

# Book review

## Account of Profits



Author: Peter Devonshire  
 Publisher: Sweet & Maxwell  
 ISBN: 9780864728029  
 Price: £60.00

In his foreword to this book, the Hon Michael Kirby AC CMG described Peter Devonshire's *Account of Profits* as a "timely" book. It certainly is. There is an ever increasing willingness to deploy fiduciary concepts in a commercial setting with the consequence that it is of the utmost importance that litigators, particularly those more used to commercial contracts than equitable concepts, have a sound understanding of what precisely is meant by the term "account of profits". When is such a remedy available and what precisely are its parameters? These questions take on a greater importance for English law litigators as a result of the Court of Appeal's controversial decision in *Sinclair v Versailles*, favouring *Lister v Stubbs* over *Attorney-General of Hong Kong v Reid*, a much greater emphasis may now be placed on what is incorporated in the personal remedy of an account of profits. Can it be extended, as Lord Neuberger hinted in *Sinclair v Versailles*, to disgorge all profits obtained from the secret commission received by the defaulting fiduciary? All such issues are touched upon, in varying degrees, in the book although perhaps the full impact of the *Sinclair v Versailles* series of cases will need to await any further edition once the case law has settled down.

### Clear & concise

*Account of Profits* sets about its task in a clear and concise manner ensuring that its 200 pages are filled with elucidation of the relevant legal principles but, importantly, backed-up with case law chosen from Australia, New Zealand, Canada and the UK. This is no erudite philosophical discussion of the remedy: it remains firmly rooted in the practical but supported by reference to the underlying principles at play, giving the reader the confidence in its contents without blinding him with theoretical discussion more commonly associated with a converted doctorate thesis. It examines in detail the remedy in four distinct contexts.

First, Devonshire tackles remedy for breach of fiduciary duty. It is here where the book's general importance lies with a detailed study of when the remedy might arise and, equally importantly, when a defaulting fiduciary may be permitted a share of those profits and/or some allowance for expenses and work. Second, the author examines the remedy in the context of breach of confidence cases and while recognising the differing views in various jurisdictions, concludes that an injured party should, in principle, be entitled to elect and claim an account of profits, notwithstanding the confidence which has been breached arises in a contractual context. The only caveat

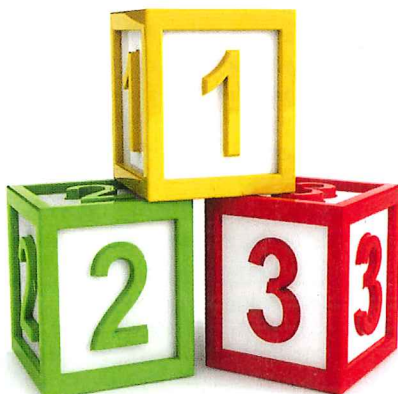
expressed by the author is that it remains open to the parties expressly to exclude such relief in their contract. Third, in the context of intellectual property rights cases and fourth, in the context of certain common law wrongs, dealing with the difficult and perennial question raised by *A-G v Blake* of whether an account of profits is available for a breach of contract.

*“This book represents an excellent & essential reference source whose importance is likely to grow in line with the increased use of account of profits as a remedy”*

### Filling a gap

The remedy of account of profits has been the subject of little independent study or examination and yet its increasing importance in commercial litigation necessitates a more vigorous analysis. This book replaces that gap in the legal library. For those litigators faced with an issue of account of profits, whether it arises in a general commercial context, or within one of the specific areas covered by this book in chapters 5-7, this book represents an excellent and essential reference source whose importance is likely to grow in line with the increased use of account of profits as a remedy by commercial litigators keen to explore the boundaries of this equitable remedy. **NLJ**

Reviewer: Paul McGrath QC, Essex Court Chambers



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