rush

HART
PUBLISHING

The Defence of Passing On

Michael Rush

·HART·
PUBLISHING
OXFORD AND PORTLAND, OREGON
2006

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: www.isbs.com

Hart Publishing, 16c Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530 Fax: +44 (0) 1865 510710
E-mail: mail@hartpub.co.uk
Website: http://www.hartpub.co.uk

British Library Cataloguing in Publication Data
Data Available

ISBN-13: 978-1-84113-602-8 (hardback)
ISBN-10: 1-84113-602-6 (hardback)

Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Preface

In his preface to the first edition of *The Law of Restitution*, Professor Andrew Burrows described how the late Alfred Wainwright was happy, sorry and relieved after finishing his seven volume guide to hiking in the Lakes District. While such sentiments are apposite for anyone who completes a significant piece of writing, the hiking analogy is particularly befitting.

This book is based on my doctoral thesis undertaken at the University of Oxford. My supervisor, Professor Burrows, was an invaluable guide. His incisive comments on innumerable and often incomprehensible drafts, masterful ability to reduce the complex to the comprehensible, and willingness to always give generously of his time, proved vital in the development and completion of the thesis. Moreover, his approach to legal scholarship did, and will continue to, exert a profound personal influence.

Many others assisted on my journey. I owe them all a debt of gratitude. Dr James Edelman was of particular importance. Though little of what is contained in the book is formally attributed to him, his involvement critically affected its content and shape. Professor Mitchell McInnes and Mr Robert Stevens, my doctoral examiners, were also a source of encouragement and insight. The same is true of Professor Peter Birks and Mr Graham Virgo. This book contains, in one form or another, many ideas canvassed in, or arising from, our lengthy discussions.

Neil Francey and Edward Archibald were also able to provide valuable information on Australian law. Professors Andrew Kull and Colleen Murphy were equally obliging in responding to various queries concerning American law. I am grateful to Albert Dinelli, Joseph Santamaria QC, Monica Chowdry and Professor Charles Mitchell for the time they spent reading and commenting on the manuscript. Professor Colin Tapper and Dr Katharine Grevling, my college supervisors, provided considerable support throughout my time at Magdalen. And I remain indebted to the Wingate Foundation, Freshfields Bruckhaus Deringer, and UK Government Overseas Research Studentship scheme, for the financial assistance they provided.

Finally, I would like to acknowledge the vital role played by my family and, in particular, my wife, Penelope.

Contents

Table of Cases