

1. Record Nr.	UNINA9910818958203321
Autore	Bant Elise
Titolo	The change of position defence / Elise Bant
Pubbl/distr/stampa	Oxford ; Portland, Oregon, : Hart Publishing, 2009
ISBN	1-4725-6046-9 1-282-38800-2 9786612388002 1-84731-507-0
Edizione	[1st ed.]
Descrizione fisica	1 online resource (292 p.)
Disciplina	340.2 346.029
Soggetti	Unjust enrichment Restitution Estoppel Mistake (Law)
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Originally presented as the author's thesis (doctoral)--University of Oxford, 2008
Nota di bibliografia	Includes bibliographical references and index
Nota di contenuto	1. Introduction and Overview -- A Introduction -- B The Change of Position Defence -- (1) A Core Case -- (2) The Four Main Areas of Doubt -- (a) The Reliance Issue -- (b) The Fault Issue -- (c) The Ambit of Operation Issue -- (d) The Rationale Issue -- C Underlying Assumptions -- (1) Introduction -- (2) The Nature of Unjust Enrichment -- (3) Restitution and Unjust Enrichment -- (4) A Fusionist Approach -- D Methodology and Overview -- (1) Introduction -- (2) Part One-Foundations -- (3) Part Two-Definition -- (4) Part Three-Ramifications -- Part One: Foundations -- 2. Lessons from Estoppel by Representation -- A Introduction -- B Elements of Estoppel by Representation -- (1) Representation -- (2) Reliance -- (a) The Meaning of Reliance -- (b) The Role of Reliance as a Causal Requirement -- (c) The Applicable Test of Causation -- (d) Proving Reliance -- (e) A Residual, Evidential Role for the 'But For' Test. -- (f) The Normative Significance of Reliance -- (g) Lessons for the Change of Position Defence -- (3) The 'Reasonableness' Requirement -- (a) The

Defendant's Reliance must be Reasonable -- (b) The Standard of Reasonableness and its Relationship to Good Faith -- (c) The Function of the Reasonableness Requirement -- (d) Lessons for the Change of Position Defence -- (4) Detriment -- (a) The Meaning of Detriment -- (b) The Time for Assessing the Detrimental Change of Position -- (c) Detrimental Changes of Position include Omissions and Non-pecuniary Changes -- (d) The Change of Position must be Irreversible -- (e) Lessons for the Change of Position Defence -- C Bars to the Defence -- (1) Defendant at Fault in Inducing the Representation -- (2) Defendant in Breach of Duty -- (3) Illegality -- D Conclusion -- 3. Lessons from the Defence of Payment Over by an Agent -- A Introduction -- B The Requirement of Payment Over -- C Notice -- D Bars to the Defence -- E Conclusion -- 4. Lessons from Rescission -- A Introduction -- B Restitutio in Integrum -- (1) Rescission and the Requirement of Restitutio in Integrum -- (2) The Requirement of Counter-restitution -- (a) Rationale -- (b) Elements and Operation -- (c) Application of the Two Claims Approach to Rescission Cases -- (3) The Defendant's Changes of Position -- (a) Change by Exchange -- (b) Independent Changes in the Received Benefit -- (c) Defendant-instigated Changes of Position -- (4) The Claimant's Changes of Position -- (a) Independent Changes in the Received Benefit -- (b) Claimant-instigated Changes of Position -- (c) An Irreconcilable Tension? -- C Conclusion -- (1) Rationale -- (2) Elements -- (3) Ambit of Operation -- Part Two: Definition -- 5. Primary Elements -- A Introduction -- B Elements -- (1) A Detrimental Change of Position -- (a) Detriment as 'Disenrichment' -- (b) Detriment as 'Irreversibility' -- (c) The Irreversibility Approach is to be Preferred -- (d) Proving the Irreversible Change of Position -- (2) Causation -- (a) Introduction -- (b) But-for Causation in Cases of Independent Changes of Position -- (c) Good Faith in Cases of Independent Changes of Position -- (d) Reliance in Cases of Defendant-instigated Changes of Position -- (e) Reliance must be Reasonable -- (f) Anticipatory Changes of Position -- (g) Proving Causation -- (3) The Impact of Third Parties -- C Conclusion -- 6. Fault as a Bar to the Defence -- A Introduction -- B Wrongdoers -- C Duress and Undue Influence -- D The Innocent Inducer -- E Illegality and Legal Stultification -- F Fault in the Defendant's Change of Position -- G Conclusion -- 7. Ambit of Operation -- A Introduction -- B Application to Claims in Unjust Enrichment -- (1) Mistake -- (2) Duress and Undue Influence -- (3) Failure of Consideration -- (4) No Intention to Benefit -- (5) Policy-motivated Unjust Factors -- (6) Cases of Proprietary Restitution -- C Application to Claims outside Unjust Enrichment -- D Conclusion -- 8. Rationale -- A Introduction -- B Disenrichment -- C Autonomy -- D Security of Receipt -- E A Harm-based Rationale -- F A Mixed Rationale of Protection and Prophylaxis -- G Conclusion -- 9. Conclusion -- Part Three: Ramifications -- 10. Ramifications -- A Introduction -- B Estoppel by Representation -- C Payment Over and Ministerial Receipt -- D Restitutio in Integrum -- E Good Consideration -- F Bona Fide Purchase -- G Statutory Change of Position Defences -- H Conclusion

Sommario/riassunto

This book defines and explains the operation of the defence of change of position in Anglo-Australian law. It is a widely accepted view that the defence is a modern development, the first express recognition of which can be traced in England to the seminal decision of the House of Lords in *Lipkin Gorman (a firm) v Karpnale Ltd.* Commentators have accordingly tended to focus on post-Lipkin case law in discussing the defence and its many disputed features. This work takes a different stance, arguing that the defence is best understood by placing it within its broader historical and legal context. It explains that the foundations

of the defence can be found in the related doctrines of estoppel by representation, the agent's defence of payment over and the law of rescission. The analysis applies crucial insights from those areas, together with the change of position authorities and broader considerations of policy and principle, to develop a rigorous model of the change of position defence. The work not only provides a clear and exhaustive examination of the defence, but demonstrates that, properly understood, the defence operates in a rational and justifiable manner within its broader private law context. In so doing, its analysis meets the oft-expressed concern that the defence may operate in an unprincipled way or by reference to 'that vague jurisprudence which is sometimes attractively styled "justice as between man and man"'
