

the trust, remain. They are not disposed of. They continue to be capable of enforcement unless and until the disposition of the legal title has the effect under the *lex situs* of the trust asset of overriding the protected trust rights. If the trust rights are overridden, it is not because they have been disposed of by virtue of the transfer of the legal title. It is because they were protected rights that were always limited and in certain circumstances capable of being overridden by virtue of a rule of law governing equitable rights ...” [51].

On this basis, Lord Mance concluded that s 127 did not apply to the transfer of shares by Mr Al-Sanea. [54]. Mr Al-Sanea had disposed of his legal interest in the shares, but this did not involve a disposition of SICL’s property. [54]. SICL retained its equitable proprietary interest or personal rights under the trust, unless the disposal defeated that interest. [54]. Even if the transaction did defeat that interest, this would not involve a disposal of SICL’s interest as SICL’s interest was “always limited in this respect”. [54].

The appeal was allowed and a declaration given that for the purposes of s 27 of the *Insolvency Act*, there was no disposition of any rights of SICL in relation to the shares. [57]. Lord Neuberger, Lord Sumption and Lord Collins each delivered separate judgments but agreed with the orders given by Lord Mance.

## RECENT PUBLICATIONS

***Ian Jackman SC, The Varieties of Restitution (2<sup>nd</sup> ed), The Federation Press, 2017***

This is the second edition of a work which was first published in 1998 to wide acclaim for its illuminating and penetrating discussion concerning the taxonomical possibilities of that area of law which is sometimes referred to as “restitution”. The initial edition added substantially to the identification of the structure of this area of the law in its various incantations. This second edition modernises the discussion by taking into account the ever widening divergence between English and Australian law and the vigorous eschewing by the High Court of any unifying or underlying principle. Of course, that is the present position. Meagher J has now left that Court and, given its new composition, it is likely that tide is about to flow again on this topic.

Mr Jackman’s thesis is that there exist three varieties of restitution. First, restitution of money benefits (incontrovertible benefits) on the basis that the conferral of the same has been rendered invalid by some vitiating factor such as duress, undue influence and total failure of consideration. Second, and probably most controversially, the restitution of benefits conferred voluntarily where the vitiating factor is the recipient’s omission to fulfil a genuine promise (often implicit) to pay for the conferred benefit. An example of this type of restitution arises in the context of benefits conferred under contracts which are void or unenforceable. The third category is restitution for wrongs. In the adoption of this taxonomy Mr Jackman eschews the notion of the existence of a unifying principle of restitution. That said, the author also proposes a second categorisation for this area of law, being the distinction between restitution for payments of money and restitution for the value of benefits conferred. This classification seeks to take account of the difficulties with the concept of “enrichment” where services and goods do not incontrovertibly benefit the recipient.

In this second edition Mr Jackman continues the defence of the position *presently* adopted in Australia. He asserts, not without some foundation, that the Oxbridge variety of restitution is reliant on more fictions than existed in the principles of the common law for which the new doctrine was intended to be the panacea. He also advances the strong common law theory of incrementalism in the development of the law rather than an approach which seeks to develop general overriding principles and theories and to build legal rules underneath.

It matters not on which side of the debate one positions themselves in relation to this book. It is, without doubt, an excellent contribution to the process of understanding the diffuse structure of the law in this area. It directly confronts the arguments advanced for the “unifying principle” approach and posits a strong, but measured, defence of the existing Australian position. It explains and analyses a difficult and abstruse area of the law and, in the process, assays the modern cases in an intelligible and comprehensive way.

This is yet another exceptional publication from The Federation Press which continues to advance the intellectual development of the law in Australia. It can be purchased for the very

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reasonable price of \$150.00 and it can be ordered on line at the publisher's website by [clicking here](#).

## **APPEALS**

No appeals have been brought in respect of cases selected for reporting in previous issues of the *Queensland Law Reporter*.

S C Holland  
Editor: Queensland Reports