BOOK REVIEW

The Law of Restitution

Peter D. Maddaugh & John D. McCamus
Aurora, Ont.: Canada Law Book, 1990
788 + lxxxix pages, $135

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Restitution has something of a special place in Canadian law, in that the Supreme Court of Canada has enthusiastically embraced, and vigorously reaffirmed, the existence of restitution as an independent source of civil obligation, resting on the principle of avoidance of unjust enrichment. If the courts take an expansive view of this principle — and this seems quite probable in the light of judicial attitudes generally — restitution will have a far-reaching effect on every branch of private law. A new book on the subject is therefore timely, and very welcome.

It is natural that writers on restitution should take an expansive view of their subject, and Maddaugh and McCamus do so. Having noticed the failure of the House of Lords to embrace a general doctrine of unjust enrichment, the authors observe, with evident satisfaction, that "happily, the situation in Canada is otherwise." On many of the disputed questions in restitution the authors take a correspondingly expansive position, supporting, for example, the 1933 California case of *Boomer v. Muir*, which allowed to a building contractor, on breach by the owner, a recovery that put the contractor in a much better position than it would have occupied if the contract had been performed. They are not, however, single-minded in their pursuit of expansion. On the question of disgorgement of profits made in breach of contract, they take (rightly, in my opinion) a cautious line, favouring restitution only where there is "an independent and concurrent breach of restitutory obligation"; in other words, not where the plaintiff's only claim is for breach of contract.

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Writers of textbooks have many conflicting objectives and pressures that they must hold in balance. There is the balance between historical explanation, and an account of current law, the balance between old and recent cases, the balance among Canadian, Commonwealth and American cases, between academic articles and judicial decisions, between description and prescription, and between detail and generality. On all these matters, the writers have achieved, in my judgment, a very good mixture.

Another problem commonly faced by writers is the need to deal with their subject thoroughly, but within the overall limits of a volume of reasonable size. This problem evidently posed difficulties for the authors, and readers familiar with Professor McCamus’s published work will be surprised to find that the subject of restitution for benefits conferred under minors’ contracts occupies less than three pages. The authors say that the subject is “so intricate and unstable [that] we have determined that a detailed account should not be attempted within the confines of the present volume,” referring to Professor McCamus’s excellent article on the subject in the University of New Brunswick Law Journal.2 For those who may not have the relevant volume of that journal to hand, I must say that this omission is a matter for regret, however much sympathy there must be for authors facing the constraints of limited space.

Generally speaking, I think that this is an excellent book, full of useful insights, and that it will be, for the foreseeable future, an essential work of reference for those interested in any aspect of Canadian private law.

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