RESULTING TRUSTS, Robert Chambers (Oxford: Clarendon Press, 1997)

> 'The law with regard to resulting trusts is not in doubt.' This is commonly said of the resulting trust and may explain why it has received so little attention in recent years, especially in comparison with the constructive trust. Most of the current academic writing about the resulting trust is found in the established textbooks on equity and trusts and these tend to provide little more than catalogues of the situations in which the resulting trust arises. However, these externalities mask a widespread uncertainty about the true nature of the resulting trust. There is no consensus on the principle by which the resulting trust operates, including the fundamental question whether it arises by operation of law or depends upon the presumed intention to create a trust. This uncertainty interacts with another. Although it is widely believed that equity's weapon against unjust enrichment is the constructive trust, it is not clear why this work is not at least in part ascribed to the resulting trust. This book examines the true nature of the resulting trust and the question whether the trusts brought into being to reverse unjust enrichment should not include resulting trusts. It then considers whether the resulting trust, when properly understood, might not be equity's contribution to reversing unjust enrichment.[1]

This, the first paragraph of Robert Chambers' excellent book on resulting trusts, says it all. Most importantly, it says in plain language why anyone involved in the fields of equity, trusts or restitution should purchase this book. Little attention has been focused on the resulting trust as it has been assumed to be static and very restrictive in scope and use. Until the inaccuracy of that assumption is accepted and attention is focused upon the principles underlying the resulting trust, the resulting trust cannot hope to be made a more useful tool. The book then goes on to do precisely that — focus our attention, create a theoretical framework for understanding the resulting trust in the context of the law of restitution and suggest how and why it might be considerably more useful in practice.

At the outset, Chambers rejects the standard principles said to explain the resulting trust, namely, that it arises either by operation of law or upon the presumed intention of the creator of the trust:

> The distinction between presumed and automatic resulting trusts is explored and ultimately rejected in this book. One of the conclusions reached here is that all resulting trusts operate on precisely the same principle regardless of the situations in which they arise. They do not depend on an implied intention to create a trust, but neither do they arise completely independently of intention. All resulting trusts come into being because the provider of property did not intend to benefit the recipient. Another conclusion of this book is that the resulting trust is not limited to the two situations described above, but may be possible whenever the recipient of property was not intended to take it beneficially.[2]

Part I of the book, — chapters 1, 2 and 3 — is devoted to an examination of the standard situations in which resulting trusts have been held to arise. Thus, chapter one deals with apparent gifts, chapter 2 with trusts which fail and chapter three with *Quistclose* trusts. These chapters provide an excellent summary of the existing law in

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1 R. Chambers, *Resulting Trusts*, (Oxford: Clarendon Press, 1997) at 1.

2 *Supra* note 1 at 2.

a way which is useful not only to English students, practitioners and academics, but also to those in Canada and Australia. In fact, it is the comparative nature of the discussion and coverage of the cases which is particularly enlightening. They also serve as the basis for his conclusion that resulting trusts operate on the same principle regardless of the situation. He maintains that resulting trusts will be found in situations where there has been a transfer of property in circumstances in which the provider of that property did not intend to benefit the recipient. Thus, resulting trusts should be seen as effecting restitution to the provider of what would otherwise be an unjust enrichment of the recipient.

After concluding in part I that all resulting trusts operate on the restitutionary principle of reversing unjust enrichment, part II of the book explores the interplay between the resulting trust and the law of restitution. In chapter 4 restitution is examined and chapters 5 through 9 consider the place of the resulting trust in the law of restitution — Vitiated Intention, Qualified Intention, Mere Equities, First-Measure Liability and Fiduciary Obligations. The book concludes by considering three aspects of the law of trusts and the law of restitution that are affected by adopting these conclusions: the classification of trusts, proprietary restitution and defences as to restitutionary claims.

Why should you read Chambers' book on Resulting Trusts? It provides clarity and insight into the way forward. Practitioners, academics and the bench should have a more consistent and logical understanding of the resulting trust. Its application should become more consistent and it may be used more frequently outside the standard categories.

Chambers offers not only a better but a different understanding of the resulting trust. He says that the recognition of the resulting trust's wider role is likely to lead or contribute to refinement of certain rules, such as the concept of a mere equity, the "mistake of law" bar, the requirement of total failure of consideration, the first measure liability and fiduciary duties of resulting trustees. The resulting trust can be seen as a series of possible responses to unjust enrichment and thus, the major contribution of the book is not that it provides an intellectual understanding and rationalization for the resulting trust within the field of trusts, but rather its relationship to the law of restitution. (In this, he builds on the work of Professor Peter Birks of Oxford University in the field of restitution.)

Does this book address issues of relevance to Canadian readers? Absolutely. Trusts are a very valuable tool within Canadian law. The resulting trust has been regarded historically as static while the constructive trust, on the other hand, has enjoyed massive growth and significance. If we move forward in the ways urged by Chambers, we will enjoy a much better understanding of not only the resulting and constructive trusts, but also of their relationships to restitution. This will in turn lead to a much sounder and fuller utilization of all three. In the concluding words of the author:

> With most of the picture now revealed, a more fundamental change is possible. It should no longer be necessary or acceptable to declare a trust because it would be inequitable or unconscionable for the

trustee to retain the property in question. These are conclusions that a trust exists or should exist, but without revealing why. The owner's conscience can only be affected if the claimant is entitled to some interest in that property. That interest is almost certainly a trust and we are left guessing what events have given rise to it. The tools now exist to identify those events. The courts can and must say whether the trust is perfecting a relied-upon expectation (for example), effecting restitution of unjust enrichment, responding to a wrong (and it is no good saying that it is wrong to keep the property), or responding to some other event.[3]

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[3] *Supra* note 1 at 244.