The law of restitution, as founded on the principle of unjust enrichment, is now firmly entrenched in Australia as an independent branch of the law of civil obligations, providing additional and alternative relief to that provided by the laws of contract, torts and equity. Since the publication of the first edition of this book in 1998, a large body of restitutioary authority has built up in Australia, with a burgeoning number of cases at first instance and on appeal being decided in accordance with restitutioary principles. Nevertheless, because of its relatively recent origins, the principles of restitution law, and in particular the principle of unjust enrichment upon which restitutioary relief is based, are still relatively unknown in the profession. As such, an urgent need still exists for Australian legal practitioners, as well as law students, to be educated as to the circumstances where the law of restitution applies and the relief it provides. This book, which at the time of writing is the only Australian text containing source materials on restitution law, will hopefully assist in fulfilment of this need as well as being a vital resource for researchers in this area.

There still appears to be a lingering perception amongst Australian practitioners that the law of restitution is largely the creation of legal academics, and that unjust enrichment principles are the result of a forced or creative interpretation of the cases. One of my aims in writing and updating this book is to establish convincingly that restitutioary principles have a strong basis in the case law. Readers will see that I have only occasionally relied upon secondary sources to illustrate important principles, preferring instead to source those principles directly in judicial authorities. It cannot be doubted, however, that the important work in providing a common conceptual basis for apparently disparate lines of authority was the genius of academics and that the views of academics have perhaps an unusually high degree of influence upon the courts when deciding restitutioary cases. As such, the academic contribution in this area is too prominent to be disregarded, prompting me to include a summary of the main academic views on each topic.

There have been some important developments in restitution law since the publication of the first edition. The High Court of Australia in its decision in *Roxborough v Rothmans of Pall Mall Australia Ltd* (2001) 185 ALR 335 examined the principles relating to recovery of payments where the basis for the payments has failed, and established the proposition that money is recoverable on that ground even though the unperformed obligation was not a specific contractual obligation. The House of Lords has also been active in the restitution area, delivering two groundbreaking decisions. In *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349, it recognised mistake of law as a ground of recovery in England for the first time, and addressed difficult issues relating to the effect of retrospectivity of judicial decisions on mistake of law claims. In *Attorney-General v Blake* [2001] AC 268, the court recognised for
the first time that an account of profits will be available in some circumstances upon a breach of contract. In this second edition I have documented these and other major developments at length, as well as taken advantage of the opportunity to enhance the commentary and analysis throughout the book.

Grateful thanks to the staff at Cavendish Publishing for their cheerful and thorough editorial assistance. Lastly, my thanks and expression of appreciation to my parents, Des and Glenda, for their constant and ongoing support, no matter what.

Sharon Erbacher
School of Law, Deakin University
August 2002
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