17. Personal Claims and Remedies

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 considers the personal liability of trustees for breach of trust and studies proprietary remedies, which involve the claimant’s recovering particular property from the defendant, or obtaining a security interest in the defendant’s property. Proprietary remedies provide the crucial advantage of providing the claimant with priority over other creditors in the event of the defendant’s insolvency. Personal claims, by contrast, do not enjoy such priority over the claims of others. However, where the defendant is solvent and the property in question has fallen in value, a personal remedy for the value of the claimant’s loss or defendant’s gain may be preferable to a proprietary remedy. Personal remedies are also to be preferred when the property in which the claimant had a proprietary interest has been dissipated, because in such circumstances no proprietary remedy will be possible.
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