FIDUCIARY RELATIONSHIPS/DUTIES

STATE: *The essential feature of a fiduciary relationship is a relationship of mutual confidence and trust between the* parties *(Mason J, Hospital Products)*

TEST

1. **Is there a fiduciary relationship?**
2. **If so, what duties were there? (to determine whether they were breached!)**

1. IS THERE A RELATIONSHIP?

Established fiduciary relationships *(Hospital Products)*

As X falls into a __ relationship, this is prima facie deemed fiduciary. Recognised categories are not closed (Hospital Products); but not wide open (e.g. parent/child)

- *Relationships of trust and confidence:* Partners
- Partners
- Business partners (*UDC v Brian*)
- Principal/agent
- Director/company
- Master/servant
- Solicitor/client
- Agent/principal
- Tenant for life/remainderman
- Guardian and ward (Trevorrow)
- Financial advisor/client (emerging status-based category; *Daly*)
    - Question is whether the facts disclose the existence of a fiduciary relationship (*Daly*)
    - Scope of this recognised duty = buying/selling of shares **only**
    - ***Daly:*** scope extended to giving advice
    - Broker obliged to make full/accurate disclosure of own interest in the transaction when providing advice (*gibbs*, *Brennan*)
- Bailor/bailee (*Mason dissent in Hospital* Products)
- Parent or child; in Canada but not in Aus
- Archetypal fiduciary relationship is a trustee–beneficiary relationship.
    - Huge overlap bt trustee/fiduciary relationships
    - BUT these two areas of law are NOT the same. Fiduciary law is NOT trust law.

Criteria based fiduciary relationship

STATE*: Courts may still recognise a fiduciary relationship depending on the circumstances outside the recognised categories. Where the parties do not fall within a recognised fiduciary relationship, it remains possible for the court to find fiduciary obligations based on the factual circumstances. There is no single definitive test for establishing a fiduciary duty; rather, courts adopt a contextual analysis (Dawson J in Hospital Products).*

STEP 1: Vertical vs horizontal relationship? *Starting point* from Gummow J in *News Ltd*

The fiduciary relationship is defined by reference to its structural context—namely, whether it arises in a vertical or horizontal relationship, as explained by Gummow J in News Ltd.

- **Vertical**:
    - one party having greater access to resources, skill, information than the other party.
    - There is some sort of hierarchy/power dynamic; one person has authority over the other
    - E.g. employer/employee, principal and agent

For vertical relationships, the favoured approach in Australia is Mason J's "distil the essence" principle from Hospital Products. This approach finds a fiduciary relationship where one party undertakes to act in the interests of another in the exercise of a power or discretion that will affect the other's legal or practical interests. Key features include a voluntary undertaking, discretion affecting another's interests, and a representative capacity. Here, the nature of the relationship is vertical, as Y has greater access to resources, skill, or information than the other, creating a hierarchy or power dynamic in which one person holds authority over the other.

- **Horizontal**

- Parties come together for shared purpose of achieving a common goal. Often have parties on equal footing; there is a mutual trust and confidence between them.
- e.g. **partners who are agents for each other,** or joint venture
- Can be fiduciary when an undertaking to act for mutual advantage

For horizontal relationships—such as partnerships or joint ventures—fiduciary duties have been recognised where there is a high degree of mutual trust and confidence between the parties, as established in UDC. The existence of formal contracts is not necessary; reliance and committed resources before formalisation can themselves indicate the presence of fiduciary obligations.Here, the nature is a horizontal relationship, as X and Y are parties coming together for a shared purpose on equal footing, with mutual trust and confidence often underpinning the collaboration (as with partners who are agents for each other, or a joint venture).

STEP 2: Undertaking test - essence of the relationship for **vertical relationship**

STATE: *Secondly, the critical feature of a fiduciary relationship, is where fiduciary undertakes or agrees to act for or on behalf/or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense (*Mason J per *Hospital Products)*

- Exercises power which places person in position of vulnerability
- ***Daly: firm undertook to advise Daly, he relied on advice → fiduciary duty extended to giving financial advice***
- ***CBA v Smith: bank undertook to advise A on whether to buy lease (A regularly seeks financial advice from bank) → said yes even though very disadvantageous → breach***
- ***Breen***: no fiduciary relationship bc doctor & patient to give access to medical records but yes to give treatment/advice
- Implied features:
  - Reliance by the other party
  - Draw analogy to existing cases; just bc it's commercial doesn't preclude fiduciary being found
- Multifactorial approach exists, but diff version of same test - *Gaudron/McHugh in Breen v Williams*
  - Relation of confidence
  - Inequality of bargaining power
  - Undertaking by 1 to perform a task in interests of another
  - Scope of party to unilaterally exercise discretion to affect the other's rights/interests
  - Dependency/vulnerability of one party causing them to rely on another
  - Inequality of bargaining power

For horizontal relationships:

- Works both ways (between both people)
- Essential feature: **mutual trust and confidence bt the parties** (*UDC*)
- Pre-contractual negotiations can show mutual trust & confidence → fiduciary relationship (*UDC*)

X and Y's relationship must be one of trust and confidence, consistent with any contractual arrangement between them, recognising that at times the fiduciary may be permitted to act in their own interests so long as this does not conflict with the true intention of the contract.

If there is no contract on the facts → *The facts reveal there is no formal contract between X and Y. however, this is not detrimental to the existence of a horizontal fiduciary relationship. The fact that the parties have acted in reliance on each other, or have committed funds before formalising any arrangement contractually, still suggests a fiduciary relationship (UDC)*

1. What is the essence of the relationship?

- Characteristics: relationships of trust and confidence/confidential relations
- Must be consistent with contractual relationship, doesn't alter true intention of K
- But fiduciary can be entitled to act to own interests under the K at times

2. Entitlement to expect

- Look at circumstances and consider whether principal to entitled to expect the fiduciary will act in their interests for purposes of the relationship (*Grimaldi*)
- *Grimaldi*: directors of mining company misappropriated company funds

Here, X is entitled to expect that Y will act in X's interests for the purposes of the relationship, reflecting the principle that fiduciaries must prioritise the interests of their principal Grimaldi