14. Fiduciary Obligations

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All books in this flagship series contain carefully selected substantial extracts from key cases, legislation, and academic debate, providing able students with a stand-alone resource. This chapter begins with a definition of fiduciary relationships as presented by a retired judge of the High Court of Australia, Sir Anthony Mason. According to Mason, the relationship is a ‘concept in search of a principle’. Fiduciary relationships are voluntary, and some relationships, such as solicitor–client, are well recognized as fiduciary in nature. However, fiduciary relationships can arise in a wide variety of situations. A fiduciary owes a duty of loyalty to his or her principal, always acting in the best interests of said principal. Fiduciary obligations are strict, and any profits made by the fiduciary in breach must be disgorged to his or her principal. Where the profits are made from property that rightfully belonged to the trust, a constructive trust may be imposed upon the profits.
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