



GOFF & JONES
THE LAW OF RESTITUTION



戈夫和琼斯
论返还法

(第7版)



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〔英〕加雷斯·琼斯 编

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**THE LAW
OF
RESTITUTION**

by

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PREFACE

In the first edition in 1966 of the *Law of Restitution* Robert Goff and I wrote: “In this book we have attempted to state in a coherent rational form, the principles of the English Law of Restitution.”

The text of this, the seventh edition, published forty years later, still seeks to do so.

The four or more years which have elapsed since the last edition has seen many important decisions. The House of Lords decided *Actionstrength v International Glass Engineering* and *Wilson v First County Trust Ltd* (public policy and restitutionary claims), *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* (non disclosure of fraud), *Co-operative Retail Services v Taylor Young* (contribution), *Criterion Properties plc v Stratford UK Properties Ltd* (want of authority and knowing receipt), *Campbell v MGN Ltd* (breach of confidence) and *Burnett's Trustee v Grainger* (omission). And at the end of July this year it heard argument in *Deutsche Morgan Grenfell v IRC* (ultra vires demands and mistake of law). On October 25, 2006 the House of Lords, Lord Scott, dissenting, reversed the Court of Appeal [2006] UKHL 49: s.32(1)(a) of the Limitation Act 1980, below, para.43–004, postponed the commencement of the limitation period in respect of all Advance Corporation Tax payments. The claim based on mistake of law was not subsumed in the claim based on an unlawful demand: above para.27–003A.

Privy Council decisions are: *Waikato Regional Airport Ltd v Att-Gen* (duress, failure of consideration, and passing on) and *Att-Gen v R* (duress, undue influence and accounting of profits) and *National Commercial Bank (Jamaica) Ltd v Hew's Executors* (undue influence).

Many of the important decisions are Court of Appeal decisions. They include *R McDonald v Coys of Kensington* (incontrovertible benefit), *Boake Allen Ltd v Commissioners for Revenue and Customs* (absence of consideration and a critical comment on *DMG v IRC*, above), *Brennan v Bolt Burdon* (compromise and mistake of law), *Halley v Law Society* (rescission), *Clark v Cutland* (tracing), *Cheltenham & Gloucester plc v Appleyard* (subrogation), *DMG v IRC* (mistake of law, doubt and the *Woolwich* principle), *Niru Battery Mfg Co v Milestone Trading Ltd* (contribution, subrogation and change of position); *Jennings v Rice* (equitable estoppel), *Drake Insurance plc v Provident Insurance plc* (insurance, non-disclosure), *Gwembe Valley Development Co Ltd v Koshy* (breach of fiduciary duties and statute of limitation), *Smithkline Beecham plc v Apotex (Europe) Ltd* (restitution after discharge of injunction), *Experience Hendrix LLC v PPX Enterprises Inc* (breach of contract, quantum meruit and accounting of profits), *A L Barnes Ltd v Time Talk (UK) Ltd* (illegality), *Murad v Al-Saraj* (breach of fiduciary duties), *It's A Wrap (UK) v Gula* (Companies Act and Community Law), *Item Software (UK) v Fassihi* (duty of fiduciaries and employees to disclose misconduct), *Douglas v Hello! (No.3)* (privacy, breach of confidence and

PREFACE

the Human Rights Act), *Commerzbank AG v Price-Jones* (change of position) and *Halton International Inc v Guernroy* (Limitation Act).

In consequence there have been many changes to the text of the sixth edition. No chapter has escaped some revision. In particular many pages of the chapters on rescission (especially *Great Peace Shipping* and the demise of *Solle v Butcher*), on contribution, on breach of contract (the post-*Blake* decisions, prominently a discussion of *Experience Hendrix*), on breach of fiduciary relationships, on breach of confidence and on change of position have been rewritten.

Professor Burrows and Mr Virgo have published important second editions of their established texts. The posthumous publication of Peter Birks' second edition of *Unjust Enrichment* in which he rejected his "old thinking" and proposed a new, radical structure and analysis was a notable event. His book is, as we would expect, elegantly stimulating, although I have not been able to accept its principal thesis: para.1–016 n.5. The debt which the profession and scholars owe to Peter is immeasurable. The volume, *Mapping The Law*, edited by Professor Burrows and Lord Rodger of Earlsferry, containing 33 essays written in his memory and published a few days ago, is a measure of the respect and affection felt for him by so many in so many countries.

I owe much to the scholarship of these authors and younger colleagues. I have also taken the opportunity of citing the *Council Drafts* of the Restatement of the Law Third: Restitution and Unjust Enrichment, written by the Reporter, Professor Andrew Kull. In recent years the subject has fallen into relative desuetude in the United States. It is to be hoped that Professor Kull's scholarship will revive the law of restitution in the country of its birth.

I have attempted to state the law as on October 1 2006.

It is my pleasure to thank my publishers and their representatives for their diligence, patience and unfailing courtesy.

Gareth Jones
Trinity College
Cambridge

October 2, 2006

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