

***Windfall Equity and the Joint Endeavour Principle: Restatement of the Principles in Muschinski v Dodds***

**Dane Bryce Weber**

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Joint endeavours are legal relationships that involve two parties agreeing to combine their property for mutual benefit, but what happens when these relationships break down? A windfall occurs when one party retains an uncontemplated beneficial interest in a property arising from a joint endeavour, upon which equity will recognise or impose a constructive trust. ‘Windfall Equity and the Joint Endeavour Principle: Restatement of the Principles in *Muschinski v Dodds*’<sup>1</sup>, by Dane Bryce Weber provides commentary on these constructive trusts to highlight their value in modern equitable practice.

Weber’s central argument is that within the windfall equity, constructive trusts do not only arise as a remedy but also through an operation of law. *Muschinski v Dodds*<sup>2</sup> is the principal case that considers this distinction.<sup>3</sup> Weber argues that in cases that have developed the principles of *Muschinski*, courts have put the ‘cart before the horse’<sup>4</sup> by tending to impose constructive trusts as a remedy without considering if one has already arisen.<sup>5</sup> Following the language of equitable jurisprudence, Weber uses the words ‘remedial’ and ‘institutional’ to differentiate between constructive trusts that are imposed by courts and those arising during a joint endeavour itself, respectively.<sup>6</sup>

The book begins by explaining the importance of institutional constructive trusts, and then frames *Muschinski* to be the correct operation of the

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<sup>1</sup> Dane Bryce Weber, *Windfall Equity and the Joint Endeavour Principle: Restatement of the Principles in Muschinski v Dodds* (LexisNexis, 2021).

<sup>2</sup> (1985) 160 CLR 583 (*‘Muschinski’*).

<sup>3</sup> *Muschinski* (n 2) 613 (Deane J). See also G E Dal Pont, *Equity and Trusts in Australia* (Thomson Reuters, 7<sup>th</sup> ed, 2019) 1118.

<sup>4</sup> Weber (n 1) 152 [6].

<sup>5</sup> See generally *Baumgartner v Baumgartner* (1987) 164 CLR 137.

<sup>6</sup> *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, 714-15.

windfall equity. Weber then discusses the development of *Muschinski* and the windfall equity's current operation.

Weber's analysis of the windfall equity uses *Muschinski* as the seminal case for the modern function of constructive trusts relating to joint endeavour relationships. That case involved the breakdown of a de facto relationship and the concurrent sale of a jointly owned property, which then saw the defendant assert beneficial ownership over a share in the proceeds that was disproportionate to his original contribution to the purchase price.<sup>7</sup> The majority found this was unconscionable and the beneficial interest asserted by the defendant was held on constructive trust.<sup>8</sup> This decision has been consistently applied despite subsequent confusion over the institutional-remedial divide, and it forms the basis of Weber's argument on the correct operation of the windfall equity. Weber additionally discusses the subsequent law found in various state supreme court decisions, including the pooling of financial contributions as evidence of a joint endeavour<sup>9</sup> and granting the minimum equity when there is only minimal damage caused.<sup>10</sup>

Weber makes practical arguments about the importance of institutional constructive trusts despite *Muschinski's* remedial focus. He emphasises that institutional trusts within the windfall equity can protect property without recourse to the courts, albeit in a primarily declaratory way until the trust is enforced.<sup>11</sup> The institutional trust is of more limited access however, as it will only be triggered by a breach of fiduciary duty.<sup>12</sup> He emphasises the benefits of the constructive trust as a cause of action, as it does not require attributable blame.<sup>13</sup> This makes it a valuable alternative to remedies that do require this element.<sup>14</sup> Weber further highlights that the date a constructive trust is deemed to have come into effect dictates what

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<sup>7</sup> *Muschinski* (n 2) 610.

<sup>8</sup> Weber (n 1) 11 [2].

<sup>9</sup> Weber (n 1) 45[3] citing *Lloyd v Tedesco* (n 5).

<sup>10</sup> Weber (n 1) 50[5] citing *Henderson v Miles (No 2)* (n 5).

<sup>11</sup> Weber (n 1) 60 [3].

<sup>12</sup> Dal Pont (n 3) 1118.

<sup>13</sup> Weber (n 1) 117 [4].

<sup>14</sup> Weber (n 1) 144 [3]; David Wright, 'The statutory trust, the remedial constructive trust, and remedial discretion' (1999) 14 *Journal of Contract Law* 221, 227.

property it protects, as courts can predate competing claims by backdating a trust.<sup>15</sup>

Weber's contention takes a strong stance in an opaque and contradictory legal area. His argument uses extensive analysis of case law and references specific areas including taxation, social security, and insolvency where the institutional constructive trust has practical effects.<sup>16</sup> At its core, the main thesis is simple, although the book assumes the reader has some prior knowledge of trusts and equitable interests. Weber's book has a valuable place in the commentary on equity as it is different from other texts regarding its detail and scope. It is rare to find entire books with one case, albeit a landmark decision, as one of its central focuses. The book's narrow scope means it is not conducive to developing a wide knowledge of equity. Nevertheless, it is ideal for students, academics, and professionals who wish to gain a deeper understanding of the windfall equity.

Due to this focus, one criticism of the book is its repetition when explaining the main concepts of joint endeavours and constructive trusts. To simplify the argument and hone the reader's understanding, the book incorporates its ideas in similar ways in every chapter. In Weber's defence, the preface does state that the last two chapters of the book are not required to be read to understand the main argument on institutional constructive trusts.<sup>17</sup> Nonetheless this repetition means less time is spent providing the foundational concepts of equity behind Weber's argument.<sup>18</sup> This reduces the book's accessibility to students in the earlier years of their legal education or professionals and academics who are unfamiliar with this particular area of law.

Weber's work strongly withstands these criticisms, taking a detailed and nuanced approach supported by a sophisticated analysis of *Muschinski* and cases that have followed it. For these reasons, *Windfall Equity and the Joint Endeavour Principle* is a valuable new development in the commentary of constructive trusts.

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<sup>15</sup> Weber (n 1) 70 [4]; Elise Bant and Michael Bryan, 'Constructive Trusts and Equitable Proprietary Relief: Rethinking the Essentials' (2001) 5 *Journal of Equity* 171, 187.

<sup>16</sup> See generally Weber (n 1) 76 [1].

<sup>17</sup> *Ibid*, Preface [5].

<sup>18</sup> For a wider understanding, see Irit Samet, *Equity: Conscience Goes to Market* (Oxford University Press, 2018).

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