	○ Regal (Hastings) Ltd v Gulliver: Directors gained profit from a share acquisition due to knowledge obtained in their fiduciary role. ▪ *Like Regal (Hastings), the profit arose solely because of [X]'s fiduciary role.* • **Accepting Bribes or Secret Commissions** ○ Fiduciary breaches duty by accepting bribes or secret commissions. ○ Attorney General for Hong Kong v Reid: Reid breached his duty by accepting bribes, which were recovered as fiduciary gains. ▪ *Like Attorney-General for Hong Kong v Reid, [X] accepted an unauthorised benefit obtained through their fiduciary office.*

STEP 4: Defences

A fiduciary may avoid liability if the principal gave fully informed consent following full disclosure of all material facts. The onus is on the fiduciary to establish this defence.

A fiduciary's breach can only be excused if they acted with the full knowledge and consent of the principal (Regal).

Full Disclosure:

- *Per Boardman v Phipps, the fiduciary must disclose all material facts concerning the conflict or profit.*

Informed Consent:

- The principal must give consent that is fully informed, meaning they understand the nature and consequences of the transaction (Boardman v Phipps; Farah Constructions)

Consent from Correct Party:

- Consent must be given by the appropriate principal or beneficiary of the fiduciary duty (Accepted Categories).

Director-Company Context

- In a company setting, consent is typically given by shareholders.
- Queensland Mines v Hudson – Breach excused because the board of directors provided full and informed consent, and all shareholders were represented on the board.
  - *Like Queensland Mines v Hudson, the breach may be excused if fully informed consent was obtained from all relevant decision-makers.*

STEP 5: Third Party Liability (if applicable)

A third party may be liable if they participated in the fiduciary's breach (Barnes v Addy). There must first be a breach of fiduciary duty.

Liability arises under:

1. Knowing receipt; or
2. Knowing assistance

Knowing Receipt (First Limb of **Barnes v Addy**)	*Under the first limb of Barnes v Addy, a third party is liable where they beneficially receive fiduciary property with sufficient knowledge of the breach.*

	1. Beneficial Transfer of Fiduciary Property • **Fiduciary property**: Must be held or controlled subject to a fiduciary obligation (Grimaldi). ○ Information is NOT property for Barnes v Addy purposes (Grimaldi). ○ Profitable business opportunities are NOT property (Farah Constructions). • **Beneficial Receipt**: The third party must receive the property in their name and for their benefit (Quince v Varga). ○ Not sufficient if merely acting as a depository or channel. **2. Knowledge** • The third party must know they received property in breach of fiduciary duty. • Knowledge from level 1-4 on the Baden scale is sufficient (SEE BELOW).
Knowing Assistance (Second Limb of **Barnes v Addy**) *Usually Stronger*	*Under the second limb of Barnes v Addy, liability arises where a third party knowingly assists a dishonest and fraudulent design.* ELEMENTS TO ESTABLISH LIABILITY **1. Dishonest and Fraudulent Design** **RULE:** F's conduct must transgress ordinary standards of honest behaviour (Ancient Order of Foresters v Lifeplan Australia) • The fiduciary's conduct must be dishonest and fraudulent (Farah Constructions v Say-Dee). ○ Threshold is low, likely to be made out. . • Not necessary for the third party to consider these standards. • Unconscionable conduct in equity (Ancient Order of Foresters v Lifeplan Australia). **2. Third Party Assistance** • The third party must actively assist in the execution of the fiduciary's dishonest design (Ancient Order of Foresters v Lifeplan Australia). • They must forward or advance the primary breach. • Passive acquiescence is not sufficient. Common Examples: • Handling documents. • Providing finance. • Participating in a scheme that diverts opportunities (Farah Constructions v Say-Dee). • Failing to act when suspicion arises (e.g., suspecting fraudulent funds but not investigating). **3. Knowledge** • The third party must have the requisite level of knowledge of the fiduciary's breach (Farah Constructions v Say-Dee). • Satisfied by knowledge within levels 1–4 of the Baden Scale (Affirmed in Farah Constructions v Say-Dee). Actual Knowledge (Sufficient) - Categories 1-3

1. **Actual knowledge**: The third party had clear and direct knowledge of the facts indicating dishonesty.
    a. *Difficult to make out – higher threshold. Pick most relevant one.*
2. **Wilful blindness**: The third party deliberately shut their eyes to what was happening.
3. **Reckless failure to inquire**: The third party had obvious reasons for suspicion but wilfully and recklessly failed to investigate (Grimaldi v Chameleon Mines: 'a calculated abstention').

Constructive Knowledge – Categories 4 – 5

4. Knowledge of circumstances that would indicate dishonesty
    a. **Sufficient** – A reasonable person would have recognised the fiduciary's dishonesty (Farah Constructions: prevents the 'morally obtuse' from escaping liability).
5. Knowledge that should put a person on inquiry
    a. **Insufficient** – Australian courts do not impose liability for mere negligence in failing to inquire.

BARNES V ADDY REMEDIES

- Can only claim personal remedy against 3P under Barnes v Addy.
- However, P can have proprietary claim against a third party without relying on the Barnes v Addy framework.

STEP 6: Remedies

Remedies for Breach of Conflict Rule

- **Injunction** to restrain continuing breach
- **Equitable compensation**: *Nocton v Lord Ashburton* [1914] AC 932
- **Rescission**: *Maguire v Makaronis* (1997) 188 CLR 449 (RG, topic 4)

Remedies for Breach of Profits Rule

- Strip the profit from fid. in one of 2 ways:
    - Account of profits: personal remedy – principal will be an unsecured creditor e.g. *Regal (Hastings) v Gulliver*
    - Proprietary remedies of constructive trust e.g. *Boardman v Phipps* or an equitable lien e.g. *Warman v Dwyer*
- As breach of profits rule is usually also a breach of conflicts rule, facts may give rise to either a loss-based remedy or a gain-based remedy
- Note double recovery not permitted: *Warman*

TOPIC 4: PERSONAL EQUITABLE REMEDIES

Equitable remedies are a discretionary remedy that orders a defendant to do or not to do a particular act.

1. **TYPES:** Specific Performance

Specific performance is a discretionary equitable remedy requiring a party to perform their obligations under a contract (Per Williamson v Lukey & Mulholland).

STEP 1: Conditions

1. **Contract must be legally valid and enforceable**