

Equity and trust exam notes

Exam duration: 180 minutes

Reading time: 30 minutes

Assuming 3000 words

Reading Time: 8:30 – 9:00

Exam time: 9:00 – 12:15

One from section A and two from section B

Three questions each 60 minutes

Q1(a): 500 words / 30 minutes: 9:00 – 9:30

Q1(b) essay: 500 words / 30 minutes: 9:30 – 10:00

Part B

Q2: 1000 words / 60 minutes: 10:00 – 11:00

Q3: 1000 words / 60 minutes: 11:00 – 12:00

HYPO Overview

1. Fiduciary relationship	<ul style="list-style-type: none"> 1.1 recognised relationships 1.2 ad hoc relationships, horizontal or vertical? 1.3 Has D breached any of the core duties? 1.4 Defence 1.5 Contracting out of FR 1.6 remedies
2. Express Trust	<ul style="list-style-type: none"> 2.1 formalities requirements? 2.2 Certainty of intention 2.3 Certainty of subject matter 2.4 Certainty of object
3. Quistclose Trust	<ul style="list-style-type: none"> 3.1 how did QT arise? 3.2 What does QT respond to? What's the nature?
4. Charitable	<ul style="list-style-type: none"> 4.1 Legally charitable Purpose 4.2 Public 4.3 Benefit
5. Trustee duties	<ul style="list-style-type: none"> 5.1 Validity of exculpation clause 5.2 Duties 5.3 Investment
6. Resulting Trust	<ul style="list-style-type: none"> 6.1 Presumptions of advancement 6.2 Presumptions of Resulting Trust 6.3 Illegality?
7. Constructive trust	<ul style="list-style-type: none"> 7.1 CICT 7.2 JECT
8. Remedies for breach of trust	<ul style="list-style-type: none"> 8.1 what did the T do to the property? 8.2 Personal remedies available to B against the T? 8.3 Personal remedies available to B against 3rd parties? 8.4 Proprietary remedies available to B (tracing)
9. Essay	

1. Fiduciary relationship	
1.1 is there a fiduciary relationship?	
1.1.1 recognised categories	<p>Gibbs CJ in HPL:</p> <ul style="list-style-type: none"> - trustee and beneficiaries - partners - principal and agent - director and company - master and servant - solicitor and client - tenant for life and remainderman - categories are not closed <p>Mason J in HPL:</p> <ul style="list-style-type: none"> - Bailor and Bailee <p>Brennan J in Daly:</p> <ul style="list-style-type: none"> - Stockbroker engaged to buy or sell shares on behalf of the client
1.1.2 ad hoc fiduciary Relationship p	<ul style="list-style-type: none"> - if the relationship does not fall within the recognised categories, the facts of the case may still give rise to a fiduciary relationship. There could be a horizontal or vertical fiduciary relationship between the parties depending on the nature of their relationship (Gummow J in News Ltd) <p>Vertical relationship:</p> <ul style="list-style-type: none"> - greater access to resources than the other party. Some kind of power imbalance. Someone on top has authority over the other (Gummow J in News Ltd) <p>The test for vertical relationship:</p> <ul style="list-style-type: none"> - Mason J in HPL: the critical feature of these relationships is that fiduciary <u>undertakes or agrees to act for or on behalf</u> of or in the interests of another person in the <u>exercise of a power or discretion</u> which will <u>affect the interests</u> of that other person in a legal or practical sense. - (could probably implied the other party relied on this undertaking, draw analogy) - HPL facts (not fiduciary): USSC granted Blackman exclusive distributorship of surgical stapling gun. B set up hospital product to compete with USSC. Not fiduciary because of rough equality.

- **Daly (vertical)**: Daly asked a firm full of stock brokers to ask for advice. Employee told him it's not a good time to buy shares but better to make a loan to the firm. Firm were in financial difficulties. after loan made, firm went insolvent. Stock broker and client, yes, recognised. But **scope of duty only extent to stocks**. Applied undertaking test. **Firm undertook to advise Daly, Daly relied on their advice, therefore firm was under FD towards Daly.** (Gibbs CJ)
- **CBA v Smith (vertical)**: bank recommended Smith to buy the lease, because bank wants to recover loan. Applied undertaking test, bank **undertook to advise Smith, Smith relied on their advice**, therefore Bank under FD towards Smith.

Horizontal relationship

- **party come together for the shared purpose of achieving a common goal, equal footing. Mutual trust and confidence between them.** (Gummow J in News Ltd)
- in substance, it's **not a partnership but looks like a partnership. Mutual confidence and trust between the parties.** The parties can demonstrate mutual confidence and trust **before** they enter into **contract**, enough for fiduciary relationship. (UDC v Brian)

How does **contract** relate to fiduciary law: (UDC)

- contract can modify / exclude fiduciary relationship (a term therefore seems to take priority over fiduciary law; fiduciary law provides default duties / rules)
- **fiduciary relationship determined not only by contract, but includes conduct (Birtchnell v Equity Trustees Executors 1929)**
- Breach of duty by a fiduciary may not be a breach of fiduciary duty (it means for every breach, you need to find the source of that breach)

UDC facts (Horizontal, joint venture): SPL owns land, UDC and Brian and SPL agree to build shopping centre on the land. Successful. B not paid, because there was a **secret agreement between SPL and UDC**, where SPL **mortgaged** the land to UDC for a loan, SPL defaulted.

	<p>Bulun Bulun Case:</p> <ul style="list-style-type: none"> - Artist creating art using community / ritual knowledge, with permission of his people, the people allowed that based on mutual trust and confidence, therefore there is a fiduciary relationship (horizontal). - Some comments on the tests from Gaudron and McHugh JJ in Breen: - categories not closed, court identified circumstances that if present, point towards, but do not determine the existence of FR: (not exhaustive and may overlap) - the existence of a relation of confidence - Inequality of bargaining power - An undertaking by one party to perform a task or fulfill a duty in the interests of another party - The scope for one party to unilaterally exercise a discretion or power which may affect the rights or interests of another - A dependency or vulnerability on the part of one party that causes that party to rely on another
<p>1.2 fiduciary duties</p>	<ul style="list-style-type: none"> - Central fiduciary duties: no conflict and no profit rules (Mason J in HPL) - Fiduciary duties are proscriptive rather than prescriptive (Gaudron and McHugh JJ in Breen) (negative rather than positive) - However, the Western Australia Court of Appeal in Westpac held in obiter that the fiduciary duty owed by company directors to the company may require the directors to take positive actions. However, this is obiter and inconsistent with Breen, therefore the court is unlikely to treat this as authoritative. - the duties are strict (Leech, Broadman and Chan) <p>Discuss this:</p> <ul style="list-style-type: none"> - Leech, Regal and majority in Boardman suggested that the liability arises from potential conflict. However, minority in Boardman suggested that the test is real or sensible possibility of conflict, this was supported in Chan in obiter. - The state of the law is unclear, discuss both.