

CIVIL LAW FOR COMMON LAWYERS: A TEACHING EXPERIMENT AT THE UNIVERSITY OF MELBOURNE

**Paper read at the International Association of Law Schools Conference,
Learning from Each Other: Enriching the Law School Curriculum in an
Interrelated World, Soochow University, Kenneth Wang School of Law, Suzhou,
China, October 17-19, 2007**

by Daniel Visser, University of Cape Town

(DRAFT: Please do not quote without permission)

INTRODUCTION: THE COMPARATIVE LAW COURSE IN THE MELBOURNE JD PROGRAM

An invitation some five years ago to teach a comparative law course in the JD program at the University of Melbourne with a specific focus on the civil-law/common-law divide was for me the beginning of an exciting teaching experiment. Melbourne University was pioneering the concept of a post-graduate law degree in Australia¹ and they selected for it only high scholastic achievers with further work experience. The *Teacher's Guide* for the Melbourne JD Program spells out the criteria for selection as follows:

'The JD is open to admission to mature graduates who have a good degree in a discipline other than law and significant employment experience. The Selection Committee carefully considers all applications with consideration given both to prior academic qualifications and employment subsequent to graduation. With each intake limited to approximately 25 students, the rigorous selection process results in a highly motivated student body comprised of a diverse range of backgrounds and academic qualifications'.

This admission policy ensured that each cohort was an exceptionally talented and motivated group of students. This, coupled with the fact that the University took the step of making the Comparative Law course one of the compulsory courses in the

¹ In the *Teacher's Guide* to the Melbourne JD Program, the degree (or at least the version of the degree which obtained until this year) is summarized as follows: 'The Melbourne JD is a graduate qualification which has been approved by the Council for Legal Education as meeting the academic requirement for admission to legal practice in all Australian jurisdictions. It is taught at an academic level intermediate between a masters degree and a professional doctorate. By choosing the name "JD" the Law School follows a successful and established form of legal training available in the USA. The program has been introduced to meet the high demand for a sophisticated and intensive graduate legal qualification, from people who already have significant professional experience. It is likely therefore to be of interest to anyone whose career would be enhanced by a legal qualification or who is seeking a new career direction.' (It should be noted that the University of Melbourne is now, in a bold and imaginative move, phasing out all undergraduate legal training and in future only the post-graduate JD will be available at Melbourne. The curriculum of the new JD is different and the numbers in the classes will of necessity be far larger than in the current model. In the new curriculum Comparative Law will be an elective and it will, in the nature of things, not be possible to teach it as an elective any more. Therefore this course stands, therefore, as a completed experiment.)

curriculum, made it possible to design a high-level course that would stretch the students.² In order for me to come from Cape Town to do the course, it was designed as an ‘intensive’, which meant that the students would receive the readings at the beginning of the trimester³ and work through them in accordance with a reading guide; and then — midway through the trimester — I would come to teach for two weeks, during which time the whole timetable would be cleared and only Comparative Law taught each day. At the end of the teaching period the students wrote an essay and then had the rest of the trimester to prepare for the examination at the end. Lastly, a noteworthy aspect of the course was that it was placed in the second trimester of the first year of law studies.

In summary, then, the course can be described as follows: a compulsory comparative law course, taught as an intensive to a rigorously selected post-graduate class from diverse backgrounds and work experience in their first year of a primary law degree. I think that it is fair to say that this is an unusual profile for a comparative law course.

MY APPROACH TO COMPARATIVE LAW TEACHING

Teaching with a theoretical perspective

The first point that I would like to make in regard to the course is that I attempt, at beginning, to give the students a flavour of the ‘climate’ of comparative law and the various debates that are taking place between scholars, in order to lead them to developing, even if at a basic level, their own approach to comparative law

The study of comparative law of late happens against a background of contestation about what comparative research should do. The ‘difference theorists’⁴ pour scorn on those who seek to find common ground between the two legal families⁵ (and indeed they even reject the very notion of there being enough commonality between legal systems to divide them into families). They, for their part, seek to place difference at the centre of comparative work in law.⁶ They argue, to borrow Hyland’s description, that attempts at the harmonization of the law of Europe could be likened to ‘the extinction of animal and plant species that results from the destruction of natural habitat’.⁷ This is a powerful analogy, but we should not forget that legal systems are not species of animals: because they are part of the culture of the community that they serve, and because culture can be unlearned just as well and as quickly as it is learned, new and healthy diversities can (and inevitably will) be created after the learning involved in growing together has been exhausted. On the other

² After the first year of teaching the course, I solicited the help of my colleague at the University of Cape Town, Professor François du Bois, because traveling to Melbourne twice a year proved not be manageable—and together we built up the course and refined its materials over the last five years.

³ The JD Program is divided into trimesters without significant breaks in order to allow the program to be completed in two calendar years.

⁴ Pierre Legrand “Against a European Civil Code” (1997) 60 *Modern LR* 44 at 55 .

⁵ See, for instance, Pierre Legrand’s ‘The Same and the Different’, in Pierre Legrand & Roderick Munday, *Comparative Legal Studies: Traditions and Transitions* (2003), 240, 249 *in fine*, 250) reference to “the control desks in Hamburg, Trento, Osnabrück, Maastricht, Rome, Utrecht and Copenhagen” [whence] ... the self-appointed spokesmen of reason ... wage an unceasing campaign to smother difference ...”.

⁶ See Richard Hyland, ‘Comparative Law’, in Dennis Patterson (ed.) *Blackwell’s Companion to Law and Legal Theory* (1997), 193.

⁷ The quote is from Hyland note 6 above, at 195.

hand, it cannot be denied that those who seek to harmonize European law sometimes do minimize the influence of the ‘unarticulated, taken-for-granted assumptions [that] underlie the law’⁸ in different systems.⁹

In the course my approach is (as indeed it is in my general approach to comparative law) that it is important to take difference seriously—even if one is ultimately interested (as I am) in finding common ground: Even though case law plays an increasing—and an increasingly acknowledged—role in civilian systems; and even though we know that judges in, say, England and France do not work quite as differently as the stereotypes would have us believe,¹⁰ much of the thinking which underlies the common law remains far removed from that in codified systems. So, I try to show the students that when Pierre Legrand states that ‘the elimination of difference in the law narrows the possibilities for creativity and experimentation and may be compared to the extinction of animal and plant species that results from the destruction of natural habitat’,¹¹ he does have a point. And I teach them that it is useful to keep in mind the lesson that the experience in private international law has taught us about various levels of difference. In this context I highlight Kurt Lipstein’s¹² distinction between instances where legal institutions or rules in different systems are (i) identical in form, but different in substance, (ii) identical in substance, but different in form, (iii) partly identical in form and substance, and (iv) existent in both form and substance in one system, but completely absent in another. And to this one might add that institutions are sometimes identical or similar in form and/or substance, but are simply differently conceived at a conceptual level and thus explained in different dogmatic terms.)

But I also teach them about the value of seeking out similarity and harmony even where it seems difficult or impossible to achieve. I teach them of the importance of the attempts aimed at the harmonization or unification of European law¹³ (eg Reinhard Zimmermann’s various interventions on behalf of re-establishing a European legal science,¹⁴ Ugo Mattei’s ‘common core’ project,¹⁵ Hein Kötz and Axel Flessner’s as well as Christian von Bar’s books on ‘European private law’ textbooks¹⁶ and Ole Lando’s restatement of European contract law).¹⁷ I teach them that far from

⁸ James Q Whitman ‘The Neo-Romantic Turn’ in Pierre Legrand & Roderick Munday (eds.), *Comparative Legal Studies: Traditions and Transitions* (2003), 312, 336; and see also 315 and 327.

⁹ It should also be noted, however, that the reductionist assumption that all those that work in, broadly speaking, the functionalist tradition are obsessed with similarity is misplaced. See generally Michele Graziadei, ‘The Functionalist Heritage’, in Pierre Legrand and Roderick Munday (eds.), *Comparative Legal Studies: Traditions and Transitions* (2003), 101 and 108 ff.

¹⁰ See Mitchel de S.-O.-l’E. Lasser, ‘Judicial (Self-)Portraits: Judicial Discourse in the French Legal System’, (1995) 104 *The Yale LJ* 1325.

¹¹ The quote is from Hyland, note 6 above, at 195.

¹² Chapter 5, ‘Characterization’, in the *International Encyclopaedia of Comparative Law* vol. III (1999), 9-21 (5-24 to 5-49).

¹³ For an overview, see Kenneth Reid & Reinard Zimmermann ‘The Development of Legal Doctrine in a Mixed Legal System’ in Kenneth Reid & Reinhard Zimmermann *A History of Private Law in Scotland; vol I: Introduction and Property* (2000)1-3.

¹⁴ See, for instance, Reinhard Zimmermann ‘Savigny’s Legacy: Legal History, Comparative Law, and the Emergence of European Legal Science’ (1996) *LQR* 576 at 579, *passim*.

¹⁵ See Mauro Bussani & Ugo Mattei ‘The Common Core Approach to European Private Law’ (1997-1998) 3 *Columbia Journal of European Law* 339; and see also, for a practical implementation of the theory, Reinhard Zimmermann & Simon Whittaker (eds) *Good Faith in European Contract Law* (2000) and James R Gordley (ed) *The Enforceability of Promises* (2001).

¹⁶ Hein Kötz & Axel Flessner *European Contract Law; vol I* (1997), translated by Tony Weir; Christian von Bar *The Common European Law of Torts* vol I (1998) and vol II (2000).

¹⁷ Ole Lando & Hugh Beale (eds) *Principles of European Contract Law* (1999).

‘suppressing the flowering of different and productive ideas’ as Legrand would have us believe,¹⁸ these are heroic attempts at creating one ‘text’ out of many — and that they might themselves turn out to be as important for our millennium as Justinian’s 6th-century project was for the previous one.

After introducing the students to the various debates in connection with comparative law, I ask them (a) to consider how they might use comparative law (for example, to understand their own law better, to be able to find imaginative arguments to win cases, to be able to function more effectively in an environment of cross-border lawyering, or to take part in law-reform programs), and (b) to formulate their own approach (however tentative this might be) of how they think the task of comparing laws, given the purpose for which it is being used, should be approached. I find that this gives the students a focused approach towards the teaching materials, because they have a vantage point from which to evaluate them.

Teaching with primary materials

The value of utilizing primary materials to a significant degree in law teaching is widely accepted, but when teaching a course in comparative law this poses a particular challenge: not only must cases be found that are *in pari materia*, but they must also be translated (or existing translations have to be found). In this regard I have found particularly helpful works such as those in the *Common Law of Europe Casebooks* series (eg Walter van Gerven, Jeremy Lever & Pierre Larouche *Tort Law* (2000) and Jack Beatson & Eltjo Schrage *Unjustified Enrichment* (2003)) as well as books such as Basil Markesinis’s *The German Law of Obligations vol II The Law of Torts, A Comparative Introduction* (3rd ed) (1997). The importance of these works are of course that not only have the cases in them been selected by country experts, but they are translated.

* I will illustrate the selection of teaching materials at the hand of the English case *Ruxley Electronics and Construction Ltd v Forsyth* [1996] 1 AC 344 (HL) and the French case Cass. Civ. 17. 11. 1984.

Teaching broader differences, teaching detail differences

After the initial discussion on the aims and methods of comparative law, the course introduces the differences between the common law and the civil law at two different levels.

First, under the rubric of ‘The soul of a legal system: what makes the common law different from the civil law’ the students are introduced to the ‘operational reality’ of the different legal systems. The way in which ‘the law-job is done’ in France and Germany on the one hand, and in England and Australia on the other, is analysed (including the differences between the those systems that fall within the same ‘family’). We look at the form of judgments, at the way that courts function, at legal education, at the role of academic scholarship—and try to separate reality from myth to arrive at an understanding of all the factors that give each system its distinctive

¹⁸ See generally Legrand, note 4 above, at 249 *in fine* – 250, where he refers to ‘the control desks in Hamburg, Trento, Osnabrück, Maastricht, Rome, Utrecht and Copenhagen’ [whence] ... the self-appointed spokesmen of reason ... wage an unceasing campaign to smother difference ...’.

shape, and to establish whether there really is an ‘immutable core’, an ‘irreducible element of autochthony’ in each of these legal systems, as Legrand would have it.¹⁹

Secondly, there follows a series of specific issues in the law of obligations, through which the detail substantive differences between the systems are illustrated — and through which the general differences taught in the first part are reinforced.

* I will illustrate the work done in this part of the course by highlighting the most important readings from the curriculum attached as Annexure A.

Teaching students to be critical

In my view the clearest benefit of this course to the students was that it gave them, early in their legal studies, a true understanding of the fact that for almost every principle that a legal system accepts, there is a counter-principle tugging at the collective consciousness of that system for recognition and that, therefore, the solutions provided by one’s own legal system can almost always be differently configured. The fact that they acquired this information in an intensive teaching stint (two weeks in which comparative law is taught to them every day, all day) gave their studies what can be described a ‘turbo-boost’ by creating for them the means with which to contextualize the work that they were doing in other courses and as well as their overall knowledge of law and its role in society.

CONCLUSION

Teaching this course showed me how much can be achieved in ideal conditions. In my own teaching of comparative law this course will always for me be the benchmark, and I am profoundly grateful for having been given the opportunity to teach this course.

¹⁹ Pierre Legrand ‘Comparative Legal Studies and a Commitment to Theory’ (1995) 58 Modern LR 262 at 271.

ANNEXURE A: THE CURRICULUM OF THE COURSE

(Copyright: Daniel Visser, François du Bois, and the University of Melbourne.)

COMPARATIVE LAW

1. INTRODUCTION: WHY DO WE STUDY LAW COMPARATIVELY?

Richard Hyland ‘Comparative law’ in Patterson (ed) <i>Blackwell’s Companion to Law and Legal Theory</i> (1997).....	1
Hugh Collins ‘Method and aims of comparative law’ (1991) <i>Oxford Jnl of Legal Studies</i> 396.....	9
Pierre Legrand ‘Comparative legal studies and commitment to theory’ (1995) 58 <i>Modern Law Review</i> 262	15
Pierre Legrand ‘Comparing legal cultures’ (book review) (1997) 56 <i>Cambridge LJ</i> 646-9.....	21
Pierre Legrand ‘Comparative law and economics’ (book review) (1997) 56 <i>Cambridge LJ</i> 638-40.....	23
Alan Watson <i>Legal Transplants and European Private Law</i> [Ius commune lectures on European Private Law, no 2] 2000.....	25
Michele Graziadei 'The functionalist heritage' in Pierre Legrand and Roderick Munday (eds) <i>Comparative legal studie : Traditions and Transitions Cambridge University Press</i> (2003) 100 – 127.....	34

2. THE SOUL OF A LEGAL SYSTEM: WHAT MAKES COMMON LAW DIFFERENT FROM CIVIL LAW?

Konrad Zweigert & Hein Kötz <i>Introduction to Comparative Law</i> (3 rd rev ed) (translated by Tony Weir) 132-235.....	48
William Tetley ‘Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified) (2000) 60 <i>Louisiana Law Review</i> 677, 701-707.....	61
Hein Kötz ‘The role of the judge in the court-room: the common law and civil law compared’ (1987) <i>Journal of South African Law/TSAR</i> 35.....	65
Basil Markesinis ‘Reading through a Foreign Judgment’ in P. Cane & J. Stapleton (eds) <i>The Law of Obligations. Essays in Celebration of John Fleming</i> (1998) 261	70
Reinhard Zimmermann and Nils Jansen ‘Quita Movere: Interpretative change in a Codified System’ in P. Cane & J. Stapleton (eds) <i>The Law of Obligations. Essays in Celebration of John Fleming</i> (1998) 285	82
Mitchel de S-O-l’E Lasser ‘Judicial (self-)portraits: Judicial discourse in the French legal system’ (1995) 104 <i>Yale LJ</i> 1325	98
John Bell ‘English law and French law – Not so different?’ (1995) <i>Current Legal Problems</i> 63.....	142
Cass. Civ. 1. 12. 1969.....	162
Cass. Civ. 12. 2. 1975.....	163
Smith & Bailey <i>The Modern English Legal System</i> (1996)	164
Dadomo & Farran <i>The French Legal System</i> – selected pages	175
T. G. Watkin <i>An Historical Introduction to Modern Civil Law</i> 130-49.....	185
J. Bell et al <i>Principles of French Law</i> 22-5.....	197
W. F. Ebke & M. W. Finkin <i>Introduction to German Law</i> Chapter 1	205

3. TWO VIEWS OF THE CATHEDRAL: THE LAW OF TORTS VS THE LAW OF DELICT

Walter van Gerven, Jeremy Lever & Pierre Larouche <i>Tort Law</i> (Common Law of Europe Casebooks) (2000) 44-74	226
Ulrich Magnus, 'Towards European Civil Liability' in Michael Faure, Jan Smits & Hildegard Schneider (eds) <i>Towards a European Ius Commune in Legal Education and Research</i> (2002) 205 at 214-224.....	243
B S Markesinis <i>The German Law of Obligations vol II The Law of Torts, A Comparative Introduction</i> (3 rd ed.) (1997) 68-75.....	249
P. Catala & T. Weir 'Delict and tort: A study in parallel' 1963 <i>Tulane Law Review</i> 617-20.....	253
B. Markesinis 'Negligence, nuisance and affirmative duties of action' 1989 <i>LQR</i> 117	256
Lawson & Markesinis <i>Tortious Liability for Unintentional Harm in the Common Law and the Civil Law</i> Vol 1	257
Lord Cullen 'From the celebrated snail to the good Samaritan' August 2003 <i>Advocate</i> 40	262
<i>Smith v Littlewoods</i> [1987] 1 AC 270-1, 280-1.....	269
<i>Crossley v Rawlinson</i> [1981] 3 All ER 674.....	271
<i>Harrison v BRB</i> [1981] 3 All ER 679	273
Cass. Civ 27. 2. 1951.....	278
Conseil d'Etat 14. 1. 1938.....	280
Walter van Gerven, Jeremy Lever & Pierre Larouche <i>Tort Law</i> (Common Law of Europe Casebooks) (2000) 358-394	281
Basil S. Markesinis <i>Tortious Liability of Statutory Bodies: A Comparative and Economic Analysis of Five English Cases</i> (1999) 13-27, 51-71	301
N. Brown & J Bell <i>French Administrative Law</i> (1993) (4 th ed) 41-47 & 86-113	320
Tony Weir, 'Down hill – all the way?' [1999] <i>Cambridge Law Journal</i> 4-7	338
Jane Wright <i>Tort Law and Human Rights</i> (2001)113-141	340
Conor Gearty, 'Osman unravels' (2002) 65 <i>Modern Law Review</i> 87-95.....	350
<i>Minister of Safety and Security v Carmichele</i> (SCA) unreported decision of the South African Supreme Court of Appeal 14 November 2003 (Case No 533/02) paras [1]-[3], [29]-[56] & [69]-[73]	355
<i>Sullivan v Moody</i> [2001] 207 CLR 562 (HCA).....	365

4. COMMON GROUND: THE CONSTITUTIONALIZATION OF PRIVATE LAW, DEFAMATION, PRIVACY, AND FREEDOM OF SPEECH

Aharon Barak 'Constitutional Human Rights and Private Law' in Daniel Friedamn & Daphen Barak-Erez <i>Human Rights in Private Law</i> (2001) 13-42	380
Christian Starck 'Human Rights and Private Law in German Constitutional Development and in the Jurisdiction of the Federal Constitutional Court' in Daniel Friedamn & Daphen Barak-Erez <i>Human Rights in Private Law</i> (2001) 97 – 111	396
Basil Markesinis, 'Privacy, freedom of expression and the horizontal effect of the Human Rights Bill' (1999) 115 <i>Law Quarterly Review</i> 47 – 88.....	404
John Fleming, 'Libel and constitutional free speech' in Peter Cane & Jane Stapleton (eds) <i>Essays for Patrick Atiyah</i> (1991).....	426
Christian von Bar <i>The Common European Law of Torts</i> vol 2 (2000) 106 – 119 (paras 93 – 104).....	435

Walter van Gerven, Jeremy Lever & Pierre Larouche <i>Tort Law</i> (Common Law of Europe Casebooks) (2000) 154 -159	443
Richard Mullender 'Tort, Human Rights, and Common Law Culture' (2003) 23 <i>Oxford Journal of Legal Studies</i> 301 – 318.....	447
Gavin Phillipson 'Transforming Breach of Confidence? Towards a Common Law of Privacy under the Human Rights Act' (2003) <i>Modern Law Review</i> 726 – 758	465
<i>Campbell v MGN Ltd</i> [2004] UKHL 22.....	482
<i>Hill v Church of Scientology of Toronto</i> [1995] 2 SCR 1130, 1158-1172, 1213-1215.....	529
<i>Reynolds v Times Newspapers Ltd</i> [1999] UKHL 45.....	539
<i>Khumalo v Holomisa</i> 2002 (5) SA 401 (CC)	590
<i>Lange v ABC</i> [1997] 189 CLR 520	603

5. EXPLORING FUNDAMENTAL DIFFERENCES BETWEEN THE COMMON LAW AND CIVILIAN SYSTEMS OF CONTRACT

Donald Harris & Denis Tallon, <i>Contract Law Today: Anglo-French Comparisons</i> (1989) 385-395	622
James Gordley (ed) <i>The Enforceability of Promises in European Contract Law</i> 371-391.....	629
Barry Nicholas <i>The French Law of Contract</i> (1992) (2 nd ed) 119-149	641
B. S. Markesinis, W Lorenz & G Dannemann, <i>The German Law of Obligations, Vol I: The Law of Contracts and Restitution: A Comparative Introduction</i> (1997) 78-83.....	658
Dale Hutchison 'Contract Formation' in Reinhard Zimmermann and Daniel Visser, <i>Southern Cross: Civil Law and Common Law in South Africa</i> (1996) 165-173	661
<i>Australian Woollen Mills Pty Ltd v Commonwealth</i> (1954) 92 CLR 424.....	666
B. S. Markesinis, W Lorenz & G Dannemann, <i>The German Law of Obligations, Vol I: The Law of Contracts and Restitution: A Comparative Introduction</i> (1997) 510-516.....	682
Mathias Habersack and Reinhard Zimmermann 'Legal Change in a Codified System: Recent Developments in German Suretyship Law' (1999) 3 <i>Edinburgh Law Review</i> 272.....	687
Hugh Beale, , Arthur Hartkamp, Hein Kötz & Denis Tallon <i>Contract Law</i> (Common Law of Europe Casebooks) (2001) 430-433 & 455-513.....	698
<i>Royal Bank of Scotland v Etridge</i> [2001] 4 All ER 449 (speech of Lord Bingham).....	729
<i>Commercial Bank of Australia v Amadio</i> [1982-1983] 151 CLR 447 (HCA)	743
<i>Brisley v Drotsky</i> (SCA) South African Supreme Court of Appeal Case No 432/2000, 28 March 2002.....	766
Bundesgerichtshof (Ninth Civil Senate) 24 February 1994, NJW 1994, 1341	770

6. EXPLORING FUNDAMENTAL DIFFERENCES BETWEEN THE COMMON LAW AND CIVILIAN SYSTEMS OF CONTRACT

G. Treitel <i>The Law of Contract</i> , Chapter III, 'Enforced Performance' 43-63.....	776
Daniel Friedmann 'Good Faith and Remedies for Breach of Contract' in Jack Beatson and Daniel Friedmann (eds) <i>Good Faith and Fault in Contract Law</i> (1995) 399-409 & 424-425.....	787
<i>Dougan v Ley</i> (1946) 71 CLR 142	795
<i>Highland and Universal Properties Ltd v Safeway Properties Ltd</i> 2000 SC 297	802
<i>Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd</i> [1998] AC 1.....	814
Henrik Lando 'The myth of specific performance in civil law countries' (2004) American Law & Economics Association Annual Meetings (paper 15)	824

Peter Rott 'German sales law two years after the implementation of Directive 1999/44/EC' (2004) 5 German Law Journal (No. 3, 1 March 2004).....	849
Hans Schulte-Noelke 'The new German law of obligations: An introduction http://www.iuscomp.org/gla/literature/literature.htm	872
<i>Ruxley Electronics and Construction Ltd v Forsyth</i> [1996] 1 AC 344 (HL).....	879
Janet O' Sullivan, 'Loss and gain at greater depth: The implications of the <i>Ruxley</i> decision', Chapter 1, in Francis D Rose (ed) <i>Failure of contracts: Contractual, restitutionary and proprietary consequences</i> 1-25	895
Cass. Civ. 17. 11. 1984.....	901

7. THE LAST FRONTIER: UNJUST ENRICHMENT IN THE COMMON LAW AND THE CIVIL LAW

Jack Beatson & Eltjo Schrage <i>Unjustified Enrichment</i> (Casebooks on the Common Law of Europe) (2003) 1-57	909
Daniel Visser 'Unjustified Enrichment' <i>Elgar Encyclopedia of Comparative Law</i> (2006) 767-82.....	929
Paul Finn <i>Equitable Doctrine and Discretion in Remedies</i> in W R Cornish et al (eds) <i>Restitution: Past, Present & Future</i> (1998) 251-74	945
Michael Bryan <i>Unjust Enrichment & Unconscionability in Australia: A False Dichotomy?</i> in Jason W Neyers, Mitchell McInnes & Stephen G A Pitel <i>Understanding Unjust Enrichment</i> (2004) 47-78.....	958
<i>David Securities Pty Ltd v Commonwealth Bank of Australia</i> (1992) 175 CLR 353.....	975
<i>Roxborough v Rothmans of Pall Mall (Australia)</i> (2002) 76 ALJR 203 (HCA).....	1003