QUESTION 1

‘Information is property.’

Is this an accurate statement regarding fiduciary obligations and confidential information? Comment on the extent to which equity will provide assistance when information has been mishandled.

TIPS FOR QUESTION 1:

A good answer to this question needs to carefully assess the nature of confidential information and fiduciary obligations. The issues raised by this question might also be discussed with reference to the concept of property with respect to digital technology.

QUESTION 1

Bill is a director of ABC Ltd. The company is involved in the exploration for and processing of precious metals. It is currently undertaking exploratory drilling at a particular location.

Ben is a close friend of Bill. Over lunch, Ben indicates that his own company, XYZ Ltd, has undertaken exploratory drilling in an adjacent block of land in the same area. In the course of discussion, Ben expresses great excitement at the prospect of them joining forces to exploit the resources of this parcel of land. Ben indicates that he will

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provide the data that his company has collated so that Bill will be in a position to consider entering the joint project. The next day the information is sent to Bill.

Several months pass and Bill refuses to talk with Ben. Later, Ben discovers that ABC Ltd has acquired the mining rights to the land and that work has started on the site. Ben is furious. He has always thought Bill was a loyal friend. His own company is now on the brink of collapse. Ben regarded information as valuable property. ABC Ltd had spent considerable money and time in producing the document. Ben now regrets providing the information to Bill. Ben is adamant that over lunch he clearly indicated that the information was being provided so that Bill could assess the potential in contributing to the joint project.

Ben seeks your advice.

TIPS FOR QUESTION 1:

See Figure 5.1 – in particular United Dominion Corporation v Brian Ltd (1985) 157 CLR 1 and LAC Minerals v International Corona Resources Ltd (1969) 61 DLR(4th)14 need to be carefully considered. The nature of fiduciary obligations needs to be discussed. Other matters include a breach of confidential information and the imposition of a constructive trust.