

# T1: Breach of Confidence ('BoC')

[P] may sue [D] for BoC for [publication/disclosure/use] of [information]. The Court will consider 4 elements to establish this claim: *Coco*; *O'Brien*. D may argue [defence].

## [1] Specificity

The onus is on [P] to establish what information is confidential and define it with 'sufficient precision': *O'Brien Ocular Sciences*. Therefore [D] can defend themselves against the claim and the Court can decide on effective relief: *Ocular Sciences*.

Here, the information is [X] in the form of [Y]. There is no restriction on the means of which information is conveyed.

### EXAMPLES

- Tax evasion 'scheme' (P pointed to trust deeds, tax legislation, research) too general and publicly accessible (Mason J in *O'Brien*)
  - When he pleaded in general terms, no specific
  - When he pleaded individually, each item was no confidential (see QoC)
- Everything; 'know-how' too general (*Ocular Sciences*)
- Identifying someone's name (*AFL*; *Jane Doe*)
- Fruit DNA (*Franklin*)
- Format/script put together by P (*Talbot*)
- Butchering meat (*Lenah*)
- Information in an operation manual (*Link 2*)
- Contents of an image (*Douglas*)
- Sexual content (*Giller*; *Wilson*)
- Religious practices (*Foster*)
- Recipe/contents of a particular drug (*Smith-Kline*)
- Report about its advertising methods (*Castrol*)

### POLICY REASONS AGAINST FINDING SPECIFICITY/QoC

- Brennan and Murphy JJ: should not protect tax avoidance
- While factually untrue that all statements of law are publicly known; everyone is entitled to

## [2] Quality of Confidence [QoC]

Equity will only protect information worth protecting: *Smith-Kline*. Two factors help ascertain this: secrecy & value.

### Secrecy

Information ought to be sufficiently secret as opposed to being common/public knowledge: *Lenah*; *Coco*.

SECRECY	NO SECRECY
<ul style="list-style-type: none"><li>• Measures have been taken to ensure secrecy (cf. <i>Lenah</i>)</li><li>• Limited dissemination to small group of people where there is no authority of</li></ul>	<ul style="list-style-type: none"><li>• No measures taken to preserve secrecy (<i>Lenah</i>)</li><li>• Government authorities have licensed [D] and have the right to inspect them</li></ul>

<p>people leaking information (<b>AFL</b>)</p> <ul style="list-style-type: none"> <li>Information in public is of a speculative nature (even if accurate) rather than authoritative (<b>AFL</b>)</li> <li>Limited circle of people -&gt; imposes that duty onto them too (<b>Jane Doe; Talbot</b>) <ul style="list-style-type: none"> <li><b>But not here statute limited the broadcasting of the plaintiff's identity here, despite Courts usually being open to the public</b></li> </ul> </li> <li>If injunction would be effective to avoid relevant detriment, suggests secrecy (<b>AFL</b>)</li> <li>Identifying the name of footballers who've consumed illicit drugs – even if many journalists and other figures knew who (<b>AFL</b>)</li> </ul>	<p>(<b>Lenah</b>)</p> <ul style="list-style-type: none"> <li>Private property / trespass insufficient for secrecy (<b>Lenah</b>)</li> <li></li> </ul>
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## Value (objective)

### Commercial Value

VALUABLE	NOT VALUABLE
<ul style="list-style-type: none"> <li>Even if it lacks secrecy – provided there was skill, time and cost putting information together + restrictions on access to nonetheless 'public' info (<b>Link 2</b>) <ul style="list-style-type: none"> <li>Thus injunction would be over the manual as a whole</li> </ul> </li> <li>Information put together in a novel way (fairly undemanding test); protect the 'ingenuity of the human brain' (<b>Coco</b>)</li> <li>TV show idea put together with ingenuity and novelty, even if idea is commonplace, the COMBINATION is valueable (<b>Talbot</b>)</li> <li>Budwoods were the only way to recreate commercially successful, unique tree (<b>Franklin</b>)</li> </ul>	<ul style="list-style-type: none"> <li>Banal; engages no serious human interest</li> <li>Value per subjective desire (willingness to pay, fame for the plaintiff)</li> <li>Merely has monetary value (<b>Coco</b>)</li> <li>Release of information just involves subjective preference of P to not have it shown, and subjective preferences of consumers to take consumption elsewhere (<b>Lenah</b>)</li> </ul>

### Personal Value

**Old test:** highly offensive to a reasonable person of ordinary sensibilities: Gleeson CJ in **Lenah**

**More appropriate test:** personal or intimate nature; to protect the personal autonomy of plaintiffs (Gummow & Hayne JJ)

### EXAMPLES