Where the question goes

OPEN	Supreme Court Act 1970 (NSW) ss 23, 57–59, 68; Law Reform (Law and Equity) Act 1972 (NSW) s 5; Conveyancing Act 1919 (NSW) ss 12, 23C, 37D, 44; Trustee Act 1925 (NSW); Charitable Trusts Act 1993 (NSW); the judgments.
SOURCE	the topic list from the LAWS5015/2015 notes; statutes read live 11 Nov 2026 as each page is built.

ROUTER · THE QUESTION INVOLVES → PAGE

Law and equity in conflict; a maxim; an unfinished gift; an agreement for a lease	SCA s 57; LR(L&E) Act s 5; CA ss 12, 23C	**EQ · 1 Fusion, maxims and gifts**
Secret information used or about to be published	judgments	**EQ · 2 Confidence**
A promise or assumption relied on; a promised house or land	judgments	**EQ · 3 Estoppel**
Make them perform the contract	SCA s 68	**EQ · 4 Specific performance**
Stop them, or make them act: interim or final; a negative covenant	judgments	**EQ · 5 Injunctions**
Assets about to vanish; evidence about to be destroyed; damages instead of an injunction	SCA ss 23, 68; UCPR Pt 25	**EQ · 6 Freezing and search orders; Lord Cairns' Act**
Is there a trust: intention, property, objects; a purpose trust; writing	CA s 23C	**EQ · 7 Express trusts**
A trustee's duties, powers or liability; the beneficiaries want the property	Trustee Act 1925	**EQ · 8 Trustees and beneficiaries**
A fiduciary: conflict, profit, consent	judgments	**EQ · 9 Fiduciary obligations**
Remedies against a fiduciary: account, compensation, rescission	judgments	**EQ · 10 Fiduciary remedies**
Property paid for or transferred without intention to give; a loan for a purpose	CA s 44	**EQ · 11 Resulting trusts**
A stranger received trust property or helped the breach	judgments	**EQ · 12 Third parties**
A failed joint endeavour; stolen or mistaken payments	judgments	**EQ · 13 Constructive trusts**
Follow the money into a mixed fund or an asset	judgments	**EQ · 14 Tracing**
A gift for a purpose: poverty, education, religion, the community	Charitable Trusts Act 1993; CA s 37D	**EQ · 15 Charitable trusts**
Which case to cite	the judgments	**EQ · 16– Cases in the exam**

THE ANSWER, IN ORDER (EVERY PAGE)

1	The right or relationship	Identify the right, interest or relationship the claim rests on, and who holds it.
2	The doctrine	State the equitable doctrine or statutory rule, with each element, from the page.
3	The facts	Apply each element to the facts in turn.
4	Bars and defences	Consent, delay, unclean hands, third-party rights, or a statutory excuse, where the page lists them.
5	Remedy; venture an answer	The remedy is discretionary: say which and why; then "[party] is entitled to [remedy]."

Fusion, the maxims and incomplete gifts SCA s 57; LR(L&E) Act s 5; CA ss 12, 23C

USE THIS PAGE WHEN	law and equity give different answers; exemplary damages against a fiduciary; an unregistered lease; a gift half done; a transfer not yet registered; "he came with dirty hands".
OPEN	Supreme Court Act 1970 s 57; Law Reform (Law and Equity) Act 1972 s 5; Conveyancing Act 1919 ss 12, 23C.
FIRST QUESTION, ALWAYS	is there a real conflict, or is someone borrowing a remedy from the other system?

RELATED PAGES · ESTOPPEL (EQ·3) · EXPRESS TRUSTS (EQ·7) · FIDUCIARY REMEDIES (EQ·10).

s 5
equity shall prevail

Law and equity give different answers
→ Law and equity are administered concurrently (SCA s 57); in a conflict on the same matter equity prevails (LR(L&E) Act s 5): a deed varied for value (Hawcroft [35]; Andrews [63]).

Hawcroft · s 5: [2017] NSWCA 91
a key-man insurance policy

s 57
administer concurrently

Exemplary damages against a fiduciary; contributory negligence in equity
→ Joint administration does not merge doctrines: "the heart of the 'fusion fallacy'" (Harris, Spigelman CJ [18]). No exemplary damages for these equitable wrongs (Heydon JA [391], [470]; Spigelman CJ narrower [4]); procedure changed, not doctrine (Andrews [68]). Day v Mead "very substantially discredited" (Harris [362]).

Harris · s 57: Mason P dissenting
employees poached clients

maxim
as done what ought to be done

An agreement for a lease, never registered
→ If specifically enforceable, an equitable lease between the parties (Walsh v Lonsdale via Eureka [9]–[11]), distinct from a legal one (Chan via Eureka [10]); a guarantee "under this lease" meant a legal lease (Chan via White v Cariste [54], [70]).

Chan v Cresdon (via White v Cariste [54]): guarantee failed
an unregistered lease

maxim
everything necessary

A gift half done; a transfer signed but not registered
→ Everything necessary, by the nature of the property, must be done; "no equity … to perfect an imperfect gift", nor is it saved as a trust (Milroy v Lord via Anning at 1056). Necessary by the donor: if the donee can finish unaided, complete (Griffith CJ at 1057). Torrens: registrable transfer and control of the title (Corin via Isin [39], [45]); recallable till then ([48]).

Anning: Higgins J dissenting in part
a deathbed deed of gift

CA ss 12, 23C
in writing

Assigning a debt, a policy, an equitable interest
→ Legal assignment: absolute, in writing, express written notice to the debtor (s 12). Assignment is not an agreement to assign; if assignable at law, no equitable assignment without the transfer (Hawcroft [45]–[46]). An existing equitable interest: signed writing (s 23C(1)(c)).

maxim
immediate and necessary relation

"He came with dirty hands"
→ It needs an "immediate and necessary relation to the equity sued for" (Black Uhlans [181]); a guide, not a rule ([158]); deceiving a lender did not bar a resulting trust ([184]–[185]). Mere breach of contract does not (Geltch [60]).

Black Uhlans: Campbell J
a club's house bought on a deceptive loan

maxim
an equity

"Equity will look after them"; a vague appeal to conscience
→ "A properly formed and instructed conscience" (Lenah, Gleeson CJ [45]; Hills [76]). Show an equity; equity follows the law and will not outflank a chosen structure (Friend v Brooker [38]–[39], [86], [88]).

Friend v Brooker: Heydon J agreeing
co-directors; contribution

DECIDE

Law and equity

1 Do law and equity conflict on the same matter (LR(L&E) Act s 5)?
- **YES** → equity prevails
- **NO** ↓

2 Is a remedy from one system claimed for a wrong in the other?
- → **YES** not by fusion alone (Harris [18]; Andrews [68])
- **NO** apply each doctrine on its own terms

An incomplete gift

1 A present intention to give?
- **NO** → no gift
- **YES** ↓

2 Has legal title passed?
- **YES** → complete
- **NO** ↓

3 Has the donor done all that is necessary on the donor's part, leaving the donee able to finish (Anning at 1057; Corin via Isin [45])?
- → **YES** complete in equity
- **NO** incomplete; recallable; not saved as a trust (Milroy v Lord)

SAY

The Court administers law and equity concurrently, and where they conflict on the same matter the rules of equity prevail. (SCA s 57; LR(L&E) Act s 5) That does not merge the doctrines, so remedy is not available for equitable wrong. (Harris [18], [470]) Donor had done everything necessary on her part to transfer property, so the gift is complete in equity. (Corin (via Isin [45]); Anning at 1057) Equity will not perfect an imperfect gift, nor treat the intended transfer as a declaration of trust. (Milroy v Lord (via Anning at 1056))

Plaintiff 's misconduct has no immediate and necessary relation to the equity sued for, so it does not bar relief. (Black Uhlans [181], [184])

MARKS LOST

1. s 57 read as fusing the doctrines (Harris [18]).
2. Exemplary damages claimed for breach of fiduciary duty (Harris [470]).
3. Mason P's dissent cited as the law.
4. Walsh v Lonsdale applied without specific enforceability (Eureka [11]).
5. An agreement for a lease treated as a legal lease for a guarantee (Chan).
6. An incomplete gift saved by calling it a trust (Milroy v Lord).
7. "Everything possible" instead of everything necessary by the donor (Anning at 1057).
8. Any misconduct treated as unclean hands (Geltch [60]).
9. Hawcroft cited for procedural fusion: it applies s 5.

Breach of confidence the judgments

USE THIS PAGE WHEN	an ex-employee takes the supplier's name; a pitch at a meeting; secretly filmed; a government document leaked; "it shows wrongdoing"; the lawyer now acts for the other side; publication about to happen.
OPEN	the judgments (no statute).
FIRST QUESTION, ALWAYS	what exactly is the information, and how did the defendant get it?

RELATED PAGES · FUSION AND MAXIMS (EQ·1) · INJUNCTIONS (EQ·5) · FIDUCIARIES (EQ·9).

four elements
conscience

Any claim to stop use of information; "our know-how"
→ "An obligation of conscience", not property (Moorgate via Del Casale [101]). (1) Information identified "with specificity, and not merely in global terms"; (2) quality of confidence; (3) receipt importing an obligation; (4) actual or threatened misuse without consent (Smith Kline via Worth [24]; Streetscape [159]). Detriment: open (Worth [25]).

Smith Kline (via Worth [24]): Gummow J's four elements
‣ *facts not verified*

element 2
quality of confidence

An ex-employee uses what he learnt; others know it too
→ "A fairly undemanding test": not public knowledge (Coco via Del Casale [103], Campbell JA); known to some may still be confidential (Hodgson JA [39]); the confider largely keeps it to himself (O'Brien via Streetscape [161]). An ex-employee's know-how, ascertainable by enquiry, is free (Hodgson JA [37], [42]–[43]). Once public, equity will not intervene (Johns via Isaac [167]).

Del Casale: no breach of confidence ([64], [74]); contract breach remained ([63], [65])
‣ *Sicilian stone sourced*

element 3
importing an obligation

Told at a meeting; given for a limited purpose; a contract covers it
→ Would a reasonable recipient realise it was given in confidence (Coco via Del Casale [104])? Weigh limited purpose, consideration, sensitivity, warnings (Filby [125]); a casual free pitch: none ([125]–[127]). Compelled information: its statutory purpose only (Johns via Smethurst [55]). A contract covering it excludes equity (Del Casale [118]).

Filby: not on the list
‣ *a One Direction concert idea*

element 3
private

Secretly filmed; a third party has it; a government document
→ Surreptitious images of private activities may be confidential, binding those who knew or ought to have known how they were got (Lenah, Gleeson CJ [34], [39]); a possum works was "not relevantly private" ([43]); natural persons only (Gummow and Hayne JJ [132]). Government: "different spectacles" (Fairfax via Lenah [137]).

Lenah: Callinan J dissenting
‣ *possum processing filmed*

iniquity
serious misdeed

"It exposes wrongdoing"
→ No confidence in iniquity (Gartside via Smethurst [99]): a crime, civil wrong or serious misdeed of public importance, disclosed to someone with a real and direct interest in redressing it (Corrs Pavey via Burton [175]). A mere allegation is not enough (Burton [200]); a wider public interest defence is unsettled ([177]).

Burton: injunctions granted
‣ *an ex-GIO employee helps a class action*

Bolkiah
no real risk

The firm now acts against its former client
→ The firm must show no real risk of disclosure, a heavy legal onus (Bolkiah via Técnicas [63]); former clients are owed confidence, not loyalty ([35]); effective barriers can discharge it ([61]–[63]).

Técnicas Reunidas: not on the list
‣ *information barriers held*

remedy
discretion

Publication or use is imminent; it has happened
→ Injunction (Johns via Smethurst [51]); equitable compensation, e.g. a licence fee (Streetscape [187]–[189]); or an account. No breach, no account (Del Casale [64]).

Streetscape: breach finding set aside; retrial
‣ *Smartpole technology*

DECIDE

Breach of confidence

1 Is the information identified with specificity?	**NO** →	the claim fails (Streetscape [159])
YES ↓		
2 Does it have the quality of confidence: not public, not mere know-how?	**NO** →	no claim; free to use
YES ↓		
3 Received in circumstances importing an obligation, and no contract covering it?	**NO** →	no equitable obligation (contract only)
YES ↓		
4 Actual or threatened misuse without consent?	**NO** →	no breach
YES ↓		
5 Is the subject matter an iniquity, properly disclosed?	→	**YES** no confidence in it (Corrs Pavey via Burton [175]) **NO** injunction; account or compensation

SAY

The information is specific description. (Smith Kline (via Worth [24]); Streetscape [159]) It has the necessary quality of confidence: it is not public knowledge, and P kept it to itself. (Coco (via Del Casale [103]); O'Brien (via Streetscape [161])) A reasonable person in D's position would have realised it was given in confidence, for the limited purpose of purpose. (Coco (via Del Casale [104]); Filby [125]) D has used threatens to use it without consent, by conduct. (Smith Kline (via Worth [24]))

P seeks an injunction restraining use, and an account of profits or equitable compensation. (Johns (via Smethurst [51]); Streetscape [187])

MARKS LOST

1. Information described globally (Streetscape [159]).
2. Confidence treated as property (Moorgate).
3. An ex-employee's know-how treated as a trade secret (Del Casale [42]–[43]).
4. Equity invoked where a contract covers the field (Del Casale [118]).
5. Lenah read as protecting a business's activities.
6. Iniquity found on a bare allegation (Burton [200]).
7. A broad public interest defence assumed (Burton [177]).
8. Streetscape cited as finding a breach: it ordered a retrial.
9. Del Casale cited as finding a breach of confidence: none was found ([64], [74]); the contract breach remained ([63], [65]).