

Swaps, restitution and trusts

(published by Sweet & Maxwell in 1999)

Alastair Hudson

*This book was based on my book *The Law on Financial Derivatives* and my doctoral research: it deals with the impact of the local authority swaps cases on derivatives market practice. The published version suffered from a very young editorial assistant working on her first book failing to transfer my hand-written changes from the proofs to the published version of the book. This was a great shame given the detailed, technical nature of the book and a great lesson. On this web page I have reproduced my original computer files for the abstract, preface, the opening portion of the Introduction and the contents for this book which gives an idea of the thesis of the work.*

Abstract

The book analyses the case of *Westdeutsche Landesbank v. Islington L.B.C.* and its ramifications for the swaps markets. In particular the book advances the thesis that claims in relation to restitution of money arising in relation to financial transactions ought to be founded on a notion of suitability. Further, the book highlights three key issues arising from the *Islington* litigation. First, that the courts failed to take into account the nature of swaps and their necessary allocation of risks between counterparties. Second, the problems created for the law of restitution by English law's conception of money as tangible property rather than as intangible choses in action held in electronic accounts. Third, the problem of taking security in financial transactions as a result of the decision of the House of Lords and by using standard market contracts as currently constituted. The underlying theme of the book is the conflict between the attitudes of traditional trusts lawyers and the proponents of the emerging principle of restitution of unjust enrichment. The book sets out new models for problems of equitable proprietary claims and unjust enrichment claims based on suitability for future cases, based on existing caselaw and by employing other techniques such as common intention constructive trusts, the doctrine of severance and the doctrine of undue influence.

Preface

The author has worked in the derivatives markets as legal counsel and as a finance professional, retaining a particular interest in the law of restitution. In that time the author developed the view that existing private law rules relating to financial transactions did

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