46. Breach and Defences

This chapter examines the defences available where a duty of confidence has been breached. It begins by considering the scope of the obligation that must be ascertained to determine whether the duty of confidence has been breached. It then discusses three factors for a breach of confidence to occur: derivation, the defendant’s state of mind, and whether the breach has caused damage. It also tackles secondary liability for breach of confidence before concluding with an examination of the Trade Secrets Directive.

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