Equitable Recipient Liability

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Determining the equitable personal liability of a recipient of property misappropriated in breach of trust or fiduciary duty raises difficult questions of principle and policy. This area of law involves the intersection of such fundamental legal concepts as proprietary obligation and personal obligation, volunteer and purchaser, strict liability and fault-based liability, common law and equity. It raises policy concerns about the stifling of commercial dealings, whether regulation should occur through statute and/or the common law, and as to the nature of permissible judicial reasoning and the use of discretion to determine remedy.

Unsurprisingly then, framing equitable recipient liability has proved controversial. Not only do eminent scholars and judges disagree as to the proper basis of liability, but the law is developing differently across the common law world. The most notable divergence so far is apparent in Australia, although the Hong Kong Court of Final Appeal also appears to take a different approach and there is some equivocation in England and Wales.

This paper describes and evaluates the differences in recipient liability across common law jurisdictions. It seeks to identify factors which have influenced the development and application of the relevant legal principles. It then asks whether, in light of these factors, it is necessary, desirable, or even possible, to have a ‘common’ law of equitable recipient liability. The paper focuses on the law in Australia, England and Wales, Singapore and Hong Kong.