Fiduciary Relationships
1. <u>Establish</u> the fiduciary **relationship** - Is the relationship between the parties one to which fiduciary obligations can attach? 2. Determine the **scope** of that relationship - Ask is the transaction in q within the scope of that relationship? 3. Establish if any **breach** has occurred: ask if there is a breach of conflicts and/or profits rule? 4. Any **defences** available to the fiduciary? 5. Assess available **remedies** against fiduciary: personal & proprietary 6. Is any **third party** involved? 7. Any **remedies** available against the third party?
STEP 1 - Is the Relationship a Fiduciary relationship?
Generally, a person is a fiduciary because the principal has placed a level of trust and confidence in them. Being a fiduciary means you are undertaking to act for someone else. - Duty of loyalty - Existence of fact - Economic interests at stake A fiduciary relationship can arise in **two ways**: **1. Accepted categories** a. Where the relationship imports the obligations. b. Inherent character of a fiduciary relationship **2. Proven Fiduciary Relationships** a. Where the relationship depends on actual characteristics - sufficient indicators.
Accepted Categories
1. **Trustee/beneficiary**: *Keech v Sandford*

a. A trustee is a person that holds and administers property or assets for the benefit of a third party
    i. They are the legal owner
    ii. Their actions have to be for the best benefit of the beneficiary.
b. A beneficiary person who derives advantage from something, especially a trust, will, or life insurance policy.
c. A trust is an arrangement whereby a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries.
    i. *Keech v Sandford*
        1. Facts: A child had inherited the lease on a shop. Mr Sandford was entrusted to look after this property until the child matured. But before then, the lease expired. The landlord had told Mr Sandford that he did not want the child to have the renewed lease. There was clear evidence of the refusal to renew for the benefit of the infant. Yet the landlord was happy to give Mr Sandford the opportunity of the lease instead. Mr Sandford took it. When the child grew up, he sued Mr Sandford for the profit that he had been making by getting the market's lease.
        2. Held: that the trustee is the only person of all mankind who might not have the lease - strict rule.
        3. The child was entitled to the lease and the profits of the shop, Mr Sandford was holding all the profits on trust for the child.

2. **Agent/principal**: *McKenzie v McDonald*
    a. Agent (fiduciary) is someone appointed who is acting on behalf of another
    b. In their scope of authority, they have the ability to influence the relationship between a principal and third party.
        i. *McKenzie v McDonald*
            1. Facts: MK appointed MD as an agent to sell her farm to fund a property. MD bought the farm himself at a lower of market value and disregarded MK's asking price. MD then sold it at the market value and gained profit.

3. **Employee/employer**: *Warman v Dwyer*