

Cases: Fiduciary Duties including Third Party Liability

Breen v Williams – doctor/ patient

- Held: HCA refused to expand the notion of fiduciary obligations in Australia to accommodate a duty for a doctor to provide a patient access to their medical records.
- Acknowledged that there was a contract between patient and doctor for medical treatment, but that there was no implied term for the provision of medical records.

Hospital Products Ltd v United States Surgical Corporation – categories not closed

- Facts: USSC manufactured surgical stapling products. USSC engaged Blackman to become its distributor. Blackman obtained exclusive distribution rights in Australia and then established a competing company, Hospital Products
- Reverse engineering USSC's products which allowed it to develop and produce further competing products
- Held: Majority of HCA held that Blackman did not owe fiduciary duties.
- However, the categories of fiduciary relationships are not closed

Chan v Zacharia – partnership

- Facts: C and Z were doctors who worked as partners. They rented premises as joint tenants under a lease with an option to renew. At the end of the term, agreed to dissolve the partnership. C was invited to join Z in exercising the option to renew the lease but declined.
- Afterwards, C obtained a new lease of the premises in his sole name.
- Held that by obtaining the new lease the defendant had exploited his fiduciary position as co-partner of the plaintiff. He was ordered to hold the lease on constructive trust for both parties.

Boardman v Phipps – conflict of duty and interest

- The Defendant [and T Phipps] placed themselves in a fiduciary position in negotiating with the directors of L & H on behalf of the Plaintiff.
- They thus acquired special knowledge of profit to be made.
- The two had acted honestly, but they were both fiduciaries.
- The confidential information about L & H acquired by the Defendant became the property of the Plaintiff.
- The Defendant's breach of fiduciary duty arose from a conflict of interest. He acquired the option to make a personal profit while in a fiduciary capacity. Thus, he could only escape his duty by informed consent from the principals.
- Majority view – information is not property, so CT arose from the moment of the purchase of the shares. Ds to be refunded for purchase price and professional services

Howard v Commissioner of Taxation - joint ventures

- Appeal against FCAFC decision that Howard received a share of an award of equitable compensation made by the Victorian Supreme Court relating to Distronics Ltd, a company of which Howard was a director. That earlier dispute related to a joint venture entered into by Howard and other directors of Distronics, in which Distronics was to be the purchaser of a golf course. The FCAFC rejected Howard's argument that he received the compensation award as a trustee of Distronics, and held that the award was assessable income in his hands.
- Held: The Court held that Howard did not receive the equitable compensation as a constructive trustee because at the time of the award there was no actual or real possibility of conflict between his interests and his duties owed as a director of Distronics Ltd

United Dominions Corporation Ltd v Brian Pty Ltd – joint ventures

- Held: A fiduciary relationship can arise and fiduciary duties can exist between parties who have not reached and who may never reach, agreement upon the consensual terms which are to govern the arrangement between them.
- A fiduciary relationship with the fiduciary obligations may exist between prospective partners who have embarked upon the conduct of the partnership before the terms of the agreement have been settled.
- The relationship between prospective partners or participants in a proposed partnership to carry out a single joint undertaking or endeavour will ordinarily be fiduciary if the prospective partners have reached an informal arrangement to assume the relationship and taken steps for its establishment.

Maguire v Makaronis – conflict of duty/interest – disclosure and advice

- Facts: Lawyers advise a client in regards to a farm investment; the client has imperfect English. One lawyer personally provides bridging finance, lending some money to the client. However, the lawyer does not tell the client that it is coming from him. The client defaults and the lawyer sued for possession of the farm
- Issue: Is the lawyer entitled to an equitable remedy to retake possession?
- Held: The contract is rescinded and the mortgage set aside. There was **not full disclosure** of the lawyer's interest in the loan. The lawyer also failed to advise the client to receive **independent legal advice**. The conflict of interest could have been cured by disclosure and advice.

Farah Constructions Pty Ltd v Say-Dee Pty Ltd - duty to disclose

- Facts: P entered into an agreement with D to develop property. Initial Council application was refused, the land was too small.
- P, in his personal capacity, not as the Plaintiff and his family purchased blocks of land adjacent to the property to build the apartments. They did not notify D about their availability for purchase.
- P concealing himself as a third-party bidder, made an offer to D to buy out their interest in the property. D refused.

- Held: P had a duty to disclose the information about the Council's requirement of amalgamation to the Defendant; and that the information that adjacent properties were available for purchase.
- The information of the Council's requirement came to P in its fiduciary capacity. It was information that P could not exploit, except in case of the D's consent. To exploit such information would place P in conflict with its self-interest and its duty toward the D in relation to the property.

Grimaldi v Chameleon Mining NL (No 2) - directors

- Case: This was an appeal against the finding that Grimaldi (G), a former director and consultant to Chameleon Mining NL (Chameleon), had improperly used funds from Chameleon for the purposes of another company of which he was a director and shareholder
- Implications: Directors, those acting as directors (even if this is not clear to them), or persons held out to be directors, can owe fiduciary duties to corporate entities, breach of which will give rise to remedies such as orders to account for any profits made, or equitable compensation for loss caused.

***John Alexander's Clubs Pty Limited v White City Tennis Club Limited* [2010] HCA 1**

- Facts: the entitlement of a tennis club to the land on which it had been operating
- Held: in commercial transactions it does not in the end promote justice to seek strained interpretations in aid of those who do not protect themselves'. The Court went on to say 'where interpretations, strained or otherwise, will not help, assistance to those persons by a strained application of equitable ideas does not promote justice either. The Club's defence of the orders in the Court of Appeal creates an unacceptable amount of strain of these kinds'.

Cases: Equitable Estoppel

Waltons Stores (Interstate) Ltd v Maher

- Facts: Maher owned property with buildings on it, was negotiating with Waltons Stores for a lease, where Waltons Stores wanted an existing building be demolished and new one erected.
- Maher, relying on these representations (though no contract signed) demolished the building and begun building a new one.
- No contract ended up being signed between the parties due to difficulties in negotiations.
- Waltons Stores instructed its lawyers to slow the deal but allowed Maher to continue to believe that a deal would be struck. Waltons Stores eventually called off the deal, even though Maher had continued constructing the new building. Maher sought to enforce the agreement.
- Held: The majority of the High Court held that, even though no formal contract had been completed between the parties, Maher was permitted to believe that any formal contracts were formalities.
- Maher could rely on “promissory estoppel” - can be used as both a “sword and shield”.

Giumelli v Giumelli

- Facts: Parents and son partners in family orchard business. Parents promised son that if he stayed and worked on property, he will receive some of the land. Son gave up opportunity to pursue a different career A fallout happened, parents refused to transfer property
- Held: The Relying Party has a prima facie entitlement to relief based on the assumed state of affairs. This means enforcing the promise, which will be qualified if it is too unjust to the Representor
- However, since the brother has already been awarded the property and made improvements on it, a monetary compensation will be calculated based on the value of the property
- Recognises expectation interest
- Court recognised that the court exercises discretion in giving effect to equitable estoppel. The discretion means that it is the estoppel which generates the remedy; thus it is a cause of action.

Sidhu v Van Dyke

- Facts: Van Dyke rented cottage from Sidhu and wife, who lived 100 metres away in the main house. Van Dyke and Sidhu commenced relationship, led to breakdown of marriage.
- Sidhu told her not to worry about getting a property settlement in the divorce, as he would subdivide the land belonging to him and his wife, and give the cottage to Van Dyke. When their relationship ended, Sidhi repudiated his earlier promise
- Held: HCA clarified that Australian law does not presume reliance on the part of a representee (in this instance Van Dyke), and a representee is still required to make out detrimental reliance. Moreover, the burden of proof to establish detrimental reliance is always on the representee.
- Van Dyke made out detrimental reliance and Sidhu was estopped from denying his promise. But as the cottage had burned down and the subdivision had never taken place, Van Dyke was awarded equitable compensation reflecting the value of what she had lost.