

Fiduciary obligation

1. Fiduciary relationship?

- Categories: trustee, director, agent, partner, solicitor
- If ad hoc: undertaking + discretion + vulnerability (*Hospital Products, Breen*)

2. Scope of duty

- What powers undertaken?
- What interests entrusted? (*Pilmer*)

3. Breach

- Conflict rule → personal interest vs duty (*Chan v Zacharia*)
- Profit rule → benefit obtained because of position (*Regal, Boardman, Grimaldi*)

4. Consent?

- Fully informed? Specific? Sui juris?
- (*Maguire v Makaronis*)

5. Causation

- Profits: “by reason of position” (*Warman, Grimaldi*)
- Loss: equitable compensation strict for trust property (*Youyang*)

6. Defences / bars

- Informed consent
- Exclusion clauses
- Laches, acquiescence, unclean hands
- Third party prejudice (*Giumelli*)

7. Remedies

- Account of profits
- Constructive trust over gains (*Grimaldi, Foskett*)
- Equitable compensation (*Youyang*)
- Injunction

Law of Assignment

- Chose in possession → thing that can be held
- Chose in action → asset cannot be possessed → only enforced by legal action eg, contractual debt, trust/beneficiary to hold benefit for another, right of payment
- Equitable property → right recognised in court exercising equitable jurisdiction and unknown to the common law, e.g. beneficiary's interest in a trust or partner's interest in a partnership; all equitable rights are intangible
 - NB: All forms of equitable property are equitable choses in action, as rights can only be enforced by action

Assignment of legal property

- Can have a statutory assignment or an equitable assignment
- Statutory → unless every step required by law is complete, the transfer will not be effective
- Equity → can still be considered under equity if:

Third Party Liability

Two pathways → **Barnes v Addy**

Knowing Receipt → **3 conditions**

- Breach of fiduciary duty
- Receipt of the property by the party → 2 limbs → Legally recognised property must be received
 - beneficially received the property in question
 - Must have received the property as principal and not as agent for another party
 - **Agip v Jackson** → not liable for having knowingly received the proceeds for breach since had not received the money beneficially but as innocent agents
 - Knowledge of the breach of fiduciary duty → Farah, Grimaldi, Consul and Spangaro
 - Did the recipient know this is a question of fact and
 - What type of knowledge must be proved to hold the recipient accountable as a constructive trustee
 - **Farah** → No knowledge of assumed breach and known actual knowledge of the essential facts which constituted the breach
 - **Grimaldi** → baden scale of what is knowledge
 - **Consul v DPC Estates** → Recipient is only liable if he has knowledge on any of the first four points of debated scale → A recipient order for relief if you have knowledge of circumstances which would indicate a breach of fiduciary duty to an honest and reasonable person
 - **Spangaro v Corporrate investment Australia funds** → The recipient knowledge must be of the breach of fiduciary of your obligation → liability is imposed from the time he became aware of the breach

Remedies for knowing receipt

- If recipient no longer holds the property → principle will be limited to a personal remedy of equitable compensation to recover value
- Recipient hold property → entitled to trace the property to the recipient and claim it
- Principal claims the property traced → the onus of proof on recipient to defeat the claim by showing he's a good faith purchaser for value without notice of the trust

Personal remedies

- Equitable compensation assessed as value of property received in some cases with compound interest
- Account of profit against recipient who have profited from receipt of property

Proprietary relief is available

- Farah and Fisi
- Where the misappropriated property is registered the recipient will be entitled to the benefit of indefeasible title and will not have to return it unless one of the so-called exceptions to indefeasibility can be established:
 - Recipient with party to Trustees fraud in which case land must be returned and
 - in personum principal registered proprietor Bound by interest years created