LAWS2201
Legal Framework of Business

The Fiduciary

Introduction
Contractual relationships are governed by the principle of *caveat emptor* which means "let the buyer beware."

- The norm in commercial dealings is that parties are at arm's length.
    - There is no pre-existing relationship between the parties nor any special aspect to the transaction that obligates one party to look out for the other party's best interests.
- This is not an absolute rule.
    - There are vitiating factors which can assist the weaker party.
        - Misrepresentation.
        - Unconscionability.
        - Undue influence.
        - Duress.
        - Doctrine of promissory estoppel.
    - Some relationships are "outside the norm" business relationships where there is a duty to look out for the other party in the relationship.
        - Contracts of utmost good faith *(uberrimae fidei)*.
        - Fiduciary relationships.

Fiduciary Relationships
The source of fiduciary duties and the remedies for breaches is the Law of Equity.

Definitions:

- A relationship of confidence in which equity imposes duties upon the person in whom confidence is reposed in order to prevent the abuse of that confidence.
    - Glavanics v Brunninghausen (1996): In-laws were co-owners of a business (i.e. fiduciary relationship) and had a falling out; they no longer trusted each other but still owed each other fiduciary duties; duty of one that remained active in the business to inform the other of outsider offer to purchase before concluding negotiations for that active one to buy out the interest of the other.

- "It is an undertaking by one person (i.e. the "fiduciary") to act on behalf of another person in the exercise of power or discretion which will affect the interests of that other person in a legal or practical sense [creating a special vulnerability of that other person]."
    - C-Shirt v Barnett Marketing and Management (1996): Vulnerability may be a characteristic of fiduciary relationships but it is not the touchstone of fiduciary relationships.

3. A relationship where because of circumstances, one party is required to put the interests of the other person or entity at least on a level with its own.

Fiduciary Duties
The fiduciary owes duties to the client which are one-sided.

- The duty is not to intentionally harm the client.

1. The fiduciary is not to have a conflict of duty (i.e. cannot serve two masters).
    - Bristol and West Building Society v May May and Merrimans (1996): Solicitor cannot represent both the buyer and the seller.
    - Blackwell v Barroile (1994): Different sections of the same firm of solicitors were acting for opposing clients; court finds situation improper despite the firm's "paper wall."