

THE LAW OF RESTITUTION. By LORD GOFF OF CHIEVELEY & GARETH JONES. (3rd. Edition). [London: Sweet & Maxwell. 1986. xcix + 770 pp. Hardcover: £60]

THE Law of Restitution, first published in 1966, has attained a standing in its own field that few modern English texts can match. Professor Peter Birks considers it to be a “great textbook”,¹ and Professor R. M. Goode has called it a “magisterial work on restitution”². Few lawyers will dispute the tributes that have been paid to the work.

As far as English law is concerned, it is undeniable that there is no “wholehearted acceptance” of a branch of the law known as Restitution. This is not to say that restitutionary principles are non-existent in English law, or that no useful purpose is served by looking at problems from a restitutionary perspective. The High Court of Australia has recently held that a *quantum meruit* award is based on unjust enrichment.³ English law, in contrast, still has to contend with the strong statement of Lord Diplock in *Orakpo v Manson Investments*

¹ *An Introduction to the Law of Restitution* (1985), p. 3.

² “Ownership and Obligation in Commercial Transactions”, (1987) 103 L. Q. R. 433 at p. 442

³ *Pavey & Matthews Pty. Ltd. v Paul* (1987) 69 A. L. R. 557. See J. Beatson, Note (1988) 104 L. Q. R. 13.

*Limited*⁴ that though there may be remedies that deal with unjust enrichment, there is no such *general doctrine*?

The conceptual framework for a more general acceptance of the law of Restitution has already been set. This has been done by *The Law of Restitution*, Professor Peter Birk's *An Introduction to the Law of Restitution*, and many learned articles that are too numerous to list. English judges may be more aware of restitutionary principles, and Lord Goff of Chieveley is now a Law Lord, but that crucial decision is still eagerly awaited by Restitution lawyers.

The third edition of "Goff and Jones" is basically an updated version of the second edition. Important judicial developments are incorporated into the text. Articles published since the second edition have also been incorporated, either in the text or in the footnotes. Short answers to critics of arguments made in the second edition will be found throughout the text. The general headings are almost the same as in the second edition. Parts of the book, including parts of the Introduction have been rewritten. But the Introduction (which ties up the whole book), though slightly expanded, is basically the same as in the second edition. This third edition bears a much closer resemblance to the second edition than the second bore to the first. Any changes in the third edition can be said to be in detail rather than in general.

Restitution lawyers may be disappointed by the treatment of Professor Peter Birk's important contribution, *An Introduction to the Law of Restitution*. There are numerous references to Professor Birk's book. But they tend to be no more than footnoted page references, even when "contrast Birks..." and "*contra* Birks..." are involved.⁶ Professor Birk's book was published in 1985. Work on this third edition was probably in progress then.

All things considered, the third edition would be much more valuable if the whole book, or at least its Introduction, were to deal with Professor Birk's views and terminology in greater detail.

⁴ [1978] A. C. 95.

⁵ *Ibid.*, at p. 104.

⁶ For example, note 27a at p.23, note 52 at p. 55, note 64 at p. 148, note 18 at p. 621, note 25 at p. 695, note 73 at p. 703.