

## LAW5008 Principles of Equity

		<p><b>Horizontal Test (Joint Venture):</b></p> <p>As <b>P</b> and <b>D</b> both owe each other fiduciary duties on a 'multi-lateral basis', this is known as a horizontal fiduciary relationship. <b>P</b> may argue they had a 'mutuality of trust and confidence' per <i>UDC v Brian Schmidt</i>. As this is considered a horizontal relationship, <b>P</b> must establish whether the <b>P</b> and <b>D</b> placed a high degree of mutual trust and confidence in each other in pursuit of a common goal.</p> <p>On balance, there is [an established/a relationship in fact] established.</p>
<b>Stage 3: Scope</b>	<p><u>Consider</u></p> <ul style="list-style-type: none"> <li>• <b>Terms of contract:</b> what the parties have agreed themselves to, especially if the relationship is based on a contract. However, written documentation won't determine the issue if the actual course of dealing between parties is inconsistent with written terms (<i>Birtchnell; Grimaldi</i>).</li> <li>• <b>Responsibility</b> (<i>Grimaldi</i>)</li> <li>• <b>Medical treatment</b> (<i>Breen</i>): medical treatment fiduciary duties will only extend to the provision of medical treatment after or in the course of consultation with the patient.</li> <li>• <b>Joint ventures</b> (<i>Howard</i>): joint ventures breached their FD by purchasing the property themselves in breach of the JV agreement.</li> </ul>	<p>Secondly, the court will look at whether the fiduciary's misconduct falls within the scope of the parties' fiduciary relationship. The scope of the relationship must be identified as determined by the 'actual circumstances of the relationship' (<i>Per Dixon J in Birtchnell</i>) and the facts of the case (<i>per Mason J in Hospital Products</i>). <b>D</b> will only be liable for breaches if they occur within this scope, as not all dealings between parties are subject to fiduciary obligations (<i>Birtchnell</i>).</p> <p><b>Contracts:</b> Regular courses of dealings outside the K may be within the scope as per Birtchnell. If <b>D</b> has a history of doing more than what they signed up for, this can be encapsulated on form, pointing to [conduct] falling within scope.</p>

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- That property(ies) may need to be traced, including into third parties' hands.
- If the proceeds/product of the property(ies) can be traced into, discuss the appropriate proprietary remedy.
- Discretionary remedial considerations may apply.

**SCRIPT:** As BOFD is likely made out, and no defences are available, we will next turn to remedies as a means of cleansing the defendant's affected conscience. Equitable remedies are discretionary in nature, and the court will consider a number of factors when deciding the appropriate remedy. A breach of fiduciary duty can yield both personal and proprietary remedies. P is entitled to elect any of the correct measures that are applicable (*Warman*). If both a loss is suffered by the plaintiff and a profit is made by the fiduciary from the same breach, the plaintiff cannot get both remedies (no double recovery). Equitable remedies are discretionary, meaning successfully proving a cause of action does not automatically entitle the plaintiff to a particular remedy. Courts consider various factors to achieve a fair result for both parties. This contrasts with common law damages, which follow "as of right".

### Breach of conflicts:

As D has breached the conflict rule, P may seek the following remedies [listed below].

### Breach of profits:

As D has obtained an unauthorized profit, the profit may be stripped of them through [remedy listed below].

<u>RULE</u>	<u>NOTES</u>	<u>SCRIPT</u>
<b>Specific Performance</b>	<ul style="list-style-type: none"> <li>• Available if there is a contract</li> </ul> <p><u>Plaintiff must establish:</u></p> <ul style="list-style-type: none"> <li>• Ready, willing and able to perform his/her part of K</li> <li>• Valid contract exists</li> <li>• That the obligation in the contract is 'sufficiently precise' (<i>Co-op v Argyll</i>)</li> <li>• A breach, or likely breach, of contract</li> </ul> <p><u>Court must consider:</u></p> <ul style="list-style-type: none"> <li>• Fairness to both parties</li> <li>• Supervision issues (<i>Co-op v Argyll</i>)</li> </ul>	<p>P may request an order of specific performance, which would require D to [perform his obligations under the contract].</p> <p>P must establish that she/he was ready, willing and able to perform his part of the contract and evidence a valid contract, a breach or likely breach of that contract and that common-law damages would be inadequate (<i>JC Williamson; Argyll Stores</i>).</p>

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	<ul style="list-style-type: none"> <li>• Not yet in existence</li> <li>• Not yet owned</li> <li>• e.g. unborn calf.</li> <li>• Property that exists, but the transferor has no current rights in it. e.g., Grandma states in her will that P will inherit her jewellery (jewellery exists, but rights won't vest until she dies). <ul style="list-style-type: none"> <li>◦ LOOK AT SPECIFIC WORDING: <ul style="list-style-type: none"> <li>■ 'Assigning my right/interest to my grandma's jewelry' rather than 'assigning my grandma's jewelry'</li> </ul> </li> </ul> </li> </ul>	<p><b>Future Property:</b></p> <p>Y has attempted to assign [future property] to P. OTF, the [property] is future property as it [reason]. Common law does not recognize assignments of future property, whether as a gift or for value. However, equity's position per <i>Taliby</i> states that transfer of future property is valid if it is sufficiently identifiable, there is consideration and the agreement is specifically enforceable (<i>Williams</i>).</p> <p><b>Norman Approach (dividends/interest):</b></p> <p>Considering that dividends/interest are inherently future property (<i>Norman</i>), it appears that D has attempted to assign future property without consideration, as opposed to a presently existing right, as [facts]. As such, this assignment will likely fail.</p> <p><b>Shepherd Approach (e.g. fruits from a tree that you own):</b></p> <p>It is arguable that D has attempted to assign future property without consideration, such that the assignment will fail (<i>Norman</i>). However, it appears that the better argument here is that the assignor was dealing with a present right, such that it falls within the exception outlined in <i>Shepherd</i>, as OTF, [assignor] holds a present interest in [asset], and the [future benefit] arises from it. Therefore, it may be enforceable in equity under the <i>Shepherd</i> exception. Therefore, we may move to step two.</p>
<b>Legal or Equitable Property?</b>	<p><u>Legal property</u></p> <ul style="list-style-type: none"> <li>• Land (general law or Torrens system)</li> <li>• Shares</li> <li>• Chattels</li> </ul>	<p>We must next determine whether the [property] is legal or equitable.</p> <p><b>Legal Property:</b></p> <p>OTF, the [property] is legal as it is [insert reasoning, e.g. a</p>