

REMEDIES IN AUSTRALIAN PRIVATE LAW

Second edition

Remedies in Australian Private Law offers readers a clear and detailed introduction to remedies and their functions under Australian law. Clearly structured, with a strong black-letter law focus, the text provides a complete treatment of remedies in common law, equity and statute, and develops a framework for understanding the principles of private law remedies and their practical application.

The second edition has been significantly revised and offers up-to-date coverage of case law and legislation, including the Australian Consumer Law. It builds on the detailed treatment of remedies and their broad functions across a range of private law categories, including torts, contract, equity, trusts and property law. It also offers expanded coverage of vindicatory damages, debt, specific restitution and coercive remedies. Theoretical perspectives on issues such as equitable obligations, the fusion of common law and equity, the nature of reasonable fee awards and the concept of unjust enrichment are also discussed.

With its systematic and accessible approach, *Remedies in Australian Private Law* enables students and practitioners to develop a coherent understanding of remedial law and to analyse legal problems and identify appropriate remedial solutions.

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REMEDIES IN AUSTRALIAN PRIVATE LAW

Second edition

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PREFACE

The second edition of this text seeks to build on the strengths of the first edition in presenting a detailed, scholarly map of remedies in Australian private law, which is intended to be helpful to judges, professionals, scholars and students.

Since the last edition, there have been several Australian cases which have required consideration. They include *Badenach v Calvert* [2016] HCA 18, (2016) 257 CLR 440 (on the availability of damages for loss of a chance in negligence), *Westpac Banking Corporation v Jamieson* [2015] QCA 50, [2016] 1 Qd R 495 (on alternative investments and calculation of damages for misrepresentation), *Stone v Chappell* [2017] SASCFC 72, (2017) 128 SASR 165 (on damages for rectification costs in excess of diminution in value), *Gray v Richards* [2014] HCA 40, (2014) 253 CLR 660 (on damages for fund management costs in personal injury cases), *Paciocco v Australia and New Zealand Banking Group Ltd* [2016] HCA 28, (2016) 258 CLR 525 (on penalty clauses in contracts), *Cheng v Farjudi* [2016] NSWCA 316, (2016) 93 NSWLR 95 (on the availability of exemplary damages) and *Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd* [2014] HCA 14, (2014) 253 CLR 560, (on unjust enrichment law and its relationship with equity).

We also consider several new overseas cases, mainly from the United Kingdom, in particular *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2014] UKSC 58, [2015] AC 1503 (on equitable compensation for breach of trust), *Lawrence v Fen Tigers Ltd* [2014] AC 822, [2014] UKSC 13 (on nuisance, injunctions and Lord Cairns' Act damages), *Cavendish Square Holding BV v Makdessi* [2015] UKSC 67, [2016] AC 1172 (on penalty clauses in contracts), *One Step (Support) Ltd v Morris-Garner* [2016] EWCA Civ 180, [2017] QB 1 (on gain-based relief in contract) and *FHR European Ventures LLP v Mankarious* [2014] UKSC 45, [2015] AC 250 (on proprietary remedies for bribes taken in breach of fiduciary duty).

In addition to incorporating new material, we have made changes to some of the existing material. In Chapter 2, we have extended the discussion of *British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railways Company of London Ltd* [1912] AC 673 and the avoided loss rule, and we have reorganised the discussion of certainty of loss and recovery for the loss of a chance in order to make the various categories of case clearer. In Chapter 5, we have added a more detailed discussion of *Clark v Macourt* [2013] HCA 56, (2013) 253 CLR 1. In Chapter 14, we have added a section on vindicatory damages. The sections on debt and specific restitution are now integrated into the discussion of specific relief in Chapter 11. We have also reorganised some of the material in Chapters 3 and 12.

As in the first edition, the primary responsibility for Chapters 2 to 9 lay with Sirko and the primary responsibility for the other chapters lay with Katy, but the text is very much a joint work. We have considered material available to us before 1 December 2017.

Katy would like to thank her family (Scott, Eloise, Josh and Hamish) for supporting her through the book revision process. She would also like to thank her JD and Masters students at Melbourne Law School for making her constantly think about how to present the law of remedies more clearly. Special thanks to Stephanie McHugh for providing research assistance to Katy.

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Katy Barnett
Sirko Harder
January 2018

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