

Topic 3: Fiduciary Duties and Breach

Introduction

P may allege that D owed a fiduciary duty to P and by [insert conduct], breached their fiduciary obligation.

Step 1: Does a fiduciary relationship exist?

First, in order to attract equity's protection, the relationship between P and D must be fiduciary. Fiduciary relationships can be established in two ways – if they fall within an accepted category or when established on the facts (*Hospital Products*).

1.1 Is the relationship an accepted category?

Accepted categories:

- Trustees and beneficiaries (*Keech v Sandford*);
- Agents and principals (*McKenzie v McDonald*);
- (senior) Employees and employers (*Warman v Dwyer*);
- Directors and companies (Regal (*Hastings v Gulliver*);
- Solicitors and clients (*Nocton v Lord Ashburton*);
- Partners (*Chan v Zacharia*); and
- Bankruptcy trustees and creditors.

1.2 Are the parties in a non-standard fiduciary relationship?

1.2.1 Vertical factual fiduciary relationship

Vertical fiduciary relationship = fiduciary duties are owed on a one-way basis (from one party to another).

Mason J's Undertaking Test

Hospital Products v USSC – a vertical factual fiduciary relationship arises where:

1. **Undertaking:** D has undertaken to act in P's interests; and
2. **Entrusting:** D has a power or discretion that could affect P's interest; and

3. **Vulnerability:** D has a special opportunity to act to the detriment of the principal, who was, accordingly, vulnerable to the fiduciary's abuse.

1.2.2 Horizontal factual fiduciary relationship

Horizontal factual fiduciary relationship = fiduciary duties are owed on a multi-lateral basis, by all parties to each other.

i.e. a joint venture relationship (*UDC v Brian*)

- Requires a 'mutuality of trust and confidence' (*UDC v Brian*).

EXCEPTION: Rejection on other grounds

A relationship bearing fiduciary characteristics still may be rejected by the court on other grounds (*Habib v Cth (No 2)*).

→ In *Habib*, the court refused to recognize a fiduciary relationship between the Commonwealth and a citizen based on policy concerns.

Step 2: Scope of the fiduciary relationship

Having established that there is likely a fiduciary relationship between P and D, the plaintiff-principal must then demonstrate that the fiduciary's alleged misconduct, [insert conduct], likely falls within the scope of their fiduciary relationship.

In determining the scope, the court will have regard to the nature of the relationship (*Hospital Products*), as well as any agreements between the parties, and the course of dealings pursued, with equity having a preference for substance over form (*Birtchnell v Equity Trustees*). This entails analysing the subject matter over which fiduciary obligations extend.

Given that P's responsibilities in the fiduciary relationship involved [specific fiduciary tasks], any actions inside these parameters would likely fall within the scope of their fiduciary obligations.

In D [dealing with someone or doing thing in capacity of fiduciary relationship], D was acting in their role as a fiduciary of P, not in an individual or separate capacity.

D's misconduct must fall within the scope of the fiduciary relationship.

- Per *Grimaldi v Chameleon Mining* 'actual function or responsibility'

determines 'the subject matter over which fiduciary obligations extend'.
i.e. look at the nature of the agreement (the contract) and the actual course of dealings

- Cf *Hospital Products v USSC* where there was nothing to the relationship other than contract and *Birtchnell v Equity Trustees* where the relationship evolved over time.

Per *Breen v Williams* duties and obligations that arise from a fiduciary relationship can only come from 'those aspects of the relationship which exhibited the characteristics of trust, confidence and vulnerability'.

→ For medical treatment fiduciary duties will only attach to matters relating to diagnosis, advice and treatment (*Breen v Williams*).

Step 3: Breach of Duty

Given that D's alleged misconduct likely falls within the scope of their fiduciary relationship, it is necessary to determine whether this conduct constitutes a breach of duty owed to P. As emphasised by Gaudron and McHugh JJ in *Breen*, 'equity imposes on the fiduciary proscriptive obligations' rather than prescriptive ones. This distinction is crucial for our analysis, as it suggests that equity frames a breach of duty in terms of *avoiding* wrongful conduct rather than mandating positive behaviour. As such, equity recognises a breach of fiduciary duty where D has either placed themselves in a position of conflict (the conflicts rule) or securing an unauthorised profit from their fiduciary position (profits rule) (*Chan v Zacharia*). Consequently, P would contend that D has contravened either or both of these rules."

Per J Deane in *Chan v Zacharia*, two forms of disloyal conduct may give rise to a breach of fiduciary duties:
breach of the conflicts rule and breach of the profits rule.

As stated in *Chan*, fiduciary wrongdoing can be a breach of the conflicts rule, the profits rule, or both.

3.1 Conflicts rule

D can breach the conflicts rule in two ways:

1. By failing to avoid a position where their self-interest and duty of loyalty to their principal conflicts or may conflict (**interest-duty conflict**); or
2. By failing to avoid a position where their duty of loyalty to their principal conflicts or may conflict with duties to another principal (**duty-duty conflict**).