

Wk. 2 – Fiduciary Duties

Fiduciary relationship – higher standard of duty and care. A relationship of confidence. Remedies available if fiduciary abuses his position to obtain an advantage. Prohibits the fiduciary from acting in a certain way.

Elements

- Presumed category – rebuttable presumption
- Onus to rebut – the person alleging fids relationship
- Is there a fiduciary relationship?
 - trust & confidence, undertaking, vulnerability, reasonable expectations
- What is the scope of duty? (within fiduciary duty scope or breach of contract?)
- What are the remedies available?

Is there a breach? No profit, no conflict

No intent to defraud on the part of the fiduciary is irrelevant – *Nocton v Lord Ashburton*

Fiduciary obligations – Fids precluded from acting in any other way than in the interests of the person to whom duty to so act is owed. Undivided loyalty - Beach *Petroleum NL v Kennedy*. There must be a trust & confidence idea and a disadvantage or vulnerability.

Strict application of fids: 1) deter self-interest 2) no profit 3) no element of fault 4) not a defence if principal is unable to act.

Presumed fids relationships: Trustee & beneficiary. Director & company. Solicitor & client. Agent & principal. Partner & partner.

Outside of presumed: factual circumstances may give rise to a finding that fids relationship exists. Subordination of interest to another.

- the undertaking to fulfil a duty in the interests of another
- the scope for one party to unilaterally exercise a power or discretion that may affect the rights or interests of another; and
- a dependency on the part of one party which causes that party to rely upon the other

Hospital Products v USSC

Facts: Blackman negotiated exclusive distributorship arrangement w/ USSC. Blackman to use best efforts to promote USSC products in AU. HPL, Blackman's company, substituted as distributor. HP started manufacturing products identical to USSC's own. HP started to sell products to USSC customers. USSC argued breach of fids obligations.

Held: NO fids duty. Commercial relationship. Right to relief rested in claim for damages & breach of contract.

TEST: *The critical feature of these relationships is that the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion, which will affect the interest of that person in a legal or practical sense.*

Galambos v Perez

Facts: P worked at firm founded by G. Firm was having financial issues and P made advances voluntarily without G knowing. When the firm went bankrupt, P found herself as unsecured creditor and recovered nothing. P sued G and defunct firm for negligent, breach of contract, and breach of fiduciary duty (wanted to recover from G's professional liability insurance). P claims that there was on-going solicitor-client relationship because free legal advice was part of her employment contract (which they apparently failed to do in connection to her loans).

Issue: Is there a fids relationship?

Held:

1) **Power dependency:** Trial judge found that P was not vulnerable in terms of her relationship with G as **she had not relinquished her decision-making power with respect to the loans**. Also found that G didn't really have any discretion over P's interests or that he made any effort to impose his will on her. P was unable to refuse requests for loans (some of the loans were even given without G's knowledge). **NO POWER DEPENDENCY.**