

Pilmer v Duke makes clear that contributory negligence is not available to shift liability onto the plaintiff in equity. Considerable 'conceptual difficulty' is encountered when trying to import these concepts — especially contributory negligence. Equitable remedies focus on the defendant's conduct whereas contributory negligence is concerned with the plaintiff.

4 Causation

There must be some causal relationship between the breach and the loss, unless the action relates to nondisclosure of information. In a case of nondisclosure, the plaintiff-beneficiary need not establish causation to recover. Put more accurately, the defendant will be prevented from pleading a causation argument. That is, a plaintiff will not have to address the argument that they would have lost money even if they had been so informed (eg, in *Hodgkinson v Simms*).

Although causation need not be established in the common law sense, some link must be proven between the defendant's wrong and the loss that is suffered by the plaintiff. A type of 'causation' must be proved (Youyang). One formulation is a 'but for' test: that is, but for the defendant's conduct would the plaintiff have suffered loss (*Target Holdings*)? This was cited with approval by the High Court of Australia in *Youyang*, but distinguished on the facts.

***Youyang Pty Ltd v Minter Ellison Morris Fletcher* (2003) HCA:**

Facts

- Youyang Pty Ltd ('YY') is a company that is a trustee of the Bill Haywood discretionary trust (comprising \$25 000 000 of investments in total)
- YY invests \$500 000 in shares of E C Consolidated Capital Ltd ('ECCCL'), a company carrying on a speculative fund
- A portion of the subscription money paid for the shares is to be used by ECCCL to buy a form of security — a bearer deposit — that entitles YY, in ten years' time, to the return of its money as a capital sum
- The remaining money could be used for speculative investments
- Minter Ellison ('Minters') acts as solicitors for the promoters of ECCCL, and agree to hold the money in their trust account as trustee for YY
 - Minters also agrees not to release the funds to ECCCL until they had been provided with a bearer certificate from a prime bank.
 - (A bearer certificate is a form of security guaranteeing the bearer repayment of the amount and time described)
 - The share money from YY was to be held in their trust account then released to ECCCL once they had received the bearer deposit so that ECCCL could invest it
- In fact, what happened was this:
 - Minters releases the money to ECCCL without obtaining a proper bearer security
 - All Minters receives is an acknowledgement of receipt (provides no security)
 - Although the receipt documentation is later updated, YY never receives a bearer certificate
 - Four years later, ECCCL becomes insolvent and is wound up
 - No money is available for unsecured creditors
 - However, YY is not a secured creditor because Minter Ellison did not obtain the bearer deposit
- Consequently, YY sues Minters for breach of fiduciary duty
 - YY seeks equitable compensation
 - Hayward claims that he would not have lost the \$500 000 but for Minters' breach

Equity Fiduciaries And Trusts 1993

**Jonathan Garton, Rebecca
Probert, Gerry Bean**



Equity Fiduciaries And Trusts 1993:

Equity, Fiduciaries and Trusts, 1993 Mark Bridge, Royal Society of Canada, University of Victoria (B.C.). Faculty of Law, International Academy of Estate and Trust Law, 1993 **Lender Liability** James O'Donovan, 2005 Addresses the liability and risk issues that arise at each successive stage of the relationship between lenders and borrowers or guarantors. This work adopts a practical transaction based approach examining the different stages of the relationship in turn and the legal issues that arise along the way. It also gives guidance on breach of loans **Equity, Fiduciaries and Trusts 1993** Donovan W. M. Waters, 1993 *Measuring Damages in the Law of Obligations* Sirko Harder, 2010-07-12 This book challenges certain differences between contract tort and equity in relation to the measure in a broad sense of damages. Damages are defined as the monetary award made by a court in consequence of a breach of contract a tort or an equitable wrong. In all these causes of action damages usually aim to put the claimant into the position the claimant would be in without the wrong. Even though the main objective of damages is thus the same for each cause of action their measure is not. While some aspects of the measure of damages are more or less harmonised between contract tort and equity e.g. causation in fact and mitigation significant differences exist in relation to 1 remoteness of damage which is the question of whether when and to which degree damage needs to be foreseeable to be recoverable 2 the compensability of non pecuniary loss such as pain and suffering distress and loss of reputation 3 the effect of contributory negligence which is the victim's contribution to the occurrence of the wrong or the ensuing loss through unreasonable conduct prior to the wrong 4 the circumstances under which victims of wrongs can claim the gain the wrongdoer has made from the wrong and 5 the availability and scope of exemplary or punitive damages. For each of the five topics this book examines the present position in contract tort and equity and establishes the differences between the three areas. It goes on to scrutinise the arguments in defence of existing differences. The conclusion on each topic is that the present differences between contract tort and equity cannot be justified on merits and should be removed through a harmonisation of the relevant principles Moffat's Trusts Law Jonathan Garton, Rebecca Probert, Gerry Bean, 2020-05-14 Always the serious student's choice for a Trusts Law textbook the new seventh edition of Moffat's Trusts Law once again provides a clear examination of the rules of Trusts retaining its hallmark combination of a contextualised approach and a commercial focus. The impact of statutory developments and a wealth of new cases including the Supreme Court and Privy Council decisions in *Patel v Mirza* 2016 UKSC 42 *PJS v News Group Newspapers Ltd* 2016 UKSC *Burnden Holdings v Fielding* 2018 UKSC 14 and *Federal Republic of Brazil v Durant* 2015 UKPC 35 are explored. A streamlining of the chapters on charitable Trusts better to align the book with the typical Trusts Law course helps students understand the new directions being taken in the areas of Trust Law and equitable remedies.

Resulting Trusts Robert Chambers, 1997 The resulting trust has received little attention in recent years and this may be because until relatively recently the law relating to resulting trusts was thought to be settled and uncontroversial. Most of the

current academic writing about resulting trusts is found in the established textbooks on equity and trusts but these tend to provide little more than catalogues of the situations in which resulting trusts arise There is however very little consensus on the principle by which the resulting trust operates including the fundamental question whether it arises by operation of law or depends on the presumed intention to create a trust This book examines the true nature of the resulting trust and the question whether the trusts brought into being to reverse unjust enrichment should not include resulting trusts It then considers whether when resulting trusts are properly understood it does turn out that it is through the resulting trust that equity makes its principle contribution to reversing unjust enrichment This book examines principally the case law of the UK Canada and Australia and it also makes reference to the views of academic commentators as found in the standard texts and law journals

Breach of Trust Peter Birks, Arianna Pretto-Sakmann, Arianna Pretto, 2002-07-05 Recent leading cases have demonstrated the urgent need to modernize the learning on breach of trust which has lagged behind the flourishing scholarship on the creation of trusts Since breach of trust or fiduciary duty occupies the centre of the legal stage it comes as a surprise that although one or two novelists have chosen Breach of Trust as the title to their book no lawyer has so far thought it necessary to produce a specialized work on the subject To fill the gap this book written by a team of leading trust lawyers from a number of common law jurisdictions investigates all the principal aspects of the subject The nature of the trustee's duties and of the liability for breach is closely examined and all available defences and excuses are reviewed Two substantial chapters consider the consequences of assisting a breach or receiving trust property from a trustee acting in breach The book closes with a critical overview of the entire topic

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The Law and Ethics of Restitution Hanokh Dagan, 2004-08-12 This 2004 book provides a comprehensive account of the American law of restitution

Dimensions of Private Law S. M. Waddams, 2003-07-10 This book considers the inherent complexities of private law relevant to property tort contract legal method and legal theory

Trusts and Modern Wealth Management Richard C. Nolan, Kelvin F. K. Low, Tang Hang Wu, 2018-05-31 Trust law has grown and developed over recent years through the continued ingenuity of practitioners and the provision of innovative new trust laws by offshore jurisdictions The wealth managed through the medium of trust law has also changed in recent years as increasingly it has come from the newly rich of Asia This brings distinctive issues to the fore the role of settlors family members and trusted advisors in trust administration the position of trustees in relation to instructions coming from such persons and an increased desire for confidentiality in trust administration and the settlement of trust disputes This collection focuses on trusts which are deliberately created to manage wealth and the concomitant

issues such trusts raise in other areas of law Essays from leading members of the judiciary practitioners and academics explore these developments and their implications for the users of trust law and for society in general *The Common Law of Obligations* Andrew Robertson, Michael Tilbury, 2016-01-28 The development of the law of obligations across the common law world has been and continues to be a story of unity and divergence Its common origins continue to exert a powerful stabilising influence carried forward by a methodology that places heavy weight on the historical foundations of legal principles Divergence is however produced by numerous factors including national and international human rights instruments local statutory regimes civil law influences regional harmonisation local circumstances and values and different political and legal cultures The essays in this collection explore the forces that produce divergence the countervailing forces that generate cohesion and consistency in the common law of obligations and the influence that the major common law jurisdictions continue to exert over one another in this area of law The chapters in this book were originally presented at the Seventh Biennial Conference on the Law of Obligations held in Hong Kong in July 2014 A second collection entitled *Divergences in Private Law* ISBN 9781782256601 will focus on particular departures from the common law mainstream and the causes and effects of those deviations **Accessories in Private Law** Joachim Dietrich, Pauline Ridge, 2016-01-25 Accessory liability is an often neglected but very important topic across all areas of private law By providing a principled analytical framework for the law of accessories and identifying common themes and problems that arise in the law this book provides much needed clarity It explains the fundamental concepts that are used to impose liability on accessories particularly the conduct and mental elements of liability involvement in the primary wrong and generally knowledge It also sets out in detail the specific rules and principles of liability as these operate in different areas of common law equity and statute A comparative study across common law and criminal law jurisdictions including the United States also sheds new light on what is and what is not accessory liability *Trends in Contemporary Trust Law* A. J. Oakley, 1996 Rev versions of papers originally presented at a conference held on Jan 6 7 1996 in Cambridge U K **Modern Studies in Property Law - Volume 3** Elizabeth Cooke, 2005-06-29 This book comprises a collection of papers given at the fifth biennial conference of the Centre for Property Law at the University of Reading held in March 2004 and is the third in the series *Modern Studies in Property Law* The Reading conference has become well known as a unique opportunity for property lawyers to meet and confer both formally and informally This volume includes a refereed and revised selection of the papers given there The papers thus cover a broad range of topics of immediate importance including land registration leasehold and commonhold prescription and law and equity A growing and popular aspect of the series is its coverage of property law matters worldwide this volume includes essays on property law in developing countries in South Africa Canada and Eastern Europe *Equity and Trusts* Alastair Hudson, 2012-08-21 Alastair Hudson's *Equity and Trusts* is an ideal textbook for undergraduate courses on the law of trusts and equitable remedies It provides a clear current and comprehensive account of the subject through

which the author's enthusiasm and expertise shine through helping to bring to life an area of the law which students often find challenging Fully updated and revised this Seventh Edition contains an analysis of Jones v Kernott and trusts of homes a new treatment of dishonest assistance and unconscionable receipt a full treatment of the law on super injunctions coverage of all of the trusts law cases precipitated by the collapse of Lehman Brothers a reflection on women and equity and the politics of trusts law a new treatment of the Hastings Bass principle and analysis of over 200 new cases and the Perpetuities and Accumulations Act 2009 Equity and Trusts remains the most comprehensive and up to date coverage of the law of Equity and Trusts while still a lively and thoughtful account of the issues raised by it This book has been cited as being authoritative in the courts of numerous countries The seventh edition is supported by a companion website which includes over 50 short podcast lectures by the author discussing and clarifying key topics from within the book which cover an entire course a set of brief video documentaries filmed on location which provide context and bring to life selected key topics a brief introductory video presentation from the author introducing the viewer to the subject of Equity and Trusts and to the book in particular

Axial Shift Benjamin Gussen, 2019-05-17 This book uses historical analysis constitutional economics and complexity theory to furnish an account of city subsidiarity as a legal ethical political and economic principle The book contemplates subsidiarity as a constitutional principle where cities would benefit from much wider local autonomy Constitutional economics suggests an optimal limit to jurisdictional footprints territories This entails preference for political orders where sovereignty is shared between different cities rather states where capital cities dominate The introduction of city subsidiarity as a constitutional principle holds the key to economic prosperity in a globalizing world Moreover insights from complexity theory suggest subsidiarity is the only effective response to the problem of scale It is a fitness trait that prevents highly complex systems from collapsing The nation state is a highly complex system within which cities function as attractors The collapse of such systems would ensue if there were strong coupling between attractors Such coupling obtains under legal monism Only subsidiarity can make the eventuality of collapse improbable The emergent and self organizing properties of subsidiarity entail a shift in policy emphasis towards cities with a wide margin of autonomy *Restitution: Past, Present and Future* William Cornish, Richard C Nolan, Janet O'Sullivan, G J Virgo, 1998-07-01 The essays in this volume are dedicated to Gareth Jones the retiring Downing Professor of English Law at the University of Cambridge His contribution to legal scholarship has been immense particularly in the fields of legal history the law of trusts charities law and most famously the law of restitution The publication of the first edition of the Law of Restitution which he co authored with Lord Goff stimulated a renaissance in the study of a subject which had previously lain dormant The effect of its publication on English legal scholarship has been profound and enduring In these essays written by a group of the world's leading restitution scholars the opportunity is taken to conduct a fresh appraisal of the development of the subject to look in other words at the past present and future of the law of restitution Contributors John Baker Peter Birks Justice Finn Roy Goode Ewan McKendrick Justice

McLachlin Sir Peter Millett Lord Nicholls of Birkenhead Richard Nolan Janet O Sullivan Graham Virgo as well as shorter contributions from invited commentators Todd & Watt's Cases and Materials on Equity and Trusts Gary Watt, 2013-06-13 This revised and updated text contains a range of relevant interesting case law statutory material academic extracts and official proposals for law reform A companion web site featuring web links and case updates ensures students have access to the latest materials *Structure and Justification in Private Law* C.E.F. Rickett, Ross Grantham, 2008-02-27 Peter Birks's tragically early death and his immense influence around the world led immediately to the call for a volume of essays in his honour by scholars who had known him as a colleague teacher and friend One such volume published in 2006 contained essays largely from scholars working in England Mapping the Law Essays in Memory of Peter Birks edited by Andrew Burrows and Lord Rodger This volume contains the essays of those outside England who chose to honour Peter and appears later than the English volume reflecting the far flung habitations of its authors The essays contained in this volume are focussed around the law of unjust enrichment but are not narrowly preoccupied instead they move freely from unjust enrichment to some of the most profound questions in private law concerning taxonomy the relationship between contract property and unjust enrichment and the place of remedies within private law This volume featuring the work of some of the world's great private lawyers provides a fitting tribute to a great scholar and a series of thought provoking essays inspired by his example Contributors Kit Barker Michael Bryan Peter Butler Hanoch Dagan Simone Degeling Daniel Friedmann Mark Gergen Ross Grantham Steve Hedley John McCamus Mitchell McInnes Eoin O Dell Charles Rickett Struan Scott Emily Sherwin Stephen Smith Richard Sutton Michael Tilbury Stephen Waddams Peter Watts Ernest Weinrib Eric Descheemaeker

Divergences in Private Law Andrew Robertson, Michael Tilbury, 2016-01-28 This book is a study of doctrinal and methodological divergence in the common law of obligations It explores particular departures from the common law mainstream and the causes and effects of those departures Some divergences can be justified on the basis of a need to adapt the common law of contract torts equity and restitution to local circumstances or to bring them into conformity with local values More commonly however doctrinal or methodological divergence simply reflects different approaches to common problems or different views as to what justice or policy requires in particular circumstances In some instances divergent methodologies lead to substantially the same results while in others particular causes of action defences immunities or remedies recognised in one jurisdiction but not another undoubtedly produce different outcomes Such cases raise interesting questions as to whether ultimate appellate courts should be slow to abandon principles that remain well accepted throughout the common law world or cautious about taking a uniquely divergent path The chapters in this book were originally presented at the Seventh Biennial Conference on the Law of Obligations held in Hong Kong in July 2014 A separate collection entitled The Common Law of Obligations Divergence and Unity ISBN 9781782256564 is also being published

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