D Fiduciary Obligations

- Core obligation owed is one of **undivided loyalty**
- The two core fiduciary obligations are:
    1. The **no-conflict rule:** a duty to not have a conflict between the interests of beneficiaries and the personal interests of the fiduciary - there must be 'a **real sensible possibility of conflict**': *Keech v Sandford* (1726); *Bell Group v Westpac Banking Corp* [2008], *Commonwealth Bank v Smith* (1991); or a '**significant possibility of conflict**': *Boardman v Phipps* (1967), *Chan v Zacharia* (1984)
        - **Unauthorised remuneration**: financial benefit beyond what is authorised: *Reading v R* [1949]
        - **Assuming a double character**: acting in more than one capacity, for example in *Armstrong v Jackson* [1917], a stockbroker was acting as both a buyer (on behalf of Armstrong) and as a seller of shares
        - **Benefits derived to the exclusion of the person to whom the fiduciary obligation is owed**: any profit for gain obtained in a situation where a conflict or a significant possibility of conflict existed or obtained or used by reason of his fiduciary relationship

***Boardman v Phipps* (1967)**	
AC	
Facts	● Boardman (trust's solicitor) and Tom Phipps (beneficiary) bought personal shares in trust company and used information acquired while acting as agents to restructure it ● Ultimately all parties (including beneficiaries) earned increased profits ● Joan Phipps (other beneficiary) sued for breach of fiduciary obligation
Issue	Was there a breach of fiduciary obligation even though the beneficiaries were better off?
Held	● It was found the pair acted alone and **took advantage of the opportunity** they had because of the trust – they **hadn't obtained fully informed consent** ● Defendants ordered to hold their shares on constructive trust for the beneficiaries ● **Fiduciaries cannot act in their own interest, even if it benefits the beneficiaries** ● **Leading case** on no-conflict rule