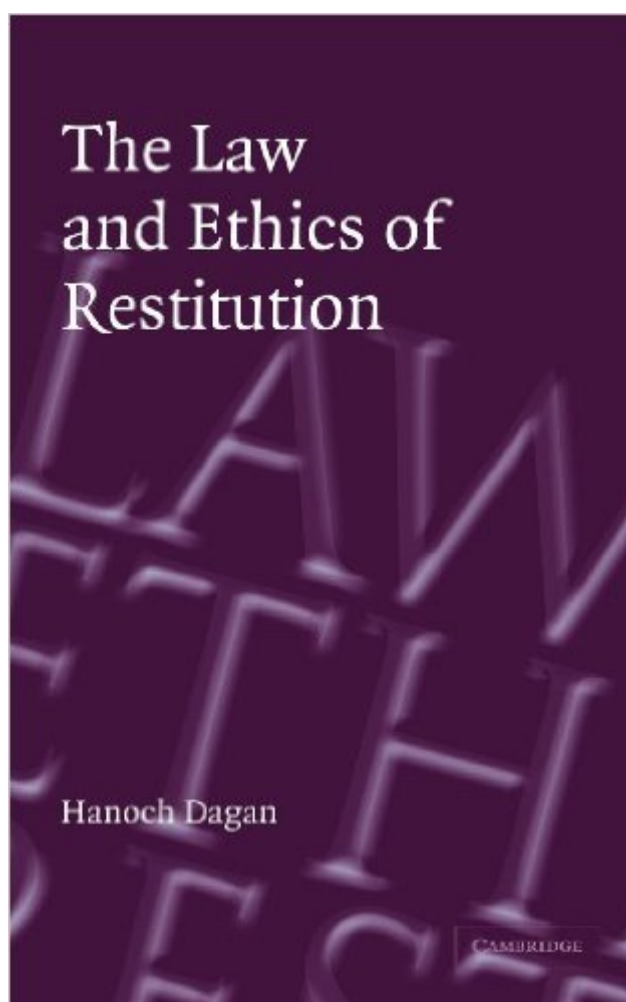


The book was found

The Law And Ethics Of Restitution



Synopsis

Dagan's book provides a dynamic and much needed account of the American law of restitution. The book reviews the existing doctrine, including the forthcoming (third) Restatement, using an ethical perspective to expose and examine critically the normative underpinnings of the core categories of restitution. Dagan also discusses some of the most controversial issues in the area, such as cohabitation, improper tax payments, and the role of constructive trusts as trumps in bankruptcy. He further tackles the recent restitution claims of slave laborers (or their descendants) against corporations that benefited from their enslavements, and of governmental bodies against injurious industries. Dagan argues that the concept of unjust enrichment is not an independent reason for restitution but, rather, serves as a loose framework, structuring the contextual application of commitments to autonomy, utility, and community in situations where either the cause of action or the measure of recovery is benefit-based. By integrating doctrinal and ethical analyses of restitution across the spectrum of restitution contexts, the author offers significant and provocative insights on existing law as well as possible reforms.

Book Information

Hardcover: 398 pages

Publisher: Cambridge University Press (September 13, 2004)

Language: English

ISBN-10: 0521829046

ISBN-13: 978-0521829045

Product Dimensions: 6 x 0.9 x 9 inches

Shipping Weight: 1.5 pounds (View shipping rates and policies)

Average Customer Review: 5.0 out of 5 stars [See all reviews](#) (1 customer review)

Best Sellers Rank: #1,961,299 in Books (See Top 100 in Books) #346 in [Books > Law > Legal Theory & Systems > Comparative](#) #652 in [Books > Law > Business > Contracts](#) #793 in [Books > Law > Constitutional Law > Civil Rights](#)

Customer Reviews

I highly recommend this little book of the least understood subject amongst American lawyers. Lawyers are enculturated to cite precedent for establishing arguments for their clients. Lawyers essentially commit the logical fallacy of "arguing from authority" which is denominated by the innocuous term "stare decisis." Essentially, lawyers cite cases or precedent to show that an appellate court ruled in such and such a way on a similar fact pattern and should, for purposes of

consistency, established judge made public policy and constitutional equal protection rule the same way for his client's case. Thus, although lawyers argue by analogy, they ultimately rely on arguing from authority: arguing that their client's case is, for the most part, or with regard to relevant points, is the mirror image of a case that involved a ruling that favors their client. However, restitution is fundamentally "doctrinal," not precedential. As in equity, you don't cite cases for precedent or for authority. Instead, if you cite cases at all, you cite them for useful clarifications of doctrine. Indeed, as in conflict of laws, you cite quite a bit of legal scholarship. The author should have made it clear that "unjust enrichment" and "restitution" are synonyms. Moreover, he failed to distinguish "remedies" from the "substantive." Substantive means establishing that somebody was enriched, and that that enrichment was unjust. The latter predicate is essential without which your client has no case. The remedial element reduces to two: constructive trust (for equitable remedies) or quasi-contract (for "money" or legal remedies). The book also seems shallow with respect to its understanding of the moral foundation for restitution.

[Download to continue reading...](#)

The Law and Ethics of Restitution Dobbs' Law of Remedies: Damages - Equity - Restitution (Hornbook Series) The Principles of the Law of Restitution Natural and Divine Law: Reclaiming the Tradition for Christian Ethics (Saint Paul University Series in Ethics) Business Ethics in Jewish Law: With a Concluding Section on Jewish Business Ethics in Contemporary Society Cases and Materials on Equitable Remedies, Restitution And Damages, 7th Edition (American Casebook Series) Restitution: Civil Liability for Unjust Enrichment RESTITUTION DE LA PROPRIÉTÉ PENDANT LA PÉRIODE DE TRANSITION (French Edition) Biomedical Ethics for Engineers: Ethics and Decision Making in Biomedical and Biosystem Engineering (Biomedical Engineering Series) University Ethics: How Colleges Can Build and Benefit from a Culture of Ethics Case Studies In Nursing Ethics (Fry, Case Studies in Nursing Ethics) Concise Guide To Paralegal Ethics, (with Aspen Video Series: Lessons in Ethics), Fourth Edition (Aspen College Series) Geriatrics and the Law: Understanding Patient Rights and Professional Responsibilities, Third Edition (Springer Series on Ethics, Law and Aging) Augmented Reality Law, Privacy, and Ethics: Law, Society, and Emerging AR Technologies Rediscovering the Natural Law in Reformed Theological Ethics (Emory University Studies in Law and Religion) Sacred Calling, Secular Accountability: Law and Ethics in Complementary and Spiritual Counseling Business Law: Legal Environment, Online Commerce, Business Ethics, and International Issues, Student Value Edition, (9th Edition) Patients with Passports: Medical Tourism, Law, and Ethics Health Care Law and Ethics (Aspen Casebooks) Bioethics: Methods, Theories, Domains (Biomedical Law and Ethics Library)

