

THE END OF KNOWING RECEIPT

BY

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Chairperson: Professor James Penner

25TH JANUARY 2016 (MONDAY)

12.00 NN – 2.00 PM

NUS LAW (BUKIT TIMAH CAMPUS)

EU TONG SEN BUILDING, LEVEL 1, LEE SHERIDAN CONFERENCE ROOM

ABSTRACT

This paper addresses the nature of liability for knowing receipt of assets transferred in breach of trust. It is argued that it is no different from liability for breach of trust. It arises because the recipient has obtained assets that are held in trust, and after becoming aware of the trust, has failed to perform the basic trust duties to preserve the trust assets and transfer them to the proper trustees. This requires actual knowledge of the trust. Notice is insufficient. This is not a form of restitution of unjust or wrongful enrichment, so it should not matter whether the assets were received for the recipient's own benefit. The recipient is an actual trustee. This is not a form of accessory or secondary liability. It is fundamentally different from liability for knowingly assisting a breach of trust or fiduciary duty. Liability for knowing receipt depends upon receiving trust assets and holding them in trust. Therefore, if the recipient obtains title free of the trust as a bona fide purchaser or through indefeasibility of registered title, liability for knowing receipt is not possible. Where assets were not held in trust prior to receipt, but were misappropriated from a company in breach of fiduciary duty, liability for knowing receipt is not possible unless a trust arises. This does not preclude the possibility of a separate claim for restitution of unjust enrichment. However, there is no need to recognise a new equitable cause of action to achieve this. The recipient of misappropriated trust funds is personally liable at common law for restitution of the value of those funds, subject to the defences of bona fide purchase and change of position.

ABOUT THE SPEAKER



Robert Chambers is Professor of Private Law in The Dickson Poon School of Law. Professor Chambers practised as a barrister and solicitor in Alberta before obtaining his DPhil from the University of Oxford under the supervision of Professor Peter Birks. He has been a senior lecturer at the University of Melbourne and a professor at the University of Alberta, King's College London, and University College London. He is the chief examiner in equity and trusts for the University of London International Programmes and a member of the editorial boards for the Journal of Equity and Trust Law International.

REGISTRATION

There is no registration fee for this seminar but seats are limited.
A light sandwich lunch and drinks will be provided on a first come first serve basis.

Closing Date: 21 Jan 2016 (Thursday) 12 noon
For enquiries, please contact Ms Phoebe Oo at clb@nus.edu.sg

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