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Gain-Based Damages: Contract Tort Equity and Intellectual Property

James Edelman

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On July 27, 2000, the House of Lords delivered a decision where, for the first time in English law, it explicitly recognized that damages for civil wrongs can be assessed by reference to a defendant's gain rather than a claimant's loss. This book considers the nature of gain-based damages and explains when they have historically been available and why, and provides a framework for appreciating the operation of such damages awards. The core thesis of the book is that two different forms of gain-based damages exist: the first is concerned with restitution of a defendant's gains wrongfully transferred from a claimant; the second is concerned only with stripping profits from the defendant's hands. Once these two gain-based damages awards are separated, they can be shown to be based upon different rationales and the basis for their availability can be easily understood.

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