

LAWS2205 Notes

Fiduciary Agents

Is there an obligation of undivided loyalty from [] owed to []? (*Grimaldi*)

1. Is there a Fiduciary Relationship?

For [] to owe duties to [], there must be a fiduciary relationship.

(a) Status Based Relationship

[] may claim that [] is a fiduciary due to the nature of their relationship falling within an established status based relationship. The different nature of the relationship will affect the scope of the obligations.

(i) Trustee-beneficiary relationship

Every trust involves a fiduciary relationship (*Keech v Sandford*)

Keech v Sandford (1726) Sel Cas t King 61; 25 ER

- trustee of lease renewed lease in own name when lessor refused to renew the lease to the trust → breached fiduciary obligations
- ‘**only person of all mankind who might not have the lease**’ was the trustee

(ii) Director/company

Director owes fiduciary duties to the company (*Regal Hasting*).

- Note- these are separate from shareholder and to other directors

(iii) Director/Shareholders

Bunninghousen v Galvanics the court established that fiduciary relationships may arise under certain circumstances within a director/shareholder relationship.

- Bryson J in *Galvanics* found three factors were critical to finding a fiduciary relationship:
 - **Direct share dealing** (not done through a market)
 - **Structure of the company** (familial relationships)
 - **The dependence upon the director for information and advice**

Glavanics v Brunninghausen (1996) 19 ACSR

Facts:

- The Plaintiff held 1000 shares and the Defendant held 5000 shares.
- The Defendant received an unexpected offer from a third party to purchase the assets of Skima. The Defendant negotiated with the third party without informing the Plaintiff. For low price

Decision:

- Diminished in circumstances create fiduciary relationship:
 - When directors deal with shareholders for purchase or sale of shares, no anonymity
 - **Impersonal relationship between members and directors**
 - **Vulnerability of shareholders to abuse is unusually high**

(iv) **Partner/Partner**

What is a partnership?

- S 6(1) of the *Partnership Act 1963* (ACT):
 - *Partnership is the relation between people carrying on a business in common with a view of profit*

General statement:

There is a general rule that the relationship between partners is a fiduciary one, although this can be changed by express agreement between the parties (*Chan v Zachariah*).

- Some contracts can reinforce a fiduciary relationship (*Chan v Zachariah*)
- Both parties have mutual confidence in each other, and both parties are mutually vulnerable to each other. (absent in other fiduciary relationships)

Chan v Zachariah

Facts:

- Z and C partners in medical practice, leased premises to conduct their practice
- Lease was for 3 years with option to renew
- After partnership was terminated C refused to renew lease, despite Z's request
- C approached lessor separately seeking renewal in lease in his name with a premium

Decision:

- Fiduciary relationship may remain after partnership ends (*Chan v Zachariah*)

- S 6(1) of the *Partnership Act 1963* (ACT):
 - *Partnership is the relation between people carrying on a business in common with a view of profit*

(v) **Lawyer-client relationship**

Relationship between solicitor client is a fiduciary relationship, 'a solicitor's loyalty to his client must be undivided.' (*Farrington v Rowe McBride*)

(vi) Agent/principle

An agent/principle is a recognised fiduciary agent (*McKenzie v McDonald*)

Re Coomber

- Fiduciary relations are of many different types; they extend from the relation of myself to an errand boy who is bound to bring me back my change up to the most intimate and confidential relations which can possibly exist between one party and another

(b) Other quasi relationships:

(i) Joint venturers

Joint venture in *UDC v Brian* was found to be a fiduciary relationship due to analogy with partnership, and high amount of mutual trust and confidence demonstrated.

UDC v Brian

Facts:

- Parties entered into 'joint venturers'
- One party mortgaged land of joint venture, so one party could borrow money, and used land to charge debt
- Other joint venturers argued doing so breached joint venture
- Was before joint venture got off the ground

Decision:

- The relationship was fiduciary because the willingness of the parties to proceed with the project prior to executing the agreement, demonstrated a high degree of mutual trust and confidence.
- The parties owed each other fiduciary obligations so that UDC could not obtain for itself a collateral advantage without the knowledge and consent of the other parties.

(ii) Advisers

Financial advisers were found in *Daly v Sydney Stock Exchange*, to potentially hold a fiduciary relationship. However, this must be affirmed by reference to the indicia (consistent with vulnerability, reasonable expectation)

Relevant cases- *Daly, Pilmer v Duke*

(c) Is there an ad-hoc relationship?

Even if there is no recognised status based fiduciary relationship, the courts may nonetheless recognise one by reference to the indicia from Mason J in *Hospital Products*:

These indicia are:

- Undertaking by the T to act in accordance with the duty (*Hospital Products, Galambos, LAC Minerals*)
 - Remember in *Galambos*- they never requested the loan, for accountant to fix

