

Divergences in Private Law

Edited by
Andrew Robertson
and Michael Tilbury

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This book is a study of doctrinal and methodological divergence in the common law of obligations. It explores particular departures from the common law mainstream and the causes and effects of those departures. Some divergences can be justified on the basis of a need to adapt the common law of contract, torts, equity and restitution to local circumstances, or to bring them into conformity with local values. More commonly, however, doctrinal or methodological divergence simply reflects different approaches to common problems, or different views as to what justice or policy requires in particular circumstances. In some instances divergent methodologies lead to substantially the same results, while in others particular causes of action, defences, immunities or remedies recognised in one jurisdiction but not another undoubtedly produce different outcomes. Such cases raise interesting questions as to whether ultimate appellate courts should be slow to abandon principles that remain well accepted throughout the common law world, or cautious about taking a uniquely divergent path.

The chapters in this book were originally presented at the Seventh Biennial Conference on the Law of Obligations held in Hong Kong in July 2014. Another collection, entitled *The Common Law of Obligations: Divergence and Unity* (ISBN 9781782256564; PTO for details), is also being published.

THE EDITORS

Andrew Robertson is Professor of Law and Director of Studies for Private Law at Melbourne Law School in the University of Melbourne.

Michael Tilbury is a Professorial Fellow at Melbourne Law School, formerly Kerry Holdings Professor in Private Law at the Faculty of Law in the University of Hong Kong.

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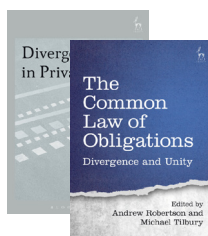
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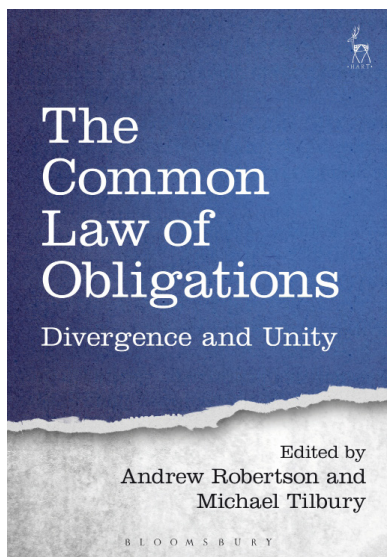
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The Common Law of Obligations

Divergence and Unity

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The development of the law of obligations across the common law world has been, and continues to be, a story of unity and divergence. Its common origins continue to exert a powerful stabilising influence, carried forward by a methodology that places heavy weight on the historical foundations of legal principles. Divergence is, however, produced by numerous factors, including national and international human rights instruments, local statutory regimes, civil law influences, regional harmonisation, local circumstances and values and different political and legal cultures. The essays in this collection explore the forces that produce divergence, the countervailing forces that generate cohesion and consistency in the common law of obligations, and the influence that the major common law jurisdictions continue to exert over one another in this area of law.

The chapters in this book were originally presented at the Seventh Biennial Conference on the Law of Obligations held in Hong Kong in July 2014. A second collection, entitled *Divergences in Private Law* (ISBN 9781782256601; PTO for details), will focus on particular departures from the common law mainstream and the causes and effects of those deviations.

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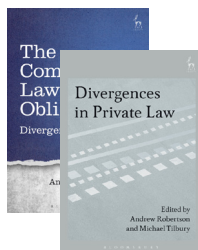
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