

**FRANKLIN V. GIDDINS [1978] QD R 72**

Supreme Court of Queensland – 12 October 1977

**FACTS**

Franklin was the owner of an orchard and had developed a new type of nectarine called the Franklin Early White. This nectarine was of better quality than most nectarines and had the commercial advantage of ripening before other nectarines.

Giddins was a neighbour and friend of Franklin's son and was aware of the commercial value of the new nectarine type and was also aware that Franklin did not wish to sell the nectarine budwood and allow others to grow the new nectarine.

Giddins trespassed onto Franklin's property and stole some nectarine budwood. Giddins later began to grow the new nectarine and sold it to the public.

**ISSUES**

Had Giddins breached an obligation of confidence to Franklin, and if so was Franklin entitled to an order that the budwood be delivered by Giddins to Franklin?

**FINDING**

An obligation of confidence could be imposed even if the confidential information was not directly imparted by the owner of the information to the person misusing the information.

The Court ordered that the budwood be delivered up to Franklin and Giddins be barred by injunction from any further use of the budwood or new nectarines.

**QUOTE**

Dunn J at page 80 said:

*"I find myself quite unable to accept that a thief who steals a trade secret, knowing it to be a trade secret, with the intention of using it in commercial competition with its owner, to the detriment of the latter, and so uses it, is less conscionable than a traitorous servant.*

*The thief is unconscionable because he plans to use and does use his own wrong conduct to better his position in competition with the owner, and also to place himself in a better position than that of a person who deals consensually with the owner."*

At page 81 he said:

*“If it be right to regard the defendants as constructive trustees of the productive wood, leaves, flowers and fruit then they are obliged to deal with them as the plaintiff’s direct. If they were directed to do so by the Plaintiff, they would be bound to destroy the property.”*

## **IMPACT**

An obligation of confidence can be imposed even if the person misusing the confidential information did not receive it directly from the owner of the information.

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