

## FIDUCIARY OBLIGATIONS

PRINCIPLE	RATIO	CASE DESCRIPTION	CITATION
<b>FIDUCIARY RELATIONSHIPS</b>			
<b>DEFINITION OF FIDUCIARY RELATIONSHIPS</b>			
Definition	Fiduciary expectation	<p>Fiduciary relationship: principal can <b>expect</b> the fiduciary to act in the principal's interests in the relationship in a fiduciary manner.</p> <p><b>Evidence which support</b> or suggest a fiduciary relationship exists includes ascendancy, influence, trust, vulnerability, confidence or dependence.</p> <p><b>Role of fiduciary</b> - critical matter; must be so closely aligned w/ principal's interests that the principal can expect a 'fiduciary expectation'</p>	P D Finn, <i>Fiduciary Obligations</i> (Lawbook, 1977)
<b>IDENTIFYING FIDUCIARY RELATIONSHIPS</b>			
Categories of fiduciary relationships	Status based relationships list is not closed	<p>USSC (US Company) manufactured surgical products and entered into an oral contract with Blackman as the Australian distributor. Since USSC's products were not patented in Australia, Blackman's company Hospital Products Limited (HPI) repackaged and rebranded them for sale domestically and internationally as a competitor.</p> <p><b>Classes of fiduciary relationships includes - partners, principal and agent, director and company, master and servant, solicitor and client, tenant-for-life and remainderman. There is no reason to suppose these categories are closed</b> (Gibbs CJ); guardian and ward (Dawson J)</p> <p>HPI broke contractual obligations to USSC; but HPI did not owe any fiduciary obligations to USSC.</p>	<i>Hospital Products v United States Surgical Corporation</i> (1984) 156 CLR 41
Types of fiduciary relationships	Parent and child	<p>Parent-child relationship is 'inherently fiduciary' - Canadian case</p> <p>NB: Not recognised in Australian courts. Canadian fiduciary principles are proscriptive rather than prescriptive.</p>	<i>M(K) v M(H)</i> (1992) 96 CLR (4th) 289, 232 (La Forest J)
Types of fiduciary relationships	Financial adviser and client	<p>Patrick Partners (stockbroking firm) broker advised Dr Daly against investing on the stock exchange and recommended that money should be lent to the broking firm. Daly accepted the advice and made the loan. The Firm became insolvent and the loan was not repaid. Daly sued the Sydney Stock Exchange seeking compensation from their fidelity fund.</p> <p><b>Reasons for a Fiduciary Relationship - inherent in the giving of 'advice':</b></p> <p>a) Stockbroking firm <b>held itself out</b> as having expertise in advising on investments is approached for advice and undertakes to give it.. (Brennan J)</p> <p>b) Client relied on the advice which the firm gave him.</p> <p><b>Fiduciary Obligation</b></p> <p><b>Duty to disclose</b> - obligation to make full and accurate disclosure of:</p> <p>a) the broker's own interests in the transaction to the client, and (conflicts of interest)</p> <p>b) that the transaction was likely to be disadvantageous. (no profit rule)</p> <p>Duty arises because a relationship of confidence exists between parties.</p> <p><b>Breach of fiduciary duty</b> owed to Dr Daly by Broker failing to inform of its negative financial position.</p>	<i>Daly v Sydney Stock Exchange</i> (1986) 160 CLR 371
Types of fiduciary relationships	Financial adviser and client	<p>Accountants engaged by a company (Kia-Ora) to provide a report to its shareholders required by ASX Listing Rules, as to whether the proposed takeover price offered by Kia-Ora for shared in Western United was fair and reasonable. The report was prepared incompetently and stated the price was fair and reasonable.</p> <p>No fiduciary relationship - advisers did not give advice or make representations about the takeover to the Company. However, accountant acted in breach of contractual and tortious duties.</p>	<i>Pilmer v Duke Group Ltd (in liq)</i> (2001) 207 CLR 165, 197 [72]
Types of fiduciary relationships	Financial adviser and client	<p>Financial adviser (Grange) owed fiduciary obligations to its client (Swan Council).</p> <p>Financial advisers had fiduciary relationship according to the 'essence' of a fiduciary relationship stated by Mason J in <i>Hospital Products v USSC</i>.</p>	<i>Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq)</i> (2012) 301 ALR, [743]

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Principles of fiduciary relationship	Principles	<p>Financial Adviser and client relationship.</p> <p><b>Principles of a fiduciary relationship:</b></p> <ol style="list-style-type: none"> <li>1) Fiduciary <b>undertakes</b> or agrees to act for or on behalf of or in the interests of another person</li> <li>2) In the undertaking, the principal must act <b>in the interests</b> of the beneficiary rather than the principal's own interests</li> <li>3) Depends <b>on the particular circumstances</b> of the case</li> <li>4) Characteristics of fiduciary relationship <b>not exhaustively defined</b> (not closed list)</li> <li>5) Not subjective expectations of the parties - <i>Beach Petroleum NL v Kennedy</i> (1999) 48 NSWLR 1</li> </ol>	<i>ABN AMRO Bank NV v Bathurst Regional Council</i> (2014) 24 FCR 1, [1070]
Elements of a fiduciary relationship (leading case)	Distil the essence / characteristics of relationship	<p>HPI was engaged to act bona fide and reasonably with due regard to the interests of USSC; could not act solely in it's own interests without reference to the interests of USSC. Therefore, characteristics of a fiduciary relationship exist. HPI breached fiduciary obligations acting in own interests carrying on a distributorship business for its own benefit and not as a trustee for USSC. This is based on HPI's general responsibilities to protect and promote the market for USSC's products in Australia.</p> <p>Mason J's approach (minority) - distil the essence or the characteristics of the relationship.</p> <p><b>Elements of a fiduciary relationship:</b></p> <ol style="list-style-type: none"> <li>a) <b>Relationship of trust and confidence</b> - per <i>Boardman v Phipps</i>; eg. trustee and beneficiary, agent and principle, solicitor and client, employee and employer, director and company, and partners</li> <li>b) <b>Undertaking</b> - Fiduciary undertakes or agrees to act</li> <li>c) <b>For another person</b> - For / on behalf of / in the interests of another person</li> <li>d) <b>Discretion</b> - in the exercise of a power or discretion</li> <li>e) <b>Legal interests</b> - which will affect the interests of that person legally or practically.</li> <li>f) <b>Special opportunity</b> - Fiduciary has a special opportunity to exercise power or discretion to the detriment of the other person</li> <li>g) <b>Vulnerability</b> - who is vulnerable to abuse by the fiduciary of their position. Eg. not a mere sub-contractor.</li> </ol> <p>Fiduciary relationships cannot be superimposed upon the contract to alter the operation which the contract was intended to have upon its true construction.</p> <p><b>NB: This minority judgment has been adopted as the test for fiduciary obligations by the HCA.</b> Ref to <i>John Alexander's Clubs v White City Tennis Club</i> (2010) 241 CLR, 34 [86]</p>	<i>Hospital Products v United States Surgical Corporation</i> (1984) 156 CLR 41
Criteria for fiduciary relationship	Factors of a fiduciary relationship	<p>Factors indicating a fiduciary relationship:</p> <ol style="list-style-type: none"> <li>1. Existence of a relation of confidence</li> <li>2. Inequality of bargaining power</li> <li>3. Undertaking by one party to perform a task or fulfil a duty in the interests of another party</li> <li>4. Scope of one party to unilaterally to exercise a discretion or power which may affect the rights or interests of another</li> <li>5. Dependency or vulnerability on the part of one party that causes that party to rely on another</li> </ol>	<i>Breen v Williams</i> (1996) 186 CLR 71
Vertical relationships	Undertaking test	<p>Mason (minority)'s Criteria for fiduciary duty:</p> <ul style="list-style-type: none"> <li>• Relationships of trust and confidence</li> <li>• Fiduciary undertake or agrees to act</li> <li>• For or on behalf of or in the interests of another person</li> <li>• In the exercise of a power or discretion</li> <li>• Which will affect the interests of the other person in a legal or practical sense</li> <li>• The fiduciary has the special opportunity to exercise the power or discretion to the detriment of the other person, and</li> <li>• There is vulnerability of the other person to abuse the fiduciary of his position</li> </ul>	<i>Hospital Products v United States Surgical Corporation</i> (1984) 156 CLR 41

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PRINCIPLE	RATIO	CASE DESCRIPTION	CITATION
Horizontal relationships	Trust and confidence test	<p>United Dominions Corporation (UDC) entered into a JV agreement w/ Brian and Security Projects (SPL) to build a shopping centre financed by borrowings of UDC and SPL owned the land. Upon development, the shopping centre was realised at a substantial profit but Brian was not repaid its financial contribution or 9.2 % profit share under agreement. Without Brian's knowledge or consent SPL entered into other mortgage agreements with UDC for two other properties.</p> <p>Whether or not a JV is fiduciary depends on the form of the particular JV and the content of obligations undertaken. Fiduciary relationships of prospective partners commence when reach an informal arrangement to assume <b>a relationship of trust and confidence</b>; and parties proceed to take steps to establish or implement the agreement.</p> <p>HCA held fiduciary relationship existed between Brian and UDC. The agreement was a commercial enterprise with a view to profits to be shared; JV property was held upon trust. Breach of fiduciary obligations meant that UDC could not rely on the mortgage to deny Brian's entitlement under the JV agreement.</p>	<i>United Dominions Corporation Ltd v Brian Pty Ltd</i> (1985) 157 CLR
Equity and Contract	Relationship b/w contractual and fiduciary obligation	<p>Ms Breen had surgery to fix complications from breast implants performed by Dr Williams. She sought a declaration that she had a proprietary interests in her medical records and that the doctor-patient relationship was fiduciary.</p> <p><b>Relationship between contractual and fiduciary obligations</b>  Mere presence of a contract does not exclude the coexistence of concurrent fiduciary duties and the contract may, in particular circumstances, provide the occasion for their existence. Does not deny a contractual term may be so precise in its regulation that there is no scope to create a fiduciary duty. (Gummow J).</p> <p>HCA held there was no fiduciary relationship in doctor-patient relationship to give right of access to medical records.</p>	<i>Breen v Williams</i> (1996) 186 CLR 71

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<b>SCOPE OF FIDUCIARY OBLIGATIONS</b>			
Scope	Identify the 'subject matter' of fiduciary obligations	<p>Relationship b/w medial practitioner and patient who seeks skilled and confidential advice and treatment is fiduciary. Scope - extends to provision of medical treatment after, or in the course of, consultation with the patient (ie. not to provision of medical records).</p> <p><b>It is necessary to identify the subject matter over which the fiduciary obligations extend</b> (Brennan CJ)</p> <p>The scope of the fiduciary duty must be moulded according to the nature of the relationship and the facts of the case - Mason J in <i>Hospital Products</i></p>	<i>Breen v Williams</i> (1996) 186 CLR 71
Scope	According to the nature of the relationship and facts	<p>Howard was a member of a JV where other JVs breached their fiduciary duties by diverting a business opportunity away from the JV. Issue of scope of fiduciary obligations in Howard's position as director of Disctronics - to question of whether the compensation was part of his assessable income or held in trust on behalf of Disctronics (ie. non-assessable for tax purposes).</p> <p>Scope - 'to be moulded according to the nature of the relationship and facts of the case' Eg. directors as shareholders are not breaching fiduciary duties by making decisions that affects their interests in promoting the interests of the company. Contrast, directors who make decisions to adv themselves.</p> <p>Fiduciary obligations - by suing and recovering equitable compensation from defaulting venturer, Howard did not obtain a gain or profit by reason or by use of his position as a director of Disctronics.</p> <p>HCA held Howard received the award of equitable compensation on his own account and did not owe fiduciary obligations to Distronics to account for the award. Ie. attempted to stretch fiduciary obligations to avoid paying tax; not in Disctronics' interests.</p>	<i>Howard v Commissioner of Taxation</i> (2014) 253 CLR 83
Scope	Duty depends on the subject matter	<p>Solicitors (Clark Boyce) acted for Mrs Mouat who mortgaged her property to secure her son's debt to a finance company (guarantor). The same solicitors acted for the son but disclosed the potential conflict between their respective duties on various occasions. Mrs Mouat was advised by the solicitors to obtain independent advice which she ignored. After son defaulted the mortgage was foreclosed, Mrs Mouat sued the solicitors in breach of fiduciary duty to inform her not to sign the guarantee</p> <p>Privy Council rejected Mrs Mouat's claim on ground that solicitors undertaking only extended to giving legal advice and scope did not extend to financial advice.</p>	<i>Clark Boyce v Mouat</i> [1994] 1 AC 428
Scope	Subject matter	Subject matter of fiduciary obligations must be determined by the character of the venture or undertaking	<i>Birtchnell v The Equity Trustees, Executors and Agency Company</i> [1929] HCA 24
<b>BREACH OF FIDUCIARY OBLIGATIONS</b>			
Fiduciary obligations	Proscriptive duties	<p>Australian courts recognise only prescriptive duties (unlike Canada which recognises proscriptive duties in an expansive manner).</p> <p>Fiduciary obligations arise because a person has come under an obligation to act in another's interest. As a result, equity imposes fiduciary proscriptive obligations</p> <p>a) <u>not</u> to obtain any unauthorised benefit form the relationship and</p> <p>b) <u>not</u> to be in a position of conflict.</p> <p>If these obligations are breach, the fiduciary must account for any profits and make good any losses arising from the breach.</p>	<i>Breen v Williams</i> (1996) 186 CLR 71 (Gaudron and McHugh JJ)