

# 2026 LAW3111 Equity Exam Notes

## **Topic List:**

Topic 1 – Introduction (Non-Examinable)

Topic 2 – Breach of Confidence

Topic 3 – Fiduciary Relationships and Breach of Fiduciary Duty

Topic 4 – Personal Equitable Remedies

Topic 5 – Proprietary Equitable Remedies

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Text in small font indicates content identified by lecturers, tutors, or course materials as non-examinable, unlikely to be on the exam, or simply unnecessary information that serves no practical use in assessments.

## Topic 2-Breach of Confidence

### Introduction

#### Equitable Doctrine of Confidence

- This legal principle concerns the protection of certain types of information regarded by equity as confidential. It's not about all types of information, just those that have certain qualities of confidentiality.
- **Gummow J in Smith Kline (SKF)** discussed the principle as an 'obligation of conscience' meaning that those privy to confidential information have an ethical and legal duty to uphold its confidentiality.

### Negating Factors

Certain circumstances or reasons may excuse or negate a duty or breach of confidence:

1. **Statutory or Public Duty:** Laws or public duties may supersede confidentiality. For example, in the case of *AB v CD*, statutory provisions relieved an individual from a confidentiality obligation.
2. **Public Interest Defense:** If the public interest in revealing the information outweighs the interest in keeping it confidential, this defense can be invoked (discussed below).

### Key Elements to Establish Breach of Confidence (*Coco v AN Clark Engineers*)

1. **Specificity:** Information must be specific, not vague or overly broad. For instance, in cases like *O'Brien* and *Ocular*, specificity was a key element.
2. **Necessary quality of Confidence:** The information must possess a certain "quality" or level of confidentiality, as seen in cases like *Saltman* and *Coco*.
3. **Obligation of Confidence:** The context or circumstances in which the information was shared should give rise to an expectation of confidence. This was discussed in cases like *Franklin*, *Coco*, and *Saltman*.
4. **Breach/Unauthorized Use:** There must be an actual or threatened unauthorized use or disclosure of the confidential information.

**Megarry J in *Coco v AN Clark Engineers*** offers a concise summary of these elements, emphasizing the importance of the nature of the information, the circumstances of its sharing, and its unauthorized use.

### Element Examination

#### Element 1- Specificity (*Ocular*, *O'Brien*)

##### Summary:

- Information must be detailed, not described in general terms. The court should be able to assess its confidential nature distinctly.
- If the information is too general, it's hard to establish a duty of confidence.
- Mason J in *O'Brien* also noted that for a court to grant relief for a breach of confidence, the claimant must specifically identify what information is confidential and not common knowledge. Failure to do so may result in the court being unable to grant relief.

## Element 2 - Quality of Confidence

### Summary:

**Assessment Factors:** There is an objective assessment of these two sub-elements

1. It should not be common or public knowledge ('must be sufficiently secret').
2. It should have some unique feature that demands equity's attention. Mere banal or everyday information won't be protected (info needs to have sufficient value).

### Detailed:

**Rule:** Per Megarry J in *Coco v Clark*, the information must have the NQOC such that it can be protected by equity. [P] must satisfy the additional requirements of secrecy (the information is not publicly available) and value (the information is not trivial and not banal), to prove that (INSERT INFO) has the NQOC.

### Part 1- Secrecy

**RULE:** Per *ABC v Lenah Game Meats*, the information must be sufficiently secret as opposed to 'public property and public knowledge' (*Cwth v Fairfax citing Saltman*).

It is not necessary for information to be secret, in the sense that it has not been communicated by the person or person to whom it relates, for it to satisfy the test of private or confidential (*Jane Doe*)

[D] is likely to allege that [INFO] was not secret as it was known in the local community/ broadcasted on television or to the public.

When is information considered to be 'public':

- (i) If it was confidential and has been disclosed
- (ii) If it was so general to begin with that it could never have been confidential

Factors to consider:

#### 1) Degree of accessibility

*Lenah* – the factory was relatively unsecure in the sense that nearly anyone could walk through it + no attempt made by the factory to conceal its operation, as such it was essentially public information.

*Jane Doe* – only people who knew about the rape were those in her circle of confidence, or those in the court room at the time, who were subject to a statutory scheme, thus the *information that pertains to her identity was not easily accessible to the public.*

*AFL* – despite the information being broadcasted, it was still considered secret due to the limited duration of the broadcast + the doctors and staff at the football club were brought into the circle of confidence.

## Step 2: Scope of fiduciary duty

### Overview:

- The effect of finding a fiduciary relationship is that it gives rise to fiduciary duties.
- Essentially, what has the fiduciary actually agreed to do and does the transaction fall within that scope?
- Best way to think about this is to go back to step 1 and think about what was the undertaking that the fiduciary made and what were the duties of the fiduciary.
- Just because there is FR does not mean there is a FD, because FD do not extend to every aspect of the relationship, just the part that is fiduciary.

### Example of how to go about this analysis: Sample Question

Question: Frank, a director and bio-medical engineer at Medi-Pro Pty Ltd (which makes medical equipment), disagrees with the company's facemask production during Melbourne's stage-4 lockdown. He proposes creating masks with replaceable filters, but in January 2021, the board (comprising five family members) rejects his idea. Using company equipment, Frank independently develops a prototype of this 'improved mask'. He secures orders for new masks from Frankston hospital.

Sample answer 1 (Regal Hastings approach): He has acquired orders from Frankston hospital, there is going to be a benefit/profit as a result of this. Therefore, the question is that profit connected to his position as director of his own company in the sense that he has used opportunity or knowledge gained by virtue of his position as director to acquire this gain. With this approach, the key is if there is a profit, think about whether you can connect it to the opportunity or info or knowledge that the fiduciary has acquired in that relationship.

Sample answer 2: What are your duties as a director to your company in the way equity would look at it. Must act loyally and faithfully to their company and not permitted self-interest in the matters for which they have undertaken to act as a director. Given the company makes medical equipment, and this is what he is making, this is within scope. He should be making the masks for the company, not on his own. The company has also said that he cannot do this, so even more reason no.

### Sample steps:

1. What is the nature of the relationship. I.e. – What has the fiduciary actually undertaken/promised to do. 'Actual function or responsibility assumed' - Grimaldi
2. Does the facts of the case change the scope of the relationship over time?

### Preliminary notes:

- Scope is the most relevant/contentious element inside the accepted categories
- Talk about scope **for each alleged breach** – and apply to each type of relationship

Note: The next two sample pages are also taken from Topic 3

## Step 6: Third Party Liability

This section is relevant if there is another person who is involved or actively participates in the breach.

Rule: A third party, (3P) may also be liable if it is established that they knowingly received fiduciary property or knowingly assisted with a fiduciary breach (Barnes v Addy)

Note: May be both

Equity may impose personal liability on third parties when fiduciary obligations are breached. Remedies will be limited to personal remedies alone. Per Barnes v Addy, Equity may impose liability (as a constructive trustee) for BOFD on a third party (TP) who either:

- 1) Knowingly receives or deals with fiduciary property (Knowing Receipt), or;
- 2) Knowingly assists with the fiduciary's dishonest and fraudulent design (Knowing Assistance)

Both of the limbs do not need be shown, merely one.

General information:

- People only generally go after TP's when the primary defendant doesn't have deep pockets
- Must be noted that strangers who merely act as agents don't become constructive trustees, such as banking accepting funds, solicitors, accountants etc.

### Type 1: Knowing receipt

Knowing receipt in the context of a breach of fiduciary duty (BOFD) occurs when a third party gets something (assets or property of some kind typically) because someone else did not fulfill their duty to act in the best interest of another person. Imagine someone is supposed to take care of another person's property or money but instead gives some of it to you. If the second person know (third party), or it's quite obvious, that what you're receiving is due to their failure to act correctly and responsibly, you could be held accountable for "knowing receipt."

#### Step 1: Knowledge

For the first step of establishing liability in knowing receipt, the third party must know of the fact that this property belongs to a principal and that the fiduciary has no entitlement to that property (*Say -Dee*). The case of *Grimaldi* clarifies that liability in knowing receipt is anchored in the principle of equity, acting as a guardian of conscience (basically saying we do need knowledge). It emphasizes that this form of liability is fault-based, akin to that in cases of assistance, demanding a similar threshold of knowledge or notice.

In this context, "knowledge" is nuanced and can be dissected into two primary forms:

Actual Knowledge: This is the unequivocal, direct understanding that the transaction was improper.

Constructive Knowledge: This refers to scenarios where the individual, through a reasonable standard of awareness and diligence, ought to have recognized the impropriety.

A pivotal framework for understanding the various nuances of knowledge is the Baden Scale, derived from *Baden v Societe General*. This scale elucidates five gradations of mental states concerning knowledge:

1. Direct (actual) knowledge.
2. Intentionally avoiding the obvious.
3. Willfully neglecting to make inquiries an honest and reasonable individual would make.
4. Being aware of circumstances which would suggest the facts to an honest and reasonable person.
5. Recognizing circumstances that would put an honest and reasonable person on inquiry.

For the first limb of *Barnes v Addy*, the initial four levels of the Baden scale are considered adequate to establish knowledge (*Say-Dee*).

#### Step 2: Receipt of fiduciary property

This includes property acquired through both breaches of trust and/or breaches of fiduciary duty (Grimaldi, Bell & DPC v Consul). Property can be real, personal or intangible (e.g. rights arising under a contract, a mining licence or securities) *Westpac v Bell Group* (Drummond AJA).

For it to be termed fiduciary property, it must belong to the fiduciary at the time of the breach. It also does not matter whether possession continues or not. Common example (combined with knowledge) includes an employee that steals from employer and deposits funds in joint bank account of herself and Husband (Involves BOFD) or a solicitor that loses money at casino. Money has come from client trust account (Involves BOT).

Fiduciary property for these purposes does not include:

- Does not include situations where someone is receiving property as an agent or administrative capacity. This could include situations where solicitor who has received trust funds and been instructed to pass trust funds onto another party without any knowledge, that solicitor is not liable
- Confidential information (Farah; Boardman)
- Acting as a mere conduit in the transfer of property to another 3P (*Westpac*)

Fiduciary property for these purposes does include:

- Trust property or company assets (*Grimaldi*; *Westpac*)
- Trade secrets (Farah; *Westpac*)
- Company money (*Grimaldi*)
- Trust property acquired and advanced (i.e. no longer in 3P's possession) for the benefit of the 3P is sufficient for knowing receipt (*Grimaldi*)
- Contractual rights and security interests of a company (*Grimaldi*)