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CARSWELL

BOOK REVIEW

Restitution in Private International Law

G. Panagopoulos
(Oxford: Hart Publishing, 2000)
274 + xxxvi pp. £40(stg)

*Janet Walker**

It is sometimes said that there is only so much law that can comfortably fit between the covers of one book. This principle seems to apply also to the curriculum of a first law degree. And so it is that, until now, the stamina of writers and readers of law books, and of teachers and students at law schools, has often given way before they have reached the subjects of restitution and private international law.

In view of the increasingly complex and crossborder nature of personal and commercial disputes it seems easier to accept this account of the widespread lack of understanding of restitution and private international law—an account based on intellectual fatigue—than it is to accept that these subjects are not well understood because they are obscure. Even if that might have been so at one time, it is certainly no longer the case. In recent years, the bounds of legal liability and the means of recovery have come to be challenged just as frequently as have the boundaries for personal and commercial dealings that were once set by national borders.

And so it is fortunate that George Panagopoulos has had the intellectual stamina to brave both the fields of restitution and of private international law and to go on to pursue a serious consideration of the intersection between the two. For even among the marathon thinkers who have gone the distance in each of these fields, few have embarked upon more than a brief or partial examination of the conflict of laws rules appropriate to claims in unjust enrichment.¹

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¹ Notable exceptions have been the authors of the chapters in F. Rose, ed., *Restitution and the Conflict of Laws* (Oxford: Mansfield Press, 1995).

To be sure, the loneliness of the long distance runner is something with which the author of this book must have been reasonably comfortable in that the book was based on his doctoral research. And he makes no bones about this feature of the book, announcing it in the opening of the preface to the book. However, given the subject matter of the book, this is probably a good thing. This is because, although this promises to be a useful book, one of its main strengths comes from its genesis in purely academic research because this has enabled its focus and direction to avoid being shaped solely by the few disparate cases or situations in which these issues have been addressed. That the jurisprudence is meagre and based on but a few disparate fact situations is amply demonstrated by a review of the entire corpus of existing authorities in a section of the book that is barely 20 pages long.

Although the book benefits from its genesis in its author's doctoral research, it is largely free of the principal concerns frequently associated with such works. For example, it opens with a chapter, which provides a concise summary of the law of restitution. While such a chapter in a book on choice of law in, say, tort would be remedial (and this chapter does not pretend to improve upon leading treatises² or introductory works³) on restitution, the many readers whose grounding in the law of restitution is incomplete or dated will find it helpful to have a well-written summary such as this at hand as they embark upon the significant challenge of grappling with the private international law issues.

And a significant challenge it is for, as the author astutely observes immediately upon settling into the main task of the book, restitution is a remedy and not a cause of action and conflict of laws rules tend to take their cue more from elements of the cause of action than from the appropriate legal consequences of seeking relief. Thus, any proposal for a single choice of law rule is bound to be only as sound as the conceptual unity of the law of restitution itself. Before reading this book a knowledgeable reader might have doubted that it was possible, therefore, to articulate a characterization of a claim in restitution in a way that would identify a single factor for every case in which restitution was sought

that would reliably connect the matter to a suitable governing law. Still, the author perseveres in a careful and coherent analysis of these thorny characterization issues and he eventually succeeds in articulating and enlarging upon a choice of law rule that faithfully reflects the complexity of the law of restitution: that of the "law of the unjust factor".

Following this triumph there is a fairly lengthy analysis of the implications of this for jurisdiction both under the Brussels Convention and under the English common law rules. The utility of this part of the book for readers outside the United Kingdom will depend largely upon the unsettled fate of the proposed Hague Judgments Convention⁴ and whether, if agreement is reached on that Convention, the text will continue to resemble the Brussels Convention as closely as does the current draft.

It is to be acknowledged that the work might not avoid the chief complaint most frequently lodged in respect of books developed from theses: that they could as effectively have been published in condensed form as longer law review articles. Indeed, it may be imagined that if this work's contribution to private international law is a sound one, it will ultimately be reduced to a terse Latin maxim—say, the "*lex elementum iniquus*." But none of this detracts from the usefulness of the step-by-step guidance the book in reaching this conclusion and understanding its implications.

On the contrary, the author is to be thanked for helpfully assembling all that is needed in a clearly and precisely written analysis that takes a reader who has a basic grasp of private international law from a state of general ignorance of the law of restitution to a thoroughgoing appreciation of relevant considerations for the rules as they should apply in that field. And he is to be applauded for organizing it all in a very tidy package placed neatly between the two covers of one book.

² Such as Lord Goff of Chieveley and G. H. Jones, *The Law of Restitution*, 5 ed. (London: Sweet & Maxwell, 1997)

³ Such as P.B. Birks, *An Introduction to the Law of Restitution*, revised edition (Oxford: Clarendon Press, 1989)

⁴ Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters, adopted by the Special Commission on 30 October 1999, available online at: <<http://www.hcch.net/e/conventions/draft36e.html>>.