

SAMPLE

Topic 3 – Fiduciary Relationships and Breach of Fiduciary Duty

Exam Notes

Background/Introduction

- [P] may allege that [D] owed a fiduciary duty to her/him and by [insert conduct] breached a fiduciary obligation.
- Fiduciary law is concerned with relationships in which one party owes fiduciary duties to the other
 - Fiduciary = person who owes duties
 - Beneficiary/principal = person to whom duties owed
- Fiduciary duties are very stringent/strict – equity is concerned with deterrence; good faith/absence of profits/intentions are irrelevant
 - *Keech*: Lease held on trust for benefit of infant; trustee sought renewal of lease. Lessor refused to renew to infant; trustee took lease in his own name; breach of FD
 - *Boardman*: solicitor and trustee purchased shares in their own names; made large profit for themselves and beneficiaries; shares could not have been purchased by the estate; breach of FD (came across opportunity within the scope of their own duties)
- The two fiduciary obligations equity imposes comprised in the profits and conflicts rule are proscriptive not prescriptive
 - Forbid fiduciary from exercising powers and discretions in certain circumstances
 - Don't oblige the fiduciary to affirmatively perform any sorts of actions

1. Existence of a Fiduciary Relationship

In order to attract Equity's protection and remedies, the relationship between [P] and [D] must be fiduciary. Fiduciary relationships will exist if they fall within an **accepted category** or when **established on the facts** (per Gibbs CJ in *Hospital Products*).

Accepted Categories

- When one of the following are present, the inferring of a fiduciary relationship resembles the application of a rule of law
- Note: these categories are not closed (*Hospital Products*)

→ Trustees and Beneficiaries (*Keech*)

- Trusteeship is a relationship between two parties (trustee and beneficiary) in property ('there can be no trust without trust property')
 - Both have sort of title over property – trustee appears to be titleholder (eg/ registered titleholder); beneficiary is true or genuine titleholder
- **Trustee is a fiduciary and owes fiduciary duties to the beneficiary**
 - Vis-à-vis the trust property, trustee can take advantage of their position in a way that is highly abusive or prejudicial (eg/ trustee as registered proprietor of land has power to sell, mortgage, lease property and because registered, appears to be titleholder)
- Source of vulnerability – power to do the wrong thing is the result of ownership of trust property

→ Company Director and Company (*Regal*; *Qld Mines*)

- **Ds make decisions for the co and thus are fiduciaries and owe fiduciary duties to the company**
 - Unscrupulous Ds can take advantage of their position and make decisions that improperly favour their own personal interest (eg/ take money from co; get family members to repair plumbing in co building rather than put it out in form of tender)

- Different source of vulnerability here – co owns its assets and so Ds’ power grounded not in ownership (like trustee case), but in the governance structure/relationships of the co

→ Agents and Principals (*McKenzie*)

- Agent is authorised by principal to exercise certain private capacities on the principal’s behalf
 - Eg/ entering into contracts
 - Eg/ exercising principal’s power to assign/transfer property and receive title to property
- **Agents owe fiduciary duties to principals**
 - Agent may depart from what they have been authorised to do so principal vulnerable to agent’s misuse of power
- Different source of vulnerability here – sourced in the legal powers the agent has to act on behalf/as extension/representative of the principal (i.e. agency powers)

→ Employees and Employers (*Consul*)

- **Employees owe fiduciary duties to their employers**
 - Employees can exercise de facto control over the assets and interests of employer
 - Eg/ use your work computer for futures trading on employee’s behalf, not only for work
 - Sometimes will convert into an agency relationship (eg/ transact / acquire property/ perform/incur contracts on behalf of the uni)

→ Partners in Business (*Chan*)

- Partnerships involve the pooling/mutuality of assets, endeavour/effort and reward
- **Each partner owes fiduciary duties to the other**
 - Each partner vulnerable to the other – could exploit pooling of assets by channelling assets off and generating individual benefits; could take up job (endeavour) themselves in their capacity of partner but on their own account, not for benefit of partnership
 - Can have aspects of agency, employment, trusteeship depending on the situation

→ Solicitors and Clients (*Nocton*)

- **Solicitors owe fiduciary duties to their clients**
 - Because of standing solicitor as vis-à-vis client of expertise and what client would take to be ability and knowledge, client has no pathway into their situation except through solicitor’s advice which is what creates a vulnerability; client can’t step behind solicitor’s advice

Excluded from Accepted Categories

- Parent and child
- Spouse and spouse
- Doctor and patient (*Breen*) - except in certain cases
- Supplier and distributor (*Hospital Products*) - consider Mason J’s exception
- Government and citizen (*Habib*)

‘Factual’ or Non-Standard Categories

- Relationships that don’t fit within the ‘accepted categories’ must be found on a factual basis
- 2 common methods:
 - Analogies drawn from the ‘accepted categories’
 - Assess test from *Hospital Products* per Mason J
- *Per Mason J in Hospital Products*, the critical feature of a FR is that the fiduciary is placed in a position to exercise power or discretion over the legal or practical interests of P to the detriment of the P, where this

power or discretion is meant to be used for or on behalf of the interests of the P; P is accordingly vulnerable to abuse by the fiduciary

1. Fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person (i.e. "fiduciary acts in a 'representative' character in the exercise of his responsibility")
2. In the exercise of a power or discretion which will affect the interests of that other person in a legal or practical (i.e. economic) sense

The relationship between the parties is therefore one which gives the fiduciary a:

3. Special opportunity to exercise power or discretion to the detriment of that other person
4. Who is accordingly vulnerable to abuse by the fiduciary of his position

Factors to consider	Explanation
1. Representative character	One party acting in a 'representative character' points towards a fiduciary relationship (<i>Hospital Products</i>)
2. Existing unilateral discretion or power	P was overseas and D, as sole Aus distributor and 'custodian' had unilateral discretion over P's success in Aus (per Mason J in <i>Hospital Products</i>)
3. Vulnerability/reliance	Is the degree of influence plausibly sufficient? → <i>Farrington/CBA</i> ; advice cases - financial advice may have a fiduciary flavour through the way in which recipient of advice has made themselves vulnerable to the giving of advice
4. Inequality of bargaining power	P was not vulnerable as it could have included protective clauses in the K (<i>Hospital Products</i>)
5. Commercial or arms' length relationship	A commercial relationship implies self-interest on behalf of each party, which is not an environment of loyalty, trust and confidence: hence, weighs against fiduciary relationship (per Gibbs J in <i>Hospital Products</i>)

<i>Hospital Products</i>	
Facts	<ul style="list-style-type: none"> • HP was <i>exclusive</i> distributor of USSC's products in Aus • Per K, HP was to use its 'best efforts' to promote the sale of USSC products in Aus • Behind USSC's back, HP manufactured surgical staples based directly on the USSC product • Gradually replaced USSC components with HP components and deferred fulfilment of orders in anticipation of filling them with HP products
Issue	Was there a fiduciary relationship between HP (Blackman) and USSC?
Decision	<p><u>Majority</u>: No</p> <ul style="list-style-type: none"> • HP didn't hold USSC's property because in a distributorship K, HP purchased goods from USSC (i.e. title passed to HP) and HP itself is reselling them • There were no legal or practical interests of USSC's that were vulnerable to HP because HP was dealing with its own customers and supplying customers with its own property because it made the products or bought them from USSC as its distributor <p><u>Minority (Mason J)</u>: Yes</p> <ul style="list-style-type: none"> • Mason J recognised the limited fiduciary duty in respect of 'product goodwill' • USSC had entrusted HP with exclusive responsibility for marketing USSC's products in Aus and the manner of promotion was left to HP's discretion – USSC's market presence in Aus was entirely mediated through its contractual dealings with HP

	<ul style="list-style-type: none"> • USSC vulnerable if HP elected to use its powers and discretions in an abusive fashion by playing on market presence to sell its own products rather than USSC's products
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Breen v Williams

Facts	<ul style="list-style-type: none"> • Patient wanted access to their medical records kept by her doctor, but doctor refused to produce them • P argued that doctor's refusal to produce medical records was a breach of duty owed to her
Issue	Was there a fiduciary relationship between doctor and patient requiring the doctor to provide the patient access to their medical records?
Decision	<p>No – majority stated that generally, there is no fiduciary duty between doctor and patient</p> <ul style="list-style-type: none"> • Simply meeting a patient, giving advice to a patient or creating records does not render the patient's interests of the kind equity is concerned with (i.e. legal and practical) vulnerable • Giving advice – puts their health interests into play but does not render their private interests of the kind fiduciary law is concerned with (assets/interests re assets/Ks) vulnerable • Fiduciary relationship possible if legal or practical interests rendered vulnerable: <ul style="list-style-type: none"> ○ Eg/ doctor selling organs etc/commercialisation of body products ○ Eg/ doctor selling medical records to a 3rd party ○ Eg/ doctor has a financial interest in pathology lab and refers patient there • <u>Gummow J</u> was willing to accept that the relationship of doctor and patient is a fiduciary one because → patient places reliance on doctor, patient must often reveal intimate and confidential info and doctor's actions may significantly affect the patient's personal and economic interests (i.e. not an exception for doctors to be fiduciaries as other Js seemed to suggest)

- Joint ventures
 - Whether a JV is fiduciary will depend upon the form that the particular JV takes and the content of the obligations which the parties to it have undertaken: is it a partnership? Or is it a simple K? (*UDC v Brian*)
 - The fact that the JV in the form of a partnership is confined to one joint undertaking, as distinct from being a continuing relationship, will not prevent the relationship between the joint venturers from being fiduciary (*UDC v Brian*)
 - A fiduciary relationship can arise and fiduciary duties can exist between parties who have not reached and who may never reach, agreement (*UDC v Brian*)

UDC v Brian

Facts	<ul style="list-style-type: none"> • UDC, Brian and SPL entered into contractual relationship with each other (<u>joint venture</u>) to build a shopping centre → Brian was to supply the labour, SPL was to supply land, UDC was to bring finance (through credit facility) • Terms of the agreement provided for the shares of all 3 participants, and that they were to be repaid their financial contributions and their share of the profit • Prior to agreement being concluded and without Brian's knowledge/consent, SPL mortgaged the land to UDC as security for 'all moneys' borrowed by SPL from UDC, including amounts advanced by UDC to SPL for both JV purposes and purposes other than developing the shopping centre • Default occurred under the mortgage and SPL was liquidated
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	<ul style="list-style-type: none"> Collateralisation clause charged the JV land with repayment of all amounts advanced by UDC to SPL on any account, or otherwise owed to UDC by SPL → so B couldn't get his contribution or share of profit
Issue	Did UDC stand in a fiduciary relationship to Brian when the mortgage with the collateralisation clause was signed with SPL?
Decision	<p>Yes</p> <ul style="list-style-type: none"> This relationship was in effect a <i>single project partnership</i> – pooling of assets, endeavour and revenue <ul style="list-style-type: none"> Profits were to be shared, JV property was held upon trust, policy of the JV was ultimately a matter for joint decision The fiduciary relationship began when negotiations were settled and the work started – this is when mutuality, vulnerabilities in respect of obvious legal and practical interests (eg/ how to dispose of labour, when to get paid) began Fiduciary relationship could arise without a formal K having been signed

- Government v Citizen
 - Habib v Cth*: H argued that Cth owed him a fiduciary duty as an overseas national when he was arrested and tortured overseas
 - Case was not permitted to advance to trial because:
 - No relationship that shows Cth has taken custody of Habib's interests. Executive does not have relationship with individual citizens (govt does not undertake to do anything on behalf of individual)
 - Alleged duty would impermissibly encroach on the function of the Executive to conduct foreign relations; equity would not impose a FD which would fetter foreign policy
 - Habib failed to identify what was the Cth's interest or duty that was in conflict with the Cth's duty to Habib
 - Generally, fiduciary law operates with respect to **private law interests** and equity will not impose a FD which would fetter the Executive's exercise of foreign policy (which involves Cth's consideration of the public interest)