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Book Review. Cases, Materials and Texts on Unjustified Enrichment

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Cases, Materials and Texts on Unjustified Enrichment (Unjustified Enrichment) is the fourth book published in the series Ius Commune Casebooks for the Common Law of Europe. This series is sponsored by the Casebook Project, a joint initiative of the law faculties at the Katholieke Universiteit Leuven and the Universiteit Maastricht. In addition to the title under review, casebooks have been published on tort law and contracts. Thus, the latest title completes the presentation of the law of obligations.

As its name implies, Unjustified Enrichment is intended primarily as a text book, and according to the Casebook Project web site the earlier titles have already been adopted as course texts by professors in various European countries, as well as in the U.S., Australia, and Japan. Beyond this, the Preface to the newest casebook in the series indicates that it aims “to explore the extent to which, despite differences in approach, concepts and terminology, common principles underlie the laws of unjust or unjustified enrichment in different systems.” More programmatically, the web site espouses the hope that by

1 Tort Law (Casebooks on the Common Law of Europe) by Walter van Gerven, Jeremy Lever, Pierre Larouche (Oxford; Portland OR: Hart, 2002; parts of this book were published in 1998 in a separate volume, now out of print, under the title Tort Law: Scope of Protection); Contract law (Casebooks on the Common Law of Europe), general editors, Hugh Beale et al. (Oxford; Portland OR: Hart, 2002).

2 http://www.law.kuleuven.ac.be/casebook
Unjustified Enrichment is divided into nine chapters, the bulk of which explore specific aspects of the doctrine of unjustified enrichment. Thus, there are chapters on enrichment, impoverishment, and the causal connection between them; absence of justification or cause; subsidiarity; interest; fault and risk; and restitution for wrongs. In addition there are two introductory chapters that provide an overview of the legal systems considered in the book and the general, substantive approach to the law of unjustified enrichment in each of those systems. Each chapter treats the legal systems in order, discussing how each handles the specific concept to which the chapter is devoted. Introductory material is included where the editors have deemed it appropriate, followed by extracts from relevant legal documents. As one might expect, case law comprises the dominant type of legal material for common law jurisdictions, whereas commentary and legislation dominate for civil law jurisdictions. However, the material is quite wide-ranging, as a glance at the Table of Cases and Table of Abbreviations readily reveals.

Unjustified Enrichment apparently began as part of a different series, and was included in the Ius Commune series only after it had already neared completion. As a result, it differs from the earlier casebooks in several respects. First, it includes analysis not only of common law (English) and civil law (French, German, Dutch) systems, but also of the “mixed” legal systems of Scotland and South Africa. Second, it contains only two pages on the influence of European Union law, though this has to do primarily with the lack of harmonization activity by the European Union in the area of unjust enrichment.

Aside from its intended use as a text book, Unjustified Enrichment promises to be quite useful as a reference work as well. One of its virtues is to offer English-language readers, and Americans in particular, an in-depth view of doctrinal developments in other jurisdictions. Surprisingly little information of this sort is available to scholars and students within the vast landscape of American legal literature. In this respect, Unjustified Enrichment, and the Ius Commune series in general, may be viewed as an up-to-date supplement to the Encyclopedia of Comparative Law, which is now quite old. The fact that it still resides in the reference collections of so many academic law libraries suggests just how welcome books such as Unjustified Enrichment will be. Perhaps the Ius Commune series will have the effect of stimulating new interest in comparative research among American students and academic professionals.

Unjustified Enrichment lends itself to use in several ways. The organizational scheme permits the user to compare legal systems in depth with
respect to a particular concept, or to follow a single legal system through all chapters consecutively, thus obtaining an overview of how the entire area of unjust enrichment is handled within that system. The footnotes are another useful feature of the work, providing up-to-date citations to leading cases, commentary, statutes, etc. Case extracts will prove useful to venturesome students who wish to spice up case notes and other types of student writing. Finally, the legal system overviews in chapter one provide brief, but trenchant introductions to important topics, such as the character and role of court decisions, the organization of the judicial hierarchy, and the system of law reporting. These are topics sometimes covered by the Legal Systems Cyclopaedia, by the more detailed but now quite out-of-date Parker School Guides to Foreign Legal Materials, and by various legal system monographs. So at least some of the material is available elsewhere, but new summaries are always welcome. Moreover, there is a real dearth of information on South African law, so the inclusion of the Roman-Dutch legal system in Unjustified Enrichment is particularly nice to see.

No review of Unjustified Enrichment would be complete without a brief description of the Casebook Project web site. The site functions as an adjunct to the books in the series. One may click on an icon of the book desired, and link to chapter tables of contents, which themselves contain further links. At the moment, there are links from the tables of contents of the casebooks on tort law, contract law, and unjust enrichment to original-language versions of selected materials extracted in the texts, and for the second tort casebook there are links to supplementary text as well. This new text contains information on the legal systems of additional jurisdictions, not included in the printed edition. Presumably the editorial team intends to continue adding links for all material extracted in the texts, as well as for new textual matter.

The web site admittedly has a few kinks. The most disconcerting problem encountered by this reviewer was that the links to original-language extracts didn’t work. And there is always a question about how long an editorial team will continue to update its web site before moving on to different projects. However, the web site is impressive and represents a potential model for the use of electronic resources to supplement and update printed monographs.

All in all, Unjustified Enrichment and the entire Jus Commune series are well conceived and well packaged, for use both as course texts and as reference sources to be mined for a variety of purposes. The entire series would be a worthy addition to all academic law libraries, even those that have a policy of not collecting casebooks. One minor objection is that Unjustified Enrichment

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does not have a subject index, an oversight given that the series editors intend the book to be used as a reference source, and not only as a casebook. However, the table of contents is quite detailed, rendering the lack of subject index somewhat less problematic.

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On September 23, 1991, the Government of the United States of America and the Commission of the European Communities entered into an agreement regarding the application of their competition laws. In September 2001, amid the shocking events of the terrorist bombing in the United States, the antitrust agencies of the United States and the European Union quietly celebrated the tenth anniversary of this treaty. _Cooperation Between Antitrust Agencies at the International Level_ reviews its first ten years, and author Bruno Zanettin uses the occasion to launch his campaign for a World Trade Organization (WTO) competition agreement. Mr. Zanettin, who is on the staff of the Director-General for Competition of the European Union, is well placed for this task.

In the first chapter, Mr. Zanettin discusses the initial unilateral efforts at regulating international antitrust. He reminds us of the pioneering role played by the U.S. Courts in _U.S. v. Alcoa_ and its “effects doctrine,” setting the tone for asserting jurisdiction over foreign-based entities whose conduct abroad has domestic effects, and explains that while this doctrine extended the scope of subject matter jurisdiction, it did not necessarily justify the assertion of personal jurisdiction over these entities. That was supplied by _International Shoe Co. v. Washington_, which was decided by the U.S. Supreme Court in the same year, and its “minimum contacts” test.

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5 148 F.2d 416 (2d Cir. 1945).

6 326 U.S. 310 (1945).