
PREFACE

Restitution is a body of law that has immense practical value and wide application to disputes of all sorts. Simply put, it is the set of rules that govern recovery of gains that a party should not keep—or “unjust enrichment,” as it is formally called; and unjust enrichment occurs every day in both private and commercial transactions. Restitution has the dual distinction of being one of the most useful of all bodies of law and the one most often overlooked. It is overlooked because several generations of modern lawyers never heard about the subject in law school. The development of this field into a coherent subject of study occurred in a manner and at a time that kept it from gaining a secure foothold in the standard curriculum. Never having learned it as students, few of today’s law professors went forth to teach it. Ignorance of the law of restitution has been growing with compound interest.

The neglect of restitution has become nearly complete in recent years, with the absence of a single casebook in print. It has thus become nearly impossible to teach restitution law even if one wants to do it. This book seeks to fill that void. It presents the law of restitution—its substance, its remedies, its history—in a manner meant to be consistently practical and interesting. Students who persevere will end up in possession of tools that are of great and regular value in the practice of law, and they will have the advantage of understanding things that their adversaries probably will not. They also will have the pleasure of learning a new way of thinking about many familiar kinds of conflicts. The conditioned reflex of the modern American lawyer is to view nearly every dispute as an occasion to seek damages. What happens when we

look at those disputes instead as an occasion to reverse the defendant's gains? The answers are found in cases that possess all the same charm and instruction as the classic cases in the common-law fields that every student encounters early in law school. Indeed, we suggest that this is the right spirit in which to approach the study of restitution: to see it as the forgotten member of the great family of first-year subjects.

Caveat Lector

The basic organization of this book follows the various headings of liability in restitution: mistakes; other instances of defective consent, such as fraud and duress; unrequested intervention; and so forth. At the end of the book come three important chapters cutting across the liabilities: recapitulations of remedies, defenses, and priorities in restitution. These are topics that invite a separate review, though it is naturally impossible to read even two or three cases without encountering them all in one way or another. Liabilities, defenses, and remedies are mixed up throughout the book, just as they are in real life, and the reader, like the lawyer, must be prepared to take them as they come.

Most of what follows has been copied from somewhere else—usually judicial opinions, sometimes books or articles. Quoted material is presented here in a manner designed to promote the convenience of the reader and the editors. That means, in particular, that we do not indicate the omission of text, citations, or footnotes, by ellipsis or otherwise—except when we feel like it, in which case we do. Minor variations in wording have occasionally been incorporated, sometimes with brackets and sometimes without, to preserve the continuity of the edited text. On the other hand, we are scrupulous about any citations that do appear, to the point of expanding or otherwise improving those given by our sources.

The idea is that the book should be as readable as possible, and that it should provide an infallible guide to finding the original authorities. But our edited materials must not be quoted as if they matched their sources.

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