Research Handbook on Unjust Enrichment and Restitution. Edited by Elise Bant, Kit Barker and Simone Degeling. [Cheltenham, UK: Edward Elgar Publishing, 2020, x + 523 pp. Hardback £195.00. ISBN 978-1-78811-425-7.]

This is a superb volume which deserves a permanent place on the bookshelf alongside the existing unjust enrichment and restitution classics. True to its designation as a "research handbook", its particular strength lies not so much in providing an account of the law (for that, stick to *Goff & Jones*) but more in providing readers with a detailed, comprehensive and up-to-date account of relevant scholarship and debate. The contributions are consistently first-rate, there are no real gaps in the coverage, and the authors regularly cross-refer to each other's chapters, which helps to give the handbook a cohesive feel without detracting from the individuality of the chapters. The absence of a proper table of cases (cf. pp. 514–20) and legislation, or even a full bibliography, is disappointing but that is a small blemish given the quality of the overall output. This is sure to become a go-to source for many studying, teaching and researching these topics.

The handbook comprises 24 chapters split across six parts: History and Comparative Insights, Taxonomy, Philosophical Foundations, Analytical Structure, Defences and Remedies. The largest and most doctrinally focused part of the handbook is Analytical Structure, which is made up of seven contributions. The titles to four of these chapters suggest an orthodox schema that divides unjust factors or grounds for restitution into categories based on "impaired intention", "conditional intention", "no intention" and "other reasons for restitution". However, on reaching to the first of these, written by Mindy Chen-Wishart and Rory Gregson, the reader discovers that they in fact consider the orthodox approach of explaining misrepresentation, duress, undue influence and similar doctrines by reference to impaired intention to be "an oversimplification" (p. 314). They argue that the orthodox approach does not fit with the authorities and impaired intention is simply one of a number of concerns addressed by the law in these doctrines. It is all rather persuasive; the only gripe from this reviewer is that, having demolished the orthodox account, the authors spend relatively little time on explaining what should be built in its place.

Their excellent chapter is followed by contributions from Andrew (now Lord) Burrows and Michael Bryan who take the opposite approach. The former argues that failure of consideration claims are unified by the "underlying idea" of conditional intention (p. 346), and the latter argues that "title-based" claims (such as claims following tracing) also have as a "common denominator … that any intention to benefit the recipient is wholly absent" (p. 363). The use of intention to explain failure of consideration claims is more convincing than the title-based claims; indeed, despite the claims made in his introduction, Bryan's survey of commentary demonstrates the myriad of powerful objections to giving any explanatory power to intention (or its absence) for these claims. The quartet then finishes with Charles Mitchell on "other reasons for restitution", who begins with an insightful introduction on the extent to which his topic (and the law of unjust enrichment more broadly) can be regarded as a legal category, before then unpacking the rules for various claims such as overpaid taxes, emergencies and incapacity.

For this reviewer, the two highlights of this part of the handbook are the chapters from Birke Häcker and Stephen Watterson. Häcker returns to the "unjust factor" versus "absence of basis" debate. She is keen to emphasise that, in the majority of cases, the same result is reached; the real debate is over how best to tackle the difficult cases at the margins. Here, Häcker notes that the pressure placed on the unjust factor model in academic writings and the overpaid tax and swaps cases has been relieved by controlling unjust enrichment by reference to the prior question of when a defendant's

enrichment will be "at the expense of" the claimant. Häcker concludes that a mixed model, requiring "*both* a lack of explanatory legal basis for the defendant's enrichment *and* (where relevant) some impairment of the claimant's volition" (p. 311, emphasis in original), is best suited to the challenge. Watterson focuses on the "at the expense of" question itself, something on which he is a prominent authority with responsibility for the relevant chapters in *Goff & Jones*. Watterson avoids producing an extended case note on the Supreme Court's landmark decision in *Investment Trust Companies (in liquidation) v HMRC* [2017] UKSC 29, [2018] A.C. 275, and instead provides a masterful survey of the literature and the continuing points of controversy notwithstanding Lord Reed's judgment in *Investment Trust Companies*.

The three chapters on defences have been put into a separate part, but two (written by Graham Virgo and Ross Grantham) could just as easily have been incorporated into Analytical Structure (or in Virgo's case, Taxonomy), whereas the third (written by Thomas Krebs), which critiques the German law approach to disenrichment, would equally have been at home in Comparative Insights. Virgo's chapter ("A taxonomy of defences in restitution") is one of the best in the handbook, clarifying the differences between defences, denials and bars, and drawing out the key themes arising from defences (e.g. interpersonal v external justice, defences going to enrichment v defences going to unjust factors, and rules v discretion). The primary focus of Grantham's contribution is the change of position defence. He identifies "significant shortcomings" (p. 421) to explaining it by reference to disenrichment, preferring the wider notion of detriment adopted by the High Court of Australia in *Australian Financial Services and Leasing Pty Ltd. v Hills Industries Ltd.* [2014] HCA 14, (2014) C.L.R. 560, even with the attendant difficulties in quantifying such detriments. With a topic like change of position, there is always more that could be said. Nonetheless, it was perhaps surprising that Grantham took Aiken L.J.'s dictum in *Haugesund Kommune v Depfa ACS Bank* [2010] EWCA Civ 579, [2012] Q.B. 549, at [122], that change of position is a "general defence to all claims for restitution … based on unjust enrichment" at face value, given that (as Grantham himself acknowledges) the defence actually "has been applied almost exclusively to cases of mistaken payments" (p. 430). That results in the section on the scope of the change of position defence feeling a little thin.

Remedies are addressed in three chapters. There is a very good chapter from Katy Barnett on the remedial differences between restitution, compensation and disgorgement *in personam* remedies, including a detailed section on the vexed issue of (what she calls) user and negotiating damages. Albeit in the part on Taxonomy, Craig Rotherham's chapter on restitution for wrongs is also really about remedies, and he also considers similar issues at some length, including (what he calls) release fee awards. The controversies over proprietary restitution, one of the most difficult areas of the law, is addressed with accomplishment by Timothy Liau and Rachel Leow. As they point out, "proprietary restitution is only *sometimes* available. The challenge is to more clearly delineate those circumstances" (p. 480, emphasis in original). The authors survey the existing theories, and their associated difficulties, as well as the different types of proprietaries remedies (trusts, powers *in rem*, and security interests) arguably available in response to a claim in unjust enrichment.

Whereas the back of the half of the handbook, reviewed above, will be of interest to practitioners as well as academics, the front half of the handbook is likely to be of more interest to the latter than the former. After an introduction of the handbook by the editors, and historical and comparative introductions to the subject by David Ibbetson and James Gordley respectively (the latter of which is worth reading alongside Häcker's and Helen Scott's chapters, since the three cover similar ground), the focus is on Taxonomy and Philosophical Foundations.

In the latter part, the reader finds some of the leading figures in private law theory reprising familiar themes, albeit with new variations. So, for example, Ernest Weinrib's chapter considers at some length (pp. 177–84) recent scholarship emphasising the role of acceptance in explaining unjust enrichment liability by reference to Weinrib's account of corrective justice. Weinrib agrees, saying (on p. 177): "acceptance makes the unjustness of the defendant's retention of the benefit correlative to the unjustness of the plaintiff's gratuitous but non-donative transfer. Acceptance is thus a general structure feature of liability for unjust enrichment". Weinrib usefully considers what is meant by acceptance, when it arises, and neatly defuses some criticisms made of its increasingly prominent role in unjust enrichment. Similarly, Hanoch Dagan returns in his chapter to his relational justice theory, explaining how restitutionary claims contribute to the framework of rules governing interpersonal interaction in the interest of upholding "reciprocal respect to self-determination" (p. 223). As for Dennis Klimchuk's chapter, it is a good example of how well this collection fits together. His wider survey of the theoretical literature for liability in unjust enrichment not only provides some further context in which to understand the claims made by Weinrib and Dagan but also some of the counter-arguments to the lines taken in their respective chapters. Having all three chapters presented together in this way makes for an excellent read.

Taxonomy is never far away in unjust enrichment. In addition to Virgo's chapter, there are a number of other chapters in the second part of the handbook devoted to that subject, all of which are well worth reading. Andrew Kull tackles what is meant by restitution and "unjust enrichment" by setting out the entertaining story of why the American Law Institute's *Restatement* was called *Restatement of Restitution* rather than *Restatement of Unjust Enrichment*. The essential point is that what was meant by "restitution" before Peter Birks is not to be confused by what is now meant by "restitution". Lusina Ho considers the theoretical and doctrinal relationship between unjust enrichment and equity. She makes a plea for the distinctiveness of equitable claims from claims in unjust enrichment. Thus, for Ho, knowing receipt should not be re-characterised as a claim in unjust enrichment, but nor should the existence of knowing receipt necessarily exclude a parallel claim in unjust enrichment. Tang Hang Wu deals with the complicated relationship between claims in unjust enrichment and the existence of a contract between the parties. He dwells on the question of when a claim in restitution can be made if performance is rendered but a contract fails to materialise, proposing an open-textured framework for determining the issue in practice, but leaving the question of principle unanswered.

The editors and authors of this handbook are to be congratulated. As Justice Edelman rightly says in the foreword to the volume, it "is nothing less than a stunning achievement" (p. ix).

WILLIAM DAY
DOWNING COLLEGE

The Regulation of Consumer Credit: A Transatlantic Analysis. By SARAH BROWN. [Cheltenham, UK: Edward Elgar Publishing, 2019. viii + 256 pp. Hardback £80.00. ISBN 978-1-78471-248-8.]

When thinking about a comparison of consumer credit regulation, the UK and the US were not the first two countries that sprung to mind. Brown has however undertaken a convincing and interesting analysis in this original and high-quality