
LAW5008 PRINCIPLES OF EQUITY EXAM NOTES

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[P]/Beneficiary may argue that [D]/Fiduciary breached a fiduciary duty when [D] [performed contentious conduct] and [D] must account for any profits **or** make good any losses arising from the breach.

STEP 1 – FIDUCIARY RELATIONSHIP

As a [POSITION], [D] owed [P] fiduciary duties.

- **Accepted category** – *where the relationship imports duties due to the inherent characteristics*
 - Trust and confidence can flow vertically, owed or owing by
 - **Partners** cannot directly/indirectly use partnership assets for personal gain (*Chan*).
 - In *Chan*, 2 doctors lease, 2 relationships (partner and trustee). Chan renewed lease on his own and wanted to break up partnership. Same rule as *Keech*.
 - Horizontally – one way, F owes to P, P owes nothing
 - **Trustees and beneficiaries** (*Keech*)
 - Trustee must not use position to get gain for themselves, even if B was not able to.
 - In *Keech*, lease of market stall which came up for renewal. Trustee renewed lease under own name which was NOT allowed.
 - **Agents and principals** (*McKenzie*)
 - Agent can only buy from P at arm's length and with full disclosure.
 - In *McKenzie*, D was real estate agent undervalued farm. Suggested that farmer buy his Camberwell shop. Overvalued the shop. D was an agent of the farmer and cannot act in his own interest.
 - **Employees** (senior?) and **employers** (*Warman*)
 - Even if P business poorly runs, senior employee may be liable for taking assets/knowledge/opportunity from business. More senior = more likely. Assess what employer is putting at risk.
 - In *Warman*, company sold motorbike parts from Italy. D (general manager) set up competition with Italian manufacturers to give him exclusive distribution rights. All business started going to D's new company.
 - **Directors and companies** (*Regal*) – [D], as a director of the company, owes fiduciary duties to [P].
 - Director cannot take up an opportunity and/or special knowledge obtained in their director/company capacity as fiduciaries without consent (of shareholders not just board members).
 - [D] only came across the opportunity to work for [3P] from [4P], whom he was dealing with at the board's direction and who herself learned in the course of company business.
 - In *Regal*, cinema being sold, and company wanted to buy it. D create a subsidiary to acquire the cinema and funded by board members. New management sues for breach as board members took profits from the sale (own interests in the subsidiary).
 - **Solicitors and clients** (*Nocton*)

- **Step 4A** – No, s 134 PLA did not apply as it is a **part chose** in action (*Shepherd*). **Writing signed is not needed** per s 53(1)(c) as it is not an equitable property.
- **Step 5A** – Is it **assignable in equity**? – The donor must **manifest an intention** to assign **immediately and irrevocably** (*Norman*).
 - A **deed** is not needed but can be the **best possible evidence** of an immediate intention to assign (*Norman*).
 - **Conclusion** – Yes, [A]’s assignment is recognised by equity. The assignment will be enforced against the transferor in equity.
 - **Cf.** No, [A]’s assignment fails.
- **Step 4B** – Yes. Is it **complete** according to **relevant transfer rules**?

General law land	PLA s 52(2) – Deed
TS land	<p>TLA ss 40, 104(1) – Registration of transfer, signed* by both transferee and transferor,** lodged along with certificate of title (COT).</p> <p>* Executed = signed</p> <p>**With e-conveyancing, solicitors/PEXA subscriber verify identity and sign on behalf of transferee & transferor & eCoT used. Documents can be unsigned before lodgement. If both parties have their own subscriber, likely that gift is not beyond recall.</p> <p>Cf. Unclear if same subscriber acts for both parties.</p>
Chattels	<p>Delivered* with intention** of transferring legal ownership OR deed of assignment.</p> <p>* Delivery of possession can be actual or constructive. Order does not matter.</p> <ul style="list-style-type: none"> • Delivery with later intention – In <i>Stoneham</i>, grandfather gave gift 2 years before expressing intention. • Intention with later delivery – In <i>Thomas</i>, the donor lost manuscript and told donee that he can have it if found. <p>** Transfer is effective at law when intention coincides with delivery.</p> <p>But if fails at law, equity cannot step in for chattels (All within donor’s control – donor must complete all steps to be valid)</p>
Shares sold off market	Corporations Act s 1071B – Registration in books of company of an instrument in prescribed form with certificates .
Debts or other legal choses in action	<ul style="list-style-type: none"> ▪ PLA s 134 – The assignment must be absolute (transfer the whole thing), in writing and signed* by the transferor, and express written notice must be given to the debtor or other party of the transfer (e.g., bank).** <ul style="list-style-type: none"> ○ * Executed = signed; Letters are typically signed.