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This article addresses three aspects of the law of ‘rectification’. The first is the importance of the labels used to name legal concepts, and the scope for confusion between so-called ‘rectification by construction’ and rectification in equity. The second is the proper scope of rectification in equity, which depends upon its relationship with common law rules and (in relation to wills) the role of statute which is more complex than may appear. The third concerns the operation of rectification in practice, in light of modern Evidence Acts.

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A seeks rectification of a contract for common mistake. A’s argument is that both A and B engaged in observable conduct that manifested a common intention not recorded in the document. If A never knew about B’s conduct at the time of execution, and B never knew about A’s conduct, is rectification nevertheless possible? This article considers the nature and scope of rectification by conduct. How far can the concept of conduct be taken, absent any requirement for an outward expression of accord? The article argues that ‘conduct’ may extend rectification to scenarios where A and B have parallel intentions which are made apparent through conduct, but where such conduct is not inter se. However, claims for rectification in such situations will rarely be successful, in light of the stringent evidential requirements, which preserve certainty in transactions, regardless of the form of the common intention.

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Written contracts have been important for millennia. They bring certain evidentiary advantages. Problems may also arise, however, when the written document fails to reflect the intentions of the parties. This is why the equitable doctrine of rectification is so important. In certain limited circumstances, it allows the written words in the contract to be modified. In recent decades, there have been considerable debates about the proper scope of rectification. These questions cannot be

understood properly without a proper grasp of the history of the subject. Rectification did not develop in isolation. It was shaped by developments within the law of contract, including the parole evidence rule, the rise in commercial contracting and was impacted by the way that contracts came to be rationalised. Set alongside these considerations there is a different tradition of preventing unconscionable behaviour in equity.

Rectification of testamentary writings in Scotland, England and Wales, and Australia

— *Daniel J Carr*

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This article considers statutory and non-statutory means of rectifying a testamentary writing in Australia, England and Wales, and Scotland. Assessing the statutory provisions in the comparator jurisdictions shows that there are tangible differences between the statutory regimes. Such differences embody different policy decisions concerning the importance of formally recorded testamentary intention in an instrument and the circumstances in which it will be possible to resort to rectification based upon other means of identifying the testator's intentions or instructions. Differences between the non-statutory routes to rectification in the Scottish and the Anglo-Australian traditions are outlined, and the article identifies enduring questions about the precise contours of the non-statutory rectification jurisdiction in each tradition. The article concludes by noting the benefits of looking at the evolution of the different rectification approaches together and how they fit with changing approaches to the importance of insistence upon strict testamentary formalities.