Cases and Materials on Restitution

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1993-94 Edition

VOLUME TWO

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1993-94
### Cases and Materials on Restitution

#### Table of Contents - Volume Two

**Part II**

The Substantive Grounds for Restitutionary Relief (cont.)

3. Recovery of the Profits of Wrongdoing

   (i) Criminal and Quasi Criminal Acts

      (a) Direct Profits

         - Re Johnson
         - Schobelt v. Barber
         - Gray v. Barr

      (b) Indirect Profits

         - Rosenfelt v. Olson

   (ii) Waiver of Tort

      - The Election Problem
        - United Australia Ltd. v. Barclays Bank
      - The Scope of the Doctrine
        - Phillips v. Homfray
        - Daniel v. O'Leary
      - The Measure of Recovery

   (iii) Compulsion

      (a) Note

      (b) Practical Compulsion

         - Knutson v. Bourkes
         - Peter Kiewit Sons Co. of Canada Ltd. et al.
         - Pao On et al. v. Lau Yiu et al.
         - George (Porky) Jacobs Enterprises Ltd.
         - Eadie v. Township of Brantford

      (c) Undue Influence

         - Note

   (iv) Breach of Fiduciary Duties

      - Establishing a Fiduciary Relationship
        - Lac Minerals Ltd. v. International
        - Corona Resources Ltd.
        - Guerin v. The Queen

      - The Duty of Loyalty
        - McLeod v. More v. Sweezy

      - Breach of the Duty of Loyalty
        - Reading v. Attorney-General

      - Liability for Breach of the Duty of Loyalty
        - Lac Minerals Ltd. v. International
        - Corona Resources Ltd.
        - Canson Enterprises Ltd. v. Boughton

      - The Abuse of Confidence
        - Saltman Engineering Co. Ltd. v. Campbell Engineering Col. Ltd.
        - Lac Minerals Ltd. v. International

      - Refusal to Share Spousal Assets on Separation

        - Sorochan v. Sorochan
        - Everson v. Rich
        - Rawluk v. Rawluk

   4. Compulsory Discharge of Another's Liability

      - Brook's Wharf and Bull Wharf Ltd. v. Goodman Bros.
      - County of Carleton v. City of Ottawa
      - Peel (Regional Municipality) v. Canada

   5. Unrequested Benefits

      - Agency of Necessity
        - Hastings v. Village of Semans

      - Preservation of Life
        - Matheson v. Smiley

      - Preservation of Property
        - Nicholson v. Chapman

      - Voluntary Discharge of Another's Obligation
        - Falcke v. Scottish Imperial Insurance Co.
        - Owen v. Tate et al
6. Restitutionary Liability of Public Authorities

William Whitely Ltd. v. R. .......... 677
Mason v. New South Wales .......... 681
Alt Canada v. British Columbia .. 690

7. Unjust Enrichment: A Free-standing Cause of Action?

Hunter Engineering Co. v. Syncrude Canada Ltd. .... 716
Peel v. Canada .................... 728a
Birks, English Reception (on Lipkin Gorman) .......... 728f

Part III. Restitutionary Remedies: A Selection of Topics

A. Tracing Money at Common Law

Note: ................................. 729
Taylor v. Plumer .................... 730
Banque Belge pour l'Etanger v. Hambrouck .. 734

B. The Constructive Trust as a General Remedy

Hussey v. Palmer .............. 744
Palachik v. Kiss .................. 747
Chase Manhattan Bank v. Israel British Bank .. 756

C. Tracing in Equity

Note: ................................. 766
(a) When does the Right to Trace in Equity Arise? 767
(b) When will the Right to Trace in Equity be Lost

Re Ontario Securities Commission v. Greymac Credit Corp. .... 767

3. Recovery of the Profits of Wrongdoing

In this Part, we propose to examine the general principle which prohibits a party, who is guilty of some form of wrongdoing, from profiting as a result of such conduct. Our aim is to briefly delineate the scope of the law of restitution in providing a means for the recovery of benefits obtained in such a manner — with particular focus on some of the problems that arise in a business/commercial context. We will begin with the most obvious examples of "unjust enrichment" and work towards the more subtle types of activity which Equity has, from time to time, declared to be reprehensible or "against good conscience".

(i) Criminal and Quasi-Criminal Acts

(a) Direct Profits

Note: In Cleaver v. Mutual Reserve Fund Life Association, [1892] 1 Q.B. 147, at p. 156, Fry L.J. remarked: "...no system of jurisprudence can, with reason, include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person". Similarly, in Beresford v. Royal Insurance Co. Ltd., [1958] A.C. 586, at pp. 599-599, Lord Atkin stated: "...the principle is that a man is not allowed to have recourse to a court of justice to claim a benefit from his crime whether under a contract or a gift. ... The absolute rule is that the courts will not recognize a benefit accruing to a criminal from his crime." Needless to say, there exist a host of civil remedies available to the victim for the recovery of benefits obtained through some criminal or quasi-criminal activity — e.g. the victim of a theft has, from time to time, declared to be reprehensible or "against good conscience".

(b) Indirect Profits

Note: In Clearing v. Mutual Reserve Fund Life Association, [1892] 1 Q.B. 147, at p. 156, Fry L.J. remarked: "...no system of jurisprudence can, with reason, include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person". Similarly, in Beresford v. Royal Insurance Co. Ltd., [1958] A.C. 586, at pp. 599-599, Lord Atkin stated: "...the principle is that a man is not allowed to have recourse to a court of justice to claim a benefit from his crime whether under a contract or a gift. ... The absolute rule is that the courts will not recognize a benefit accruing to a criminal from his crime." Needless to say, there exist a host of civil remedies available to the victim for the recovery of benefits obtained through some criminal or quasi-criminal activity — e.g. the victim of a theft has, from time to time, declared to be reprehensible or "against good conscience".

(c) Quasi-Criminal Acts

Note: In Cleaver v. Mutual Reserve Fund Life Association, [1892] 1 Q.B. 147, at p. 156, Fry L.J. remarked: "...no system of jurisprudence can, with reason, include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person". Similarly, in Beresford v. Royal Insurance Co. Ltd., [1958] A.C. 586, at pp. 599-599, Lord Atkin stated: "...the principle is that a man is not allowed to have recourse to a court of justice to claim a benefit from his crime whether under a contract or a gift. ... The absolute rule is that the courts will not recognize a benefit accruing to a criminal from his crime." Needless to say, there exist a host of civil remedies available to the victim for the recovery of benefits obtained through some criminal or quasi-criminal activity — e.g. the victim of a theft has, from time to time, declared to be reprehensible or "against good conscience".

Of particular interest is this regard is the application of this rule of public policy to prevent a murderer from taking any benefits under his victim's will (see e.g., Re Johnson, [1950] 1 W.W.R. 263 (Nun.)), or under an intestacy (see e.g., Re Nordstrom, [1962] S.C.R. 147), or the proceeds of his life insurance policy (see e.g., Deckert v. Prudential Insurance Co. of America, [1943] O.R. 448 (C.A.), in the absence of any statutory provision whatsoever prohibiting such an acquisition. The rule is also applied to prevent a wrongdoer from accelerating his enjoyment of an existing right — e.g., the joint-tenant who murders his co-tenant and thereby takes the latter's undivided share by right of survivorship. (See e.g., Schobelt v. Barber, [1967] 1 O.R. 349.)

The rule of public policy has also been invoked to prevent a wrongdoer from claiming indemnification under an insurance policy for his own intentional criminal conduct. (See e.g., Gray v. Barr, [1971] 2 Q.B. 544.)