

# EQUITY EXAM SCAFFOLD

LAWS2015 / LAWS5015

# Topic 2.1 – Equitable Breach of Confidence

Case Name	Summary
<i>Seager v Copydex</i> <i>Carpet Grips</i>	<ul style="list-style-type: none"> <li>• Example case of an Equitable Obligation of Confidence and the exclusive jurisdiction of equity</li> <li>• Equitable remedy of equitable compensation for a breach of equitable duty of confidence</li> </ul>
<i>Coco v ANC</i> <i>Re: Design for a moped engine</i>	<ul style="list-style-type: none"> <li>• Megarry J outlines the 3 elements required for an equitable duty of confidence to arise</li> </ul>
<i>Optus v Telstra</i> <i>About customer Data</i>	<ul style="list-style-type: none"> <li>• Builds on the elements outlined by Megarry J above</li> <li>• Just because there is a contractual remedy, does not prevent an equitable remedy</li> <li>• Example of a gains based remedy being granted</li> </ul>
<i>O'Brien v Komesaroff</i> <i>Copyright of a tax minimisation device</i>	<ul style="list-style-type: none"> <li>• This case was won on a breach of copyright</li> <li>• But there was no breach of confidence that could be established</li> <li>• It failed for <b>lack of specificity</b></li> </ul>
<i>Johns v ASC</i> <i>ASC published transcripts of an interview</i>	<ul style="list-style-type: none"> <li>• There was no equitable duty because the work was now in the public domain</li> <li>• Gaudron J outlines what the 'public domain' is</li> <li>• Public Domain ≠ confidential</li> <li>• But see if <i>AFL v The Age</i> applies</li> </ul>
<i>AFL v The Age</i> <i>Published details of player failed drug test</i>	<ul style="list-style-type: none"> <li>• The information could still be injuncted because <b>not enough people saw it</b> – the information had not yet entered the public domain and therefore had not yet lost its confidential nature</li> <li>• This was based on the view counter of a website</li> </ul>
<i>Lucasfilm v Ainsworth</i> <i>Stormtrooper Helmet</i>	<ul style="list-style-type: none"> <li>• The stormtrooper helmet is not confidential because everyone knows about it</li> <li>• It is public knowledge</li> </ul>
<i>BBC v Harper Collins</i> <i>Stig case</i>	<ul style="list-style-type: none"> <li>• The identity of the Stig was already outed by other news sources, therefore it had lost its confidentiality</li> </ul>
<i>ABC v Lenah Game Meats</i> <i>Footage of possum meat processing</i>	<ul style="list-style-type: none"> <li>• Gleeson J outlines the restricted use of <b>personal information</b> as well as a <b>test</b> for what is personal information</li> </ul>
<i>Wright v Gasweld</i> <i>Setting up a rival store</i>	<ul style="list-style-type: none"> <li>• Creates the <b>test</b> for what is <b>corporate information</b></li> </ul>
<i>Del Casale v Artedomus</i>	<ul style="list-style-type: none"> <li>• Distinguishes <b>corporate information</b> from <b>know-how</b></li> </ul>
<i>Bolkiah v KPMG</i> <i>Stopping use of past auditor</i>	<ul style="list-style-type: none"> <li>• Example of a future breach of equitable obligation resulting in successful injunction</li> <li>• Can prevent work</li> </ul>
<i>Cth v John Fairfax</i> <i>Protecting government secrets</i>	<ul style="list-style-type: none"> <li>• There is no inherent right to confidentiality of government information – in fact it is probably the opposite</li> <li>• If it is the government, you start from the position that there is no duty of secrecy.</li> </ul>
<i>Lennon v News Group</i> <i>Publication of personal information from ex</i>	<ul style="list-style-type: none"> <li>• There was no injunction because Lennon had previously talked about his married life to the press and therefore the public</li> </ul>
<i>Campbell v Mirror</i> <i>Photos/ Rehab</i>	<ul style="list-style-type: none"> <li>• Consider the different <b>levels of disclosure</b></li> <li>• Campbell offered bare facts, but Mirror went beyond with photos therefore breach</li> </ul>
<i>Giller v Procopets</i> <i>Sex tape distribution</i>	<ul style="list-style-type: none"> <li>• Equitable compensation awarded for <b>mental distress</b></li> <li>• Compensation as <b>aggravated</b> because the guy was a dick</li> </ul>
<i>Terrapin</i> <i>Reverse Engineering / IP Theft</i>	<ul style="list-style-type: none"> <li>• Example application of the springboard doctrine</li> <li>• Can't use an injunction to get ahead</li> </ul>

### (0) What does the client want?

- Can s/he sue for breach of contract?
  - Just because there is a breach of contract and a contractual remedy can be awarded, does not remove the right to equitable remedy.
- Do they want equitable compensation for the breach?
- What kind of injunction do they want?
  - Prohibitory (forbidding an act) or mandatory (ordering something be done)
  - Interim/interlocutory(brought early before a full trial to preserve the status quo)
  - Ex parte (without hearing the D) or inter parties
  - *Quia timet* (granted against threatened wrongs)

### (00) How can they achieve this?

*Equity affords protection to confidential information in its exclusive jurisdiction. Confidential information may be protected independent of any contractual or statutory obligation i.e. if there was no contract (e.g. where negotiations failed to conclude in a contract) or because the defendant was not a party to a contract.*

- Distinguish the protection equity affords to confidential information in its exclusive jurisdiction against the protection it confers to contractual confidences in equity's auxiliary jurisdiction.
  - Contractual terms can be enforced by the equitable remedy of injunction if common law remedies are insufficient.
  - Other common law remedies are available in a common law breach such as damages.
- But breach of confidence is concerned with situations where confidential information will be protected independently of any contractual or statutory obligation e.g. where there was no contract; or where the defendant was not a party to any contract.

### The Test for an equitable obligation of confidence:

Megarry J in Coco sets out 3 elements normally required if, apart from contract, a case of breach of confidence is to succeed:

- (1) It must "have the **necessary quality of confidence** about it".
- (2) The information must have been imparted in **circumstances importing an obligation of confidence**.
- (3) there must be an **unauthorised use of that information to the detriment of the party communicating it**.

However, the more modern case of Optus v Telstra (2010), Finn Sundberg and Jacobson JJ provide a more robust adaptation of the elements required for an equitable obligation of confidence:

- 1) **Information identified with specificity**
  - Unlike Coco, this is a new addition
- 2) **Necessary quality of confidence**
  - Is the information confidential?
- 3) Received in **circumstances importing an obligation of confidence**
  - This just means you have to know that the information is confidential
  - It can be if a contract tells you, maybe there is a confidential relationship etc...
- 4) **Actual or threatened misuse without consent**.
  - Unlike Coco, there is no requirement of detriment
  - Occasionally, there will be situations where a person's past attitude will mean that they have consented

*Because courts have been wary of setting out necessary and sufficient conditions of equitable obligation, there have been different cases analysing and developing each element outlined in Coco. These can be similarly applied to the test from Optus v Telstra.*

#### (1) Information identified with specificity:

*If the court is to make an order requiring obligation of confidentiality to be observed, it must be able to identify clearly the information that is to be kept confidential. The order must have the degree of specificity sufficient to "enable the Court to embody it in an order" (Mason J in Komesaroff)*

- In the case of O'Brien v Komesaroff, the plaintiff could not **specificity** which section of the deed held the confidential information and the courts failed to find a breach of confidence.
- The court must be able to identify clearly the information that is to be kept confidential
  - It must be identified to the extent that a binary ruling of if a breach had been committed.

#### (2) Necessary quality of confidence

*Equity will only protect information that holds "the necessary quality of confidence about it" Per Deane J in Moorgate Tobacco. The position of Campbell JA in Del Casale is preferred in determining if this element is met. He asks if "a person of*

ordinary intelligence, in all the circumstances of the case, including, inter alia, the relationship of the parties and the nature of the information and the circumstances of its communication, recognise this information to be" confidential.

- It must be a genuine secret – not in the public domain and not common knowledge.
  - It is not confidential information if the information is **public knowledge** (*Johns v ASC*)
- In *Johns v ASC*, Gaudron J defines "public domain" as having two distinct aspects:
  - *the first is concerned with the question whether any duty of confidence arises;*
    - *No obligation attaches to 'trivial tittle-tattle' or to information which is public property and public knowledge or 'common knowledge.'*
  - *the second is concerned with whether a duty of confidence has come to an end.*
  - *If it is the **defendant himself who has caused the information** being dissimilated see below in defences of Loss of Confidentiality*

## (2B) Types of Confidential Information:

*These cases can be used to confirm the information in question holds the necessary quality of confidence*

- **Design:** The design of the Stormtrooper Helmet is not confidential (*Lucasfilm v Ainsworth*)
- **Identity:** The identity of the Stig was already published by newspapers so Ben Collins' book could not be enjoined for confidence (*BBC v HarperCollins*)
- **People that see it:** But if it is public, but not enough people see it, it can still be confidential (*AFL v The Age*)
  - If not enough people see it, it will remain in the realm of speculation
- **Personal Secrets:** The **test for personal secrets** per *ABC v Lenah Game Meats*:
  - (*Gleeson CJ*) *An activity is not private simply because it is not done in public.*
    - *But 'information relating to health, personal relationships, or finances, may be easy to identify as private'*
  - The requirement that disclosure or observation of information or conduct would be:
    - *highly offensive;*
    - *to a reasonable person;*
    - *of ordinary sensibilities;*
  - **Sexual relationships**, preferences, and activity (*Giller v Procopets*) <not this is a VIC case
  - **Medical information**/Conditions etc... especially if it causes embarrassment (*Campbell v Mirror Group*)
- **Corporate Secrets:** The **test for corporate information** per Kirby J in *Wright v Gasweld*:
  - *How much skill and effort was expended to acquire the information?*
  - *Has the employer jealously guarded the information?*
  - *Has the employee made aware of the confidential nature of the information?*
  - *Is there an industry practice in keeping this sort of information secret?*
  - *Has access to the information been controlled?*
  - **BUT:** 'know-how' can be carried onto the next job, confidential information cannot (Hodgeon JA in *Del Casale & Ors. v. Artedomus*)

- **Work/Former Clients:** In Bolkiah v KPMG the firm was prevented from working for client X in an action against Y because they had previously acted for Y.
  - Lord Millett: *The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence.*
- **Government Secrets:** Before governmental information has sufficient confidentiality to warrant protection, it has to be information where it is in the public interest for disclosure to be restrained (Cth v John Fairfax)
  - *...when equity protects government information, it will look at the matter through different spectacles...the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.* – Mason J
  - But start with the position that there is no duty of secrecy.
- **Third Parties**
  - See Lenah Game Meats where the video was sent to the ABC; a third party

### (3) Importing an Obligation of Confidence

- *The test is whether any reasonable person standing in the shoes of the recipient of the information would have realised on reasonable grounds that the information was given to him in confidence (Coco)*
- This is a question of if the accused knew that the information was confidential.
  - Was there a contract involved? Perhaps an employment contract?
  - Was there oral communication/writing?
  - Was there something like a sealed letter?

### (3B) Multiple Breaches

- In a scenario where information travels from X > A > B
  - X should seek to stop A telling B but;
  - If A tells B, then B can tell other people if he does not know it is confidential information (i.e. if B is also innocent).

### (4) Actual or Threatened Misuse Without Consent

- If there has not yet been a breach, only a threat, you can apply for a *Quia timet* injunction
- Has there been **detriment**?
  - This is a requirement in Coco, however, was not present in the elements outlined in Optus v Telstra.
  - The law is unclear on this issue.
- Per the case of Smith Kline & French Laboratories in order to establish Actual or Threatened Misuse:
  - *The court must conclude that a confidence reposed has been abused that unconscientious use has been made of the information*
- Consent would generally come from the plaintiff

### (5) Defence:

- **Authorised Use:** For example, if a celebrity tips off news.com about their secret birthday party, they cannot claim confidentiality when news.com publishes the pictures.
  - But it is different if Celeb A talks about being drug free, then News publishes photos of them getting treatment – that is still a breach as it was more than *authorised* by Celeb A (Campbell v Mirror Group)
- **Public Interest:**
  - In NRMA v Yates it would only be acceptable in matters of national security, public health etc... but there is no broad public interest in the truth being told
  - But in AG Australia v Burton & Anor, Campbell J held that 'the present status of a "public interest... is not clear.'

- **Force Disclosure:**
  - In Royal Women's hospital v Medical Practitioners Board of Victoria, a breach was established when a doctor was ordered to release some information, however it was successfully defended as it was a court ordered or statutory breach.
- **Loss of Confidentiality**
  - *A person who is subject to obligation is released from it by the person who is entitled to the benefit of the obligation*
  - *The information comes to be in the public domain, other than through the breach of a person who is subject to the duty*
  - [See Gaudron J in Johns v ASC at 2.2.1(B)(1)(a)]
    - *If it is the defendant himself who has caused the information being dissimilated, the cases are not definitive. On principle, the defendant is not released. A remedy of account for profits could be available even if an injunction against further publication is not available (because equity does nothing in vain)*
    - *Gaudron J defines "public domain" as having two distinct aspects:*
      - *the **first** is concerned with the question whether any duty of confidence arises; 'No obligation attaches to 'trivial tittle-tattle' or to information which is public property and public knowledge or 'common knowledge.*
      - *the **second** is concerned with whether a duty of confidence has come to an end.*

#### (6) Remedies:

- **Contractual Confidence:**
  - Damages for breach of contract
  - If common law damages are inadequate the court may consider equitable remedies
    - E.g. Injunction to prevent further breach of contract
  - Account for profits is not awarded for breach of contract
- **Equitable Confidence:**
  - Injunction for future/threatened breach (no need to show common law damages are inadequate)
  - Account of profits
    - This is assessed by reference to the gain of the defendant rather than the loss of the claimant.
    - Seen in Douglas v Hello! Ltd
  - Equitable compensation (NOT CALLED DAMAGES)
    - Can be for mental distress (Giller v Procopets)
    - And can be aggravated (Giller v Procopets)
    - Loss of work
- **The Springboard Doctrine**
  - This is where "an injunction may be granted to prevent the defendant from benefitting from past misuse of confidential information even if it is no longer confidential"
  - It states that the culprit of a breach of confidence cannot put himself in a better position than the rest of the market
    - Equity will prevent a defaulting confidant from being able to use information, even after it has entered the public domain BUT will eventually allow them to use it.
  - E.g. in Terrapin Ltd v Builders Supply Co:
    - *A person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made communication – Roxburgh J*

# EQUITY FULL NOTES

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# Topic 1: The History and Nature of Equity

## 1. The History and Nature of Equity

- Equity refers to that body of cases, maxims, doctrines, rules, principles and remedies which derive ultimately from the specific jurisdiction established by the original English High Court of Chancery.

	Contract	Tort & Civil wrongs	Property	Restitution
<b>Common law</b>	Simple contract (Formation; Terms; Breach; Remedies: Damages) Actions in Debt Actions on a deed	Trespass Trespass/Action on the act Negligence (Duty; Breach; Causation; Damages) Economic torts etc	Duty Breach Causation Remedies: Damages	Action for money had and received (mistake; total failure of consideration; duress; etc) Action for money paid to the defendant's use Quantum meruit etc
<b>Equity</b>	Vitiating factors (e.g., unilateral mistake; unconscionable conduct; undue influence) (Promissory) estoppel Relief against penalties Equitable assignments of legal rights Remedies: specific performance; rescission; rectification	Fiduciary duties Breach of confidence Remedies: injunction; account of profits; equitable compensation; contribution	Equitable interests (e.g., under an express trust; a resulting trust; or a constructive trust; mortgagor's equity of redemption; restrictive covenants; equitable liens) Equitable priority rules (Proprietary) estoppel Tracing Remedies: injunction; subrogation; marshalling	Constructive trusts Resulting trusts Remedies: injunctions; subrogation

## 2. What is Equity? History and Nature of Equity

*The Earl of Oxford's Case (1615) 1 Ch Rep 1 (21 ER 485)*

### FACTS:

- The Magdalene College in Cambridge owned some land that they were prevented from selling
- So, to get around it the College surrendered some ground to the Crown and got the Crown to grant the land to Spinola
- Spinola developed the land and made it nice and sold it to the Earl of Oxford
- The College then notices that the land that they 'sold' was worth lots of money, so they wanted to get the money back
  - They wanted to engineer a dispute that ends with the college being declared the owner of the land
  - And then use that to claim the land back.

### ISSUE:

- Who owns the land?

### HELD:

- At law** the College was held to own the land per the correct interpretation of the Act.
  - This was because, at law, they could not have sold the land, so it must have remained with College.
- The Earl of Oxford then went to the courts of chancery where he wanted some equitable relief

- The Lord Chancellor put the representatives of the College in jail for refusing to answer questions
- The Kings Bench took them out of jail
- The real **issue** is:
  - **If the decision of the common law was final or not?**
    - Was their imprisonment lawful or not?
    - If the decision of the Kings Bench is final, then the imprisonment was unlawful. And vice versa.
  - To decide this, they went to King James, who decided in favour of equity.

**SIGNIFICANCE:**

- **This is the basis of equity today**
  - The super is being held *legally* by the super provider
  - Legally they could just keep the money forever – but equity prevents this

### 3. The Effects of the Judicature Acts and the ‘Fusion Fallacy’

#### 3.1. Equity Acts in NSW

*Supreme Court Act 1970*

- S 57 – Concurrent administration
  - The Court shall administer concurrently all rules of law, including rules of equity.

*Law Reform (Law and Equity) Act 1972*

- S 5 – Rules of equity to prevail
  - In all matters in which there was immediately before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail.

#### 3.2. The Fusion of Law and Equity

- Any judge in the NSW legal system can decide points of law and equity
  - But it is only supposed to be the administration of equity that has been merged. The law itself should not have been changed.
- The fusion is meant to stop you bouncing between the courts to get a remedy
  - It is not supposed to change the final outcome
    - BUT there are some cases that suggest otherwise

#### 3.3. What is Fusion Fallacy

- It is a case the outcome of which can only be explained by the fusion fallacy
  - I.e. that can only be explained by thinking that law and equity has been merged

*Day v Mead [1987] 2 NZLR 443*

*Example of nonsense reasoning and the Fusion Fallacy*

**SUMMARY:**

- A **fiduciary relationship** is a special relationship where the fiduciary is in a position of power i.e. a client of a solicitor is a principle
- In this case, a solicitor gave advice to a client and the client lost money
  - The client sued and won for the breach of fiduciary duty
    - The amount the client won was reduced because of contributory negligence
    - This is an example of a **fusion fallacy** as it makes no sense
- The nature of a fiduciary relationship is one where the vulnerable cannot look after their own interest... but then it makes no sense to reduce the damages because the vulnerable party could not look after their own interests...

**SIGNIFICANCE:**

- This was not followed in NSW

- The real answer to this case was that there was no real breach of fiduciary duty because the solicitor was not acting as a solicitor.
- This means it should not have been a fiduciary case in the first place.

### Walsh v Lonsdale (1882) 21 Ch D 9

#### FACTS:

- A landlord granted a 7-year lease to a tenant, but the lease did not satisfy the legal formalities and was therefore the lease was ineffective at law
  - The tenant still entered the premises and the landlord demanded 1 years rent in advance
  - The tenant refused and the landlord seized the tenant's goods and the tenant sued

#### ISSUE:

- Was the distress of goods lawful or not?
  - This depended on the bigger question:
  - The distress of good would be lawful if the tenant owed the rent in advance
    - The rent would be owed if the lease was lawful
      - The question therefore is: **Did the tenant owe the money?**

#### HELD:

- Someone with the right to seek specific performance stands in the same position of some with a legal lease
- If there had not been a fusion:
  - The Landlord would have gone to the court of equity first to win BUT the tenant would win a court of law and the landlord would have to give the goods back

#### SIGNIFICANCE:

- As held by the HCA in Chan v Cresdon Pty Ltd, the courts of equity have a power to backdate specific performance
  - This case was similar where there was only an equitable lease because there was no compliance sufficient to a legal lease
    - The question was if a guarantee under a legal lease also applied to an equitable lease
  - This case is only important in its application of explaining Wash v Lonsdale
- W v L says that you have this right now because even if you had gone and gotten it, it would have been backdated
  - W v L has an argument of fusion fallacy

### Harris v Digital Pulse Pty Ltd (2003) 56 NSWLR 298

#### FACTS:

- An employee worked for the benefit of his own company contrary to his contract with another company
  - The employee was fired, and the employer sought exemplary damages from him for breach of fiduciary duty

#### ISSUE:

- Could punitive damages/exemplary duty available for a breach of fiduciary duty?
  - Does equity recognise a punitive/exemplary response?

#### HELD:

- 2:1 – Equity did not recognise a punishment element

#### SIGNIFICANCE:

- The concept of a fusion fallacy does not mean the law cannot change
- In this case, Mason J (dissent) knew that it might not be the case
  - He did not allow it because fusion had happened
  - He utilised first principles

### 3.4. Nomenclature

- Sometimes equity acts in a common law right but other times in its own rights
  - I.e. sometimes the cause of action is legal (i.e. breach of contract) and the response is equitable (i.e. rescission)
- The question to ask is if equity is acting in aid of its own rights or legal rights?
  - **If equity is aiding its own rights/equitable wrongs: (i.e. breach of trust or fiduciary duty)**
    - Equity can simply aid in equitable rights
    - You do not have to ask if damages
  - **If equity is aiding in legal rights/legal wrongs: (i.e. breach of contract or trespass)**
    - There is a middle step
    - **For equity to aid in legal rights, damages must be inadequate.**
      - You MUST ask if the legal damages are sufficient.
      - If the legal response is adequate, then equity cannot act.
  - For example, if there is a trespass because some dude is sitting in your front yard, you will get damages, but you don't want damages, you want the person out of your house. Then, you have to ask if the legal remedy is adequate. In this case, it is not. And now, equitable relief can be granted.

### 4. Maxims of Equity

- **He who seeks equity must do equity**
  - The remedy granted must also be equitable/fair for the other party
- **He who comes to equity must come with clean hands**
- **Legal interest will generally prevail over equitable (unless there is postponing conduct)**
- **Where the equities are equal the law prevails**
- **Where the equities are equal the first in time prevails**
- **Delay defeats equity**
- **Equity looks to intention rather than form**
  - Equity cannot affect legal title (*Corrin v Patton*)
  - Also see trusts
- **Equity presumes equality**
  - I.e. if there was a trust created for two children, it would be assumed to be a 50/50 split
- **Equity regards as done that which ought to be done**
- **Equity acts *in personam***
  - Rights are enforced by order of the court directing the person (think trustee) to do something
  - E.g. In the case of *Penn v Lord Baltimore*, there was a land dispute in the USA as to who owned a certain parcel of land. An agreement was reached as to how to divide the land. Penn sued Baltimore when Baltimore tried to derogate from this agreement. The courts in London ordered Baltimore to comply with the American agreement. It could only do this because the English equitable court acts in personam.
- **Equity will not assist a volunteer**
  - Equity will not assist people who are disappointed they did not receive a gift
  - If, however, a trust was created for value, then equity will assist.

## 2.1 Breach of Confidence

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<i>Optus v Telstra</i> <i>About customer Data</i>	<ul style="list-style-type: none"> <li>• Builds on the elements outlined by Megarry J above</li> <li>• Just because there is a contractual remedy, does not prevent an equitable remedy</li> <li>• Example of a gains based remedy being granted</li> </ul>
<i>O'Brien v Komesaroff</i> <i>Copyright of a tax minimisation device</i>	<ul style="list-style-type: none"> <li>• This case was won on a breach of copyright</li> <li>• But there was no breach of confidence that could be established</li> <li>• It failed for <b>lack of specificity</b></li> </ul>
<i>Johns v ASC</i> <i>ASC published transcripts of an interview</i>	<ul style="list-style-type: none"> <li>• There was no equitable duty because the work was now in the public domain</li> <li>• Gaudron J outlines what the 'public domain' is</li> <li>• Public Domain ≠ confidential</li> <li>• But see if <i>AFL v The Age</i> applies</li> </ul>
<i>AFL v The Age</i> <i>Published details of player failed drug test</i>	<ul style="list-style-type: none"> <li>• The information could still be injuncted because <b>not enough people saw it</b> – the information had not yet entered the public domain and therefore had not yet lost its confidential nature</li> <li>• This was based on the view counter of a website</li> </ul>
<i>Lucasfilm v Ainsworth</i> <i>Stormtrooper Helmet</i>	<ul style="list-style-type: none"> <li>• The stormtrooper helmet is not confidential because everyone knows about it</li> <li>• It is public knowledge</li> </ul>
<i>BBC v Harper Collins</i> <i>Stig case</i>	<ul style="list-style-type: none"> <li>• The identity of the Stig was already outed by other news sources, therefore it had lost its confidentiality</li> </ul>
<i>ABC v Lenah Game Meats</i> <i>Footage of possum meat processing</i>	<ul style="list-style-type: none"> <li>• Gleeson J outlines the restricted use of <b>personal information</b> as well as a <b>test</b> for what is personal information</li> </ul>
<i>Wright v Gasweld</i> <i>Setting up a rival store</i>	<ul style="list-style-type: none"> <li>• Creates the <b>test</b> for what is <b>corporate information</b></li> </ul>
<i>Del Casale v Artedomus</i>	<ul style="list-style-type: none"> <li>• Distinguishes <b>corporate information</b> from <b>know-how</b></li> </ul>
<i>Bolkiah v KPMG</i> <i>Stopping use of past auditor</i>	<ul style="list-style-type: none"> <li>• Example of a future breach of equitable obligation resulting in successful injunction</li> <li>• Can prevent work</li> </ul>
<i>Cth v John Fairfax</i> <i>Protecting government secrets</i>	<ul style="list-style-type: none"> <li>• There is no inherent right to confidentiality of government information – in fact it is probably the opposite</li> <li>• If it is the government, you start from the position that there is no duty of secrecy.</li> </ul>
<i>Lennon v News Group</i> <i>Publication of personal information from ex</i>	<ul style="list-style-type: none"> <li>• There was no injunction because Lennon had previously talked about his married life to the press and therefore the public</li> </ul>
<i>Campbell v Mirror</i> <i>Photos/ Rehab</i>	<ul style="list-style-type: none"> <li>• Consider the different <b>levels of disclosure</b></li> <li>• Campbell offered bare facts, but Mirror went beyond with photos therefore breach</li> </ul>
<i>Giller v Procopets</i> <i>Sex tape distribution</i>	<ul style="list-style-type: none"> <li>• Equitable compensation awarded for <b>mental distress</b></li> <li>• Compensation as <b>aggravated</b> because the guy was a dick</li> </ul>
<i>Terrapin</i> <i>Reverse Engineering / IP Theft</i>	<ul style="list-style-type: none"> <li>• Example application of the springboard doctrine</li> <li>• Can't use an injunction to get ahead</li> </ul>

# 1. Breach of Confidence

## 1.1. Concurrent Jurisdiction

- Both equity and common law will apply here to provide remedies to a breach of confidence in:
  - **Express contractual obligations:** where there is an explicit contractual obligation of confidence e.g. employment contract, product distribution agreements, manufacturing licensing agreements etc.
  - **Implied contractual obligations:** where the contract can imply an obligation of confidence e.g. a contract of employment general has a term requiring the employee to observe good faith
- The **remedy** will usually be either:
  - Damages or;
  - An Injunction to:
    - Stop a past breach from happening again
    - Stop a continuing breach
    - Preventing a future breach aka, a *quia timet* injunction

## 1.2. Exclusive Jurisdiction

- Only equity can assist where there is a:
  - An **obligation of confidence** that arises from the **circumstances** in which the information is communicated or obtained and;
  - This is breached
  - E.g. Coco v AN Clark, Optus v Telstra (2010), Seager Limited v Copydex

### Seager Limited v Copydex Limited [1967] 2 All ER 415

*Example case of an Equitable Obligation of Confidence and the exclusive jurisdiction of equity / Carpet Grips*

#### FACTS:

- A plaintiff had approached the company about marketing a type of carpet grip
  - While discussing this, the plaintiff mentioned another kind of carpet grip
  - After negotiations broke down, the company patented the second type of carpet grip

#### ISSUE:

- There is no contract here so there is no contractual duty of confidence
  - The common law cannot assist.
- But is there an equitable duty of confidence?

#### HELD:

- Yes, there was a breach of an equitable duty of confidence
- The remedy here was equitable compensation

## 2. Scaffold

### (0) What does the client want?

- Can s/he sue for breach of contract?
  - Just because there is a breach of contract and a contractual remedy can be awarded, does not remove the right to equitable remedy.
- Do they want equitable compensation for the breach?
- What kind of injunction do they want?
  - Prohibitory (forbidding an act) or mandatory (ordering something be done)
  - Interim/interlocutory(brought early before a full trial to preserve the status quo)
  - Ex parte (without hearing the D) or inter parties
  - *Quia timet* (granted against threatened wrongs)

### (00) How can they achieve this?

*Equity affords protection to confidential information in its exclusive jurisdiction. Confidential information may be protected independent of any contractual or statutory obligation i.e. if there was no contract (e.g. where negotiations failed to conclude in a contract) or because the defendant was not a party to a contract.*

- Distinguish the protection equity affords to confidential information in its exclusive jurisdiction against the protection it confers to contractual confidences in equity's auxiliary jurisdiction.
  - Contractual terms can be enforced by the equitable remedy of injunction if common law remedies are insufficient.
  - Other common law remedies are available in a common law breach such as damages.
- But breach of confidence is concerned with situations where confidential information will be protected independently of any contractual or statutory obligation e.g. where there was no contract; or where the defendant was not a party to any contract.

### The Test for an equitable obligation of confidence:

Megarry J in Coco sets out 3 element normally required if, apart from contract, a case of breach of confidence is to succeed:

- (1) It must "have the **necessary quality of confidence** about it".
- (2) The information must have been imparted in **circumstances importing an obligation of confidence**.
- (3) there must be an **unauthorised use of that information to the detriment of the party communicating it**.

However, the more modern case of Optus v Telstra (2010), Finn Sundberg and Jacobson JJ provide a more robust adaptation of the elements required for an equitable obligation of confidence:

- 1) **Information identified with specificity**
  - Unlike Coco, this is a new addition
- 2) **Necessary quality of confidence**
  - Is the information confidential?
- 3) Received in **circumstances importing an obligation of confidence**
  - This just means you have to know that the information is confidential
  - It can be if a contract tells you, maybe there is a confidential relationship etc...
- 4) **Actual or threatened misuse without consent**.
  - Unlike Coco, there is no requirement of detriment
  - Occasionally, there will be situations where a person's past attitude will mean that they have consented

*Because courts have been wary of setting out necessary and sufficient conditions of equitable obligation, there have been different cases analysing and developing each element outlined in Coco. These can be similarly applied to the test from Optus v Telstra.*

### (1) Information identified with specificity:

*If the court is to make an order requiring obligation of confidentiality to be observed, it must be able to identify clearly the information that is to be kept confidential. The order must have the degree of specificity sufficient to "enable the Court to embody it in an order" (Mason J in Komesaroff)*

- In the case of O'Brien v Komesaroff, the plaintiff could not **specificity** which section of the deed held the confidential information and the courts failed to find a breach of confidence.
- The court must be able to identify clearly the information that is to be kept confidential
  - It must be identified to the extent that a binary ruling of if a breach had been committed.

### (2) Necessary quality of confidence

*Equity will only protect information that holds "the necessary quality of confidence about it" Per Deane J in Moorgate Tobacco. The position of Campbell JA in Del Casale is preferred in determining if this element is met. He asks if "a person of ordinary intelligence, in all the circumstances of the case, including, inter alia, the relationship of the parties and the nature of the information and the circumstances of its communication, recognise this information to be" confidential.*

- It must be a genuine secret – not in the public domain and not common knowledge.
  - It is not confidential information if the information is **public knowledge** (Johns v ASC)
- In Johns v ASC, Gaudron J defines "public domain" as having two distinct aspects:
  - *the first is concerned with the question whether any duty of confidence arises;*
    - *No obligation attaches to 'trivial tittle-tattle' or to information which is public property and public knowledge or 'common knowledge.'*
  - *the second is concerned with whether a duty of confidence has come to an end.*
  - *If it is the **defendant himself who has caused the information being dissimilated** see below in defences of Loss of Confidentiality*

### (2B) Types of Confidential Information:

*These cases can be used to confirm the information in question holds the necessary quality of confidence*

- **Design:** The design of the Stormtrooper Helmet is not confidential (Lucasfilm v Ainsworth)
- **Identity:** The identity of the Stig was already published by newspapers so Ben Collins' book could not be enjoined for confidence (BBC v HarperCollins)
- **People that see it:** But if it is public, but not enough people see it, it can still be confidential (AFL v The Age)
  - If not enough people see it, it will remain in the realm of speculation
- **Personal Secrets:** The **test for personal secrets** per ABC v Lenah Game Meats:
  - (Gleeson CJ) *An activity is not private simply because it is not done in public.*
    - *But 'information relating to health, personal relationships, or finances, may be easy to identify as private'*
  - The requirement that disclosure or observation of information or conduct would be:
    - *highly offensive;*
    - *to a reasonable person;*
    - *of ordinary sensibilities;*
  - **Sexual relationships**, preferences, and activity (Giller v Procopets) <not this is a VIC case
  - **Medical information/Conditions** etc... especially if it causes embarrassment (Campbell v Mirror Group)
- **Corporate Secrets:** The **test for corporate information** per Kirby J in Wright v Gasweld:
  - *How much skill and effort was expended to acquire the information?*
  - *Has the employer jealously guarded the information?*
  - *Has the employee made aware of the confidential nature of the information?*
  - *Is there an industry practice in keeping this sort of information secret?*
  - *Has access to the information been controlled?*
  - **BUT:** 'know-how' can be carried onto the next job, confidential information cannot (Hodgeon JA in Del Casale & Ors. v. Artedomus)

- **Work/Former Clients:** In Bolkiah v KPMG the firm was prevented from working for client X in an action against Y because they had previously acted for Y.
  - Lord Millett: *The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence.*
- **Government Secrets:** Before governmental information has sufficient confidentiality to warrant protection, it has to be information where it is in the public interest for disclosure to be restrained (Cth v John Fairfax)
  - *...when equity protects government information, it will look at the matter through different spectacles...the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.* – Mason J
  - But start with the position that there is no duty of secrecy.
- **Third Parties**
  - See Lenah Game Meats where the video was sent to the ABC; a third party

### (3) Importing an Obligation of Confidence

- *The test is whether any reasonable person standing in the shoes of the recipient of the information would have realised on reasonable grounds that the information was given to him in confidence* (Coco)
- This is a question of if the accused knew that the information was confidential.
  - Was there a contract involved? Perhaps an employment contract?
  - Was there oral communication/writing?
  - Was there something like a sealed letter?

### (3B) Multiple Breaches

- In a scenario where information travels from X > A > B
  - X should seek to stop A telling B but;
  - If A tells B, then B can tell other people if he does not know it is confidential information (i.e. if B is also innocent).

### (4) Actual or Threatened Misuse Without Consent

- If there has not yet been a breach, only a threat, you can apply for a *Quia timet* injunction
- Has there been **detriment**?
  - This is a requirement in Coco, however, was not present in the elements outlined in Optus v Telstra.
  - The law is unclear on this issue.
- Per the case of Smith Kline & French Laboratories in order to establish Actual or Threatened Misuse:
  - *The court must conclude that a confidence reposed has been abused that unconscientious use has been made of the information*
- Consent would generally come from the plaintiff

### (5) Defence:

- **Authorised Use:** For example, if a celebrity tips off news.com about their secret birthday party, they cannot claim confidentiality when news.com publishes the pictures.
  - But it is different if Celeb A talks about being drug free, then News publishes photos of them getting treatment – that is still a breach as it was more than *authorised* by Celeb A (Campbell v Mirror Group)
- **Public Interest:**
  - In NRMA v Yates it would only be acceptable in matters of national security, public health etc... but there is no broad public interest in the truth being told
  - But in AG Australia v Burton & Anor, Campbell J held that 'the present status of a "public interest... is not clear.'

- **Force Disclosure:**
  - In *Royal Women's hospital v Medical Practitioners Board of Victoria*, a breach was established when a doctor was ordered to release some information, however it was successfully defended as it was a court ordered or statutory breach.
- **Loss of Confidentiality**
  - *A person who is subject to obligation is released from it by the person who is entitled to the benefit of the obligation*
  - *The information comes to be in the public domain, other than through the breach of a person who is subject to the duty*
  - [See *Gaudron J in Johns v ASC* at 2.2.1(B)(1)(a)]
    - *If it is the defendant himself who has caused the information being dissimilated, the cases are not definitive. On principle, the defendant is not released. A remedy of account for profits could be available even if an injunction against further publication is not available (because equity does nothing in vain)*
    - *Gaudron J defines "public domain" as having two distinct aspects:*
      - *the **first** is concerned with the question whether any duty of confidence arises; 'No obligation attaches to 'trivial tittle-tattle' or to information which is public property and public knowledge or 'common knowledge.*
      - *the **second** is concerned with whether a duty of confidence has come to an end.*

#### (6) Remedies:

- **Contractual Confidence:**
  - Damages for breach of contract
  - If common law damages are inadequate the court may consider equitable remedies
    - E.g. Injunction to prevent further breach of contract
  - Account for profits is not awarded for breach of contract
- **Equitable Confidence:**
  - Injunction for future/threatened breach (no need to show common law damages are inadequate)
  - Account of profits
    - This is assessed by reference to the gain of the defendant rather than the loss of the claimant.
    - Seen in *Douglas v Hello! Ltd*
  - Equitable compensation (NOT CALLED DAMAGES)
    - Can be for mental distress (*Giller v Procopets*)
    - And can be aggravated (*Giller v Procopets*)
    - Loss of work
- **The Springboard Doctrine**
  - This is where "an injunction may be granted to prevent the defendant from benefitting from past misuse of confidential information even if it is no longer confidential"
  - It states that the culprit of a breach of confidence cannot put himself in a better position than the rest of the market
    - Equity will prevent a defaulting confidant from being able to use information, even after it has entered the public domain BUT will eventually allow them to use it.
  - E.g. in *Terrapin Ltd v Builders Supply Co*:
    - *A person who has obtained information in confidence is not allowed to use it as a spring-board for activities detrimental to the person who made communication – Roxburgh J*

## 2.1. Cases: Generally

### Coco v AN Clark (Engineers) Ltd [1969] RPC 41

#### FACTS:

- There was a design for a moped engine

#### ISSUE:

- Should an interim injunction be granted?

#### HELD:

- **Three Part Test from Megarry J:** *In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed.*
  - First, the information itself, in the words of Lord Greene, M.R. in the *Saltman* case on page 215, must “have the **necessary quality of confidence** about it”.
  - Secondly, that information must have been imparted in **circumstances importing an obligation of confidence**.
  - Thirdly, there must be an unauthorised use of that **information to the detriment of the party communicating it**.
    - BUT a proof of detriment is not a necessary element as you do not have to prove loss. An available equitable remedy does not require damage.

### Optus Networks Pty Ltd v Telstra Corporation (2010) 265 ALR 281

*Preferred case rather than the one above*

#### FACTS:

- At the time of this case, Telstra and Optus both owned large portions of the telecommunications network in Australia
  - Although they owned the networks, they had to offer the network for other companies
- This meant that if you were in a Telstra area but were an Optus customer, Telstra could see what was happening and vice versa.
  - Telstra and Optus promised, via a contract, to not peep on the other
  - In the contract there was a clause that said the company to break the agreement would owe the other \$x
- Telstra breaks this agreement and Optus sues
  - Optus wants more than the \$x from the contract

#### ISSUE:

- Can Optus rely on the equitable duty of confidence to get more relief?

#### HELD:

- In a broad sense, equity was not ousted even though it was regarding two massive companies
- It was found that the wording of the contract did not exclude equitable duty
  - Just because there is a contractual remedy, it does not oust equitable remedy
    - The contractual/common law remedy can still be inadequate
  - Therefore, Optus could seek equitable remedy such as gains based remedy etc...

#### SIGNIFICANCE:

- This case creates the *new* test for an equitable obligation of confidence. See above for the scaffold.

## 2.2. Cases: Information identified with specificity

### O'Brien v Komesaroff (1982) 150 CLR 310

#### FACTS:

- An insurance salesman and solicitor marketed tax minimisation devices
  - It was the solicitor that actually came up with the device
  - They had a falling out and the insurance salesman kept selling these devices and the solicitor wanted him to stop

#### HELD:

- The solicitor sued and **won on breach of copyright** but **lost on breach of confidence** because:
  - He could not identify with **specificity** which section of the deed held the confidential information
  - There is nothing in the trust deed per se which gives any indication that it is information of confidential nature.

## 2.3. Cases: Necessary quality of confidence

- The information needs to be of a confidential nature
  - This means it can't be publicly known as this would no longer constitute a breach of confidence
    - This also creates an issue as once the information is out, there is no point seeking an injunction because the information is already out there

### *Johns v Australian Securities Commission (1993) 178 CLR 408*

#### FACTS:

- The ASC had published transcripts of interviews with Johns regarding a collapse of a large number of companies

#### ISSUE:

- Was there a breach of confidence?
  - Where his words in this interview confidential?

#### HELD:

- No
  - The information was now in the public domain and therefore no longer confidential.
- (Gaudron J) the term "public domain" has two distinct aspects:
  - *the first is concerned with the question whether any duty of confidence arises;*
  - *the second is concerned with whether a duty of confidence has come to an end.*

### *Lucasfilm Limited v Ainsworth*

#### SUMMARY:

- Someone sold the stormtrooper helmet design
  - This information was not confidential as everyone knew about Star Wars
- Lucasfilm did however win on other grounds

### *BBC v Harper Collins (2010) EWHC 2424*

#### SUMMARY:

- This is when Top Gear sued the original Stig when he published a tell-all book
- This claim failed because the identity of the Stig had already been released by newspapers.

### *AFL v The Age*

#### SUMMARY:

- The Age Newspaper published the details of an AFL player who had failed a drugs test
  - It was caught and the information was taken down
  - The data showed that a very small number of people had clicked on the web page
- It was held that the information had not lost its confidential nature
  - It still remained as speculation' – Callum J

### 2.3.1. Personal Secrets

### *ABC v Lenah Game Meats Pty Ltd [2001] HCA 63*

#### SUMMARY:

- Gleeson J: Certain kinds of information about a person, such as information relating to **health, personal relationships, or finances**, may be **easy to identify as private**;
- as may certain kinds of activity, which a reasonable person, applying contemporary standards of morals and behaviour, would understand to be meant to be unobserved.
- **The Test for PERSONAL INFORMATION:** The requirement that disclosure or observation of information or conduct would be:
  - **highly offensive;**
  - **to a reasonable person;**
  - **of ordinary sensibilities;**
  - is in many circumstances a useful practical **test of what is private.**

### 2.3.2. Corporate Secrets

#### Wright v Gasweld (1991) 22 NSWLR 317

##### SUMMARY:

- **The Test for CORPORATE INFORMATION:**

- How much skill and effort was expended to acquire the information?
- Has the employer jealously guarded the information?
- Has the employee made aware of the confidential nature of the information?
- Is there an industry practice in keeping this sort of information secret?
- Has access to the information been controlled?

#### Del Casale & Ors. v. Artedomus (Aust) Pty. Limited [2007] NSWCA 172

##### SUMMARY:

- Know-how or Confidential
  - Know-how can be carried onto the next job, confidential information cannot.
- *However, where the confidential information is something that is ascertainable by enquiry or experiment, albeit perhaps substantial enquiry or experiment, and the know-how which the ex-employee is clearly entitled to use extends to knowledge of the question which the confidential information answers, it becomes artificial to treat the confidential information as severable and distinguishable from that know-how; and in that kind of case, courts have tended not to grant relief. – Hodgson JA*

### 2.3.3. Preventing Work

#### Bolkiah v KPMG [1999] 2 AC 222

##### FACTS:

- B was the brother of a sultan or some country. He had been extremely rich with money everywhere
  - He fell out with the Sultan
  - The Sultan asked for tenders from big accountant firms to go and find the money

##### ISSUE:

- KPMG in the past had worked for Bolkiah, so Bolkiah sued them seeking an order to say they could not work on the new business.

##### HELD:

- KPMG were prevented from working with the Sultan on the new business

### 2.3.4. Government Secrets

- The government will usually have other methods to enforce the keeping of their secrets

#### Commonwealth v John Fairfax & Sons Ltd (1980) 147 CLR 39

##### SUMMARY:

- The government did not succeed in protecting their secrets
  - There was no inherent right to keep things confidential
- *This is not to say that equity will not protect information in the hands of the government, but it is to say that when equity protects government information it will look at the matter through different spectacles.*
- *Accordingly, the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.*

##### SIGNIFICANCE:

- If it is the government, you start from the position that there is no duty of secrecy.

## 2.4. Cases: Importing an Obligation of Confidence

- This is ultimately a question of: **did you know it was confidential.**
- For example:
  - A contract cannot turn something that is not confidential into something confidential
  - BUT it can say that x information is indeed confidential

○ A contract is a way you can be told information is confidential

- It is pretty common sense as to what is confidential – there does not *have* to be a contract.
  - For example; a sealed letter with a name is likely confidential

#### *Moorgate Tobacco Co. Ltd v. Philip Morris Ltd*

##### SUMMARY:

- [The basis of the obligation] lies in the notion of an obligation of conscience arising from the circumstances in or through which the information was communicated or obtained.

##### 2.4.1. Multiple Breaches

- Think Chinese whispers from X > A > B
  - X can still stop both A and B from telling the secret.
  - You can't stop B if they didn't know it was confidential.
    - But as soon as they know, likely by you telling/suing them, then you can stop them.
    - It all comes down to if B knows the information is confidential rather than the relationships between the parties.
    - Also note that B, the third party, has to be innocent.

## 2.5. Cases: Actual or Threatened Misuse Without Consent

##### 2.5.1. Threatened Misuse

- *Quia timet* injunction applies to threatened misuse
- It is valid

##### 2.5.2. Unauthorised Misuse

- This implies that there is an authorised use
  - It arises for example when Celebrity A stages some beach pics and tips off the paparazzi
  - A cannot turn around and say that it was an unauthorised misuse because of A's past actions

#### *Lennon v News Group Newspapers [1978] FSR 573*

##### SUMMARY:

- Lennon's ex-wife was going to publish stuff about her past married life.
- An injunction was not granted to Lennon because he had previously talked about his married life.

#### *Campbell v Mirror Group Newspapers Ltd [2004] UKHL 22*

##### SUMMARY:

- Campbell lied to the papers about being drug free – but she wasn't
- The Mirror took photos of her going to a rehab clinic
- The judge held that it was still a breach of confidence
  - It would not have been a breach if they had just reported on it because of her lying etc... and had previously authorised discussion.
  - But the photo was a breach of confidence because it showed where it was, and what she looked like going in. This was because it was more than the bare facts.

## 3. Defences

- Is there a **public interest defence** against a breach of confidence
  - E.g. in Australia (*NRMA v Yates*) it would only be acceptable in matters of national security, public health etc...
  - There is no broad public interest in the truth being told
- **Force Disclosure**
  - *Royal Women's hospital v Medical Practitioners Board of Victoria*
  - There was a public inquiry into late term terminations
  - Doctors were ordered to release certain information on some women
    - This normally would have been a breach of confidence,

- But they had a defence that it was a court ordered or statutory breach.
- It is still a breach of confidence, but it is defended

## 4. Remedies

- The remedy for a contractual breach is **damages**
  - Common law remedy
- The remedy for threatened breach of contract is an **injunction** to prevent the breach
  - Equitable remedy
- A remedy for an equitable breach is normally:
  - **An injunction** – when you can stop the breach before it happens
  - **Equitable compensation** – can show that loss has been suffered
  - **Account of profits** – when you think you can get more based on what the other person has gained

### *Giller v Procopets (2008) 24 VR 1 at [394]-[403]*

#### FACTS:

- This case involved a sex tape where a man made a video having sex with his partner
  - She did not consent to him showing the sex tape to her family
- The breach of confidence here was him showing the video

#### ISSUE:

- She had emotional loss, but no quantifiable loss.
  - He did not make a gain either.
- What should her damages be?

#### HELD:

- She was still compensated (equitable compensation) for **mental distress**.
  - It was \$40K with an additional \$10K for aggravated because the guy was a dick about the whole thing
  - It was not punitive – which you can't have (*Harris v Digital Pulse*)

#### 4.1.1. The Springboard Doctrine

- This is the idea that the culprit of a breach of confidence cannot put himself in a better position than the rest of the market
  - E.g. Company A brings out a new product, Company B reverse engineers it and brings out a similar product 6 months later.
    - But Company C breaches confidence and gets to sell it after 2 months
    - Therefore, to protect Company B, the court may order C to not sell the product until 6 months.

### *Terrapin Ltd v Builders Supply Co (Hays) Ltd [1967]*

#### FACTS:

- A pre-fabricated structure was put on the market and was susceptible to reverse engineering.
- The defendants breached confidence by using the designs of the plaintiff and, by doing so, got a head start on other competitors in the field.

#### HELD:

- To counter this unfair advantage, the court ordered that the defendant be placed under a special disability in the form of an injunction preventing it from entering the market, which lasted until the information had fully reached the public domain.