

Topic 3 – Fiduciary Relationships (135).

What is a fiduciary relationship? “The relationship of one person to another, where the former is bound to exercise rights and powers in good faith for the benefit of the latter.” Equity will impose on a fiduciary the highest duty of standard and care.

Fate v Williamson: Williamson was under a fiduciary relationship to disclose all information regarding the value of the property.

Reading v The King: Any profits or bribes gained by a soldier improperly using his uniform were recoverable by the Crown because a fiduciary relationship applied.

Definitions in Equity:

- Confidence: one person placing their confidence in another;
- Loyalty: one person being obliged to give their loyalty to another;
- Trust: one person placing their, and being entitled to place their, trust in another person.

When does the relationship exist? (a) whenever the plaintiff entrusts to the defendant property, including intangible property e.g. confidential info, and relies on them to deal with such property for the benefit of the plaintiff or for purposes authorized by him, not otherwise **(b)** whenever the plaintiff entrusts to the defendant a job to be performed, e.g. the negotiation of a contract on his behalf or for his benefit, and relies on the defendant to procure for the plaintiff the best terms available.”

What are the relevant factors for a relationship to be fiduciary?

- Express or implied trust and confidence extended consciously or necessarily by one party to the other;
- One party expressly, impliedly or necessarily undertaking to act in the interest of another;
- A relationship that involves a representative role by one for the other is usually subject to a fiduciary duty.

Scope of Fiduciary Duty: Guided by the concept of “loyalty”. The duty requires the fiduciary to act in the best interests of other party to the relationship – the principal. Commonly the principal will be the beneficiary of a trust but not always.

Three fundamental rules:

- **The “non-conflict” duty:** A fiduciary is not permitted to be in a position whereby there is a possible conflict between the fiduciary’s personal interests and those of the person to whom the fiduciary duty is owed;
- **The “no-profit” duty:** A fiduciary is not permitted any material benefit from a fiduciary relationship unless expressly agreed by an informed consent;
- **The “best interests” duty:** A fiduciary must act in the best interests of the person to whom the fiduciary duty is owed and to give preference to that person’s interests over their own.

Presumed Fiduciary Relationships:

- **Trustee and beneficiary (162):** **Keech v Sandford:** Held that the trustee’s fiduciary duty meant the trustee was obliged to hold the lease in trust for the original beneficiary.
- **Company director and company (156):** **Regal Hastings v Gulliver:** Held that the directors’ fiduciary obligation to the company meant that they took their share sale profits in trust for the company.
- **Lawyer & Client (155):** **Boardman v Phipps:** Held that the solicitor was a fiduciary of the trust and therefore prohibited from making any profit incidental to the execution of his role as a fiduciary.
- **Business Partners (163):** **Birtchnell v Equity Trustees**
- **Agent and Principal (166):** **Haywood v Roadk:** Held that the agent was in breach of fiduciary duty for failure to give adequate advice on the future prospects of the property.
- **Joint Ventures – Possibly Fiduciary:** A joint venture is a partnership for a single limited purpose, usually each party will be the fiduciary of the others. **United Dominions v Brian Pty Ltd.** Held that the lender party had the same duty of full disclosure of its loan terms as it would have applied if it were in a partnership with the other two parties.
- **Medical Doctor and Patient – Possibly Fiduciary (177):** **Breen v Williams:** Held that while there may be special situations of unusually close medical relationships that attract a fiduciary status, the doctor and patient relationship is not normally a fiduciary relationship.
- **Broker / Investor - Possibly Fiduciary (171):** **Daly v Sydney Stock Exchange:** Held that the relationship of stockbroker and client will normally be sufficiently of a fiduciary nature as to place on the broker an obligation to make disclosure of any relevant information that might reveal that a transaction was likely to be disadvantageous. There is no presumed fiduciary relationship, but there is no obstruction to a finding of a fiduciary relationship, where the facts of the actual relationship meets the criteria.
- **Financial Advisor - Possibly Fiduciary:** **Pilmer v Duke Corp:** Held that that service does not normally give rise to a FR (except for extreme circumstances) because the relationship does not incorporate the features of agency or vulnerability. Incompetent breach of their contractual & tortious duties didn’t mean that the accountants are liable.
- **Banker & Customer - Possibly Fiduciary:** **Commonwealth Bank v Smith:** In the particular circumstances the bank had a fiduciary duty to its customer which required it to give preference to the customer’s interests above its own.

Less Likely to be Fiduciary:

- **Employer & Employee – Not Fiduciary (167):** In some cases, it may be partly fiduciary at least in relation to the employer’s property, but neither of the parties can be bound to be completely loyal to the other.
 - **Family Members – Unlikely Fiduciary**
 - **Guardian and Ward – Unlikely Fiduciary:** Authority flows from the second party’s absence of legal capacity; not from trust
 - **Mortgagee Exercising Power of Sale - Law of Property Act (Part 7)** has made provision to regulate this relationship satisfactorily. This is therefore no longer covered by equity.
 - **Perpetrator and Victim of Corruption:** **Attorney General for Hong Kong v Reid:** Held that a delinquent fiduciary takes the proceeds of corruption on constructive trust for the party to whom the fiduciary duty is owed. Thus, the proceeds of a bribe will be held on trust for the injured principal.
 - **Manufacturer and Distributor (174):** Usually an “arms-length” relationship. Not fiduciary as it is normally purely commercial, and each party is free to pursue its own interests. In special circumstances however, it can be classified as a fiduciary relationship.
- Arms-Length Relationships:** **Jones v Bouffier:** Where the parties have dealt with each other at arms-length, or where it is fair to characterise their relationship as purely commercial, it will be most unlikely that the relationship will be fiduciary. **Hospital Products Ltd v United States Surgical Corporation:** USSC appointed HPA to distribute its products in Australia. HPA formed a secret plan to manufacture similar products and pass them off as made by arrangement with USSC. The written contract between parties made clear that the parties were independent of each other. Then HPA went into competition with USSC. USSC sued for breach of contract, contraventions of the Trade Practices Act (“TPA”), the tort of passing off, infringement of copyright, breach of duty of confidence and unfair competition, as well as breach of fiduciary duty.

Why a fiduciary duty claim? FDC gains a better remedy than breach of contract. Evidence to prove the quantum of damages would involve proving the number of sales, when, to whom, and for how much with evidence that the relevant customers would otherwise have purchased USSC’s product. Also, a damage award only creates a debt which may not be recoverable if the debtor is insolvent.

Contrast Damages with Fiduciary: A victim of breach of fiduciary duty is entitled to equitable remedies which are broader and more comprehensive than law’s remedy of damages.

Was the relationship fiduciary? What is the test? There is no clear criteria outlining the existence of a fiduciary relationship, it is dependent on the situation and circumstances. Court of Appeal: a fiduciary relationship exists where the facts of the case in hand establish that in a particular matter a person has undertaken to act in the interests of another and not in his own. the fact that one person subjectively trusted another - is neither necessary for nor conclusive. Inequality alone is not determinative.

Contracts and Fiduciary Relationships: The relationship cannot be superimposed upon the contract to alter the operation which the contract was intended to have according to its true construction.

Summary – Australia: The concept of fiduciary relationships will apply where there is a substantial combination of:

- Trust necessarily given by one to the other;
- Confidence placed by one in the other;
- Expectation of loyalty from one to the other;
- Express or implied undertaking by one to act in interests of the other ;
- Disadvantage, vulnerability and unequal bargaining power of one to the other.

Cases relating to the fiduciary duty of the public sector: [Mabo \(No 2\)](#), [Wik Peoples v Queensland](#), [Lexcray Pty Ltd v Northern Territory](#)

Defences to Fiduciary Claims: Acting honestly and in good faith is no defence to a claim for breach of fiduciary duty. [Boardman v Phipps](#)

The main possible defences are:

- Informed consent of the beneficiary of the duty to the actions complained of (after full disclosure of all relevant matters).
- Estoppel may arise on the basis of the behaviour of the beneficiary of the duty.
- Laches The beneficiary of the duty may delay complaint to the point that it is not reasonable to permit the grievance to be litigated.
- Unclean hands: The beneficiary of the duty may also be guilty of relevant inequitable actions which may mean that the court will exercise its discretion to bar litigation of the grievance.

Equitable Remedies in Fiduciary Claims: The main equitable remedies that are relevant to breach of fiduciary duty:

- Equitable compensation;
- Account of profits;
- Injunction; and
- Constructive trust.

Third Parties to Fiduciary Breaches: Third parties who knowingly involve themselves in a breach of fiduciary duty will be liable as though they owed the duty themselves. [Consul Developments v DPC Estates](#)

Potentially Relevant Cases:

[NZ Netherlands Society "Oranje" Incorporated v Kuys](#), [Queensland Mines Ltd v Hudson](#), [Coleman v Myers](#), [Jenyns v Public Curator](#)

Remedies: 190

- Constrictive Trust ([Timber Engineering Co Pty Ltd v Anderson](#))
- Account of Profits ([United States Surgical Corporation v Hospital Products International](#))
- Damages or Equitable Compensation ([Mordecai v Mordecai](#))

Compensation looks to the loss suffered by the claimant whereas Constructive Trusts and Account of Profits look to what the fiduciary has gained.