

# Contract, Tort And Restitution

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cannot be resolved solely by altering the grounds of judicial review. Rather, we need to shift our focus away from the courts to the regulatory systems themselves. As Scott points out, judicial control is most likely to be effective where it builds on existing features of the regulatory regimes, fostering those organic values and practices which most closely accord with legal values. He also reminds us that the courts are not the only avenue for the infiltration of legal values. The activities of lawyers in firms, regulatory offices and government departments may be as, or more, important. The task, then, is to justify judicial restraint and flexibility by ensuring that the courts do not have to be in the vanguard of rendering regulatory activity accountable and legitimate. As academics, we must share this responsibility and participate actively in shaping administrative processes, instead of just complaining to one another when they fail to measure up to our standards.

AILEEN MCHARG

*Understanding the Law of Obligations: Essays on Contract, Tort and Restitution*  
by ANDREW BURROWS  
Oxford: Hart Publishing, 1998, xxiv + 217 + (index) 6 pp (hardback £25)  
ISBN 1 901362 38 8

Professor Burrows has presented a selection of essays on various aspects of the three main strands of the law of obligations, namely the law of contract, the law of tort and the emerging, albeit long-standing law of unjust enrichment or restitution. Some of the material is not new, the selection of essays being based on previously published material familiar to those who have read, with interest, the views of the author. However, Professor Burrows has taken the opportunity to advance his arguments in the light of developments since the date of publication of the original articles upon which this collection of essays is based.

At the outset, it should be emphasised that Professor Burrows, also a Law Commissioner, takes the view that the traditional distinction between contract, tort and restitution is sustainable and that it is unnecessary to challenge the fundamental dividing lines between each of the three principal pigeon-holes. However, he also recognises, in the foreword, that the concept of concurrent liability should be accepted, despite the fact that the existence of concurrent liability can cause serious problems in relation to the application of certain rules such as those concerning limitation of actions, remoteness of loss etc.

The layout of the book consists of eight essays covering a wide range of issues relevant to the law of obligations, including, in the concluding essay, a valuable insight into the work of the Law Commission in attempting to improve the law of contract and the law of tort.

Essay 1, entitled 'Dividing the Law of Obligations' is an updated version of an article first published in the *Law Quarterly Review*<sup>1</sup> which sought to defend

1. A Burrows 'Contract, Tort and Restitution – A Satisfactory Division or Not?' (1983) 99 *LQR* 217.

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