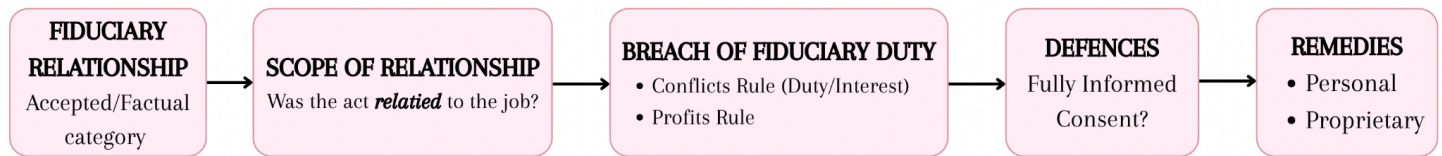


TOPIC 3 - BREACH OF FIDUCIARY DUTIES



OTE, [P] may allege that [D] owed a FD to her/him and breached that duty through [conduct]. Thus, given [P] can establish all elements of a breach of FD cause of action against [D], [P] may be entitled to remedies for breach.

✿ FIDUCIARY RELATIONSHIP

In order to attract equity's protections and remedies, the first issue is to prove that the relationship between [P] and [D] is a fiduciary relationship. Per *Hospital Products*, this relationship may either be a settled category readily recognised by the courts, or it may be established in fact.

Settled categories

OTE, the relationship between [P] and [D] is one of [accepted categories]. Per *case law*, equity recognizes that [relationship] is inherently fiduciary in nature, and that [D's position] stands in a fiduciary capacity vis a vis [P's position]. Therefore, [D] may be recognised to be a fiduciary and obliged to act in the best interest of [P].

Settled relationships:

Trustees - Beneficiaries	<i>Keech v Sandford; Boardman v Phipps</i> Trustee holds property on trust for beneficiary, and manages the property for the equitable (beneficial) ownership of the beneficiary. → The trustee has control over assets that belong (in equity) to someone else. → The beneficiary is vulnerable and relies on the trustee to act honestly and in their best interests.
Partnership	<i>Chan v Zacharia</i> Parties carrying on a business in common with a view to profit → The duties are imposed by reason of the mutual confidence that the partners will engage in some particular activity or transaction for a joint advantage only → Each partner is both a fiduciary and a principal Only horizontal accepted relationship
Agents - Principals	<i>McKenzie v McDonald</i> Agents have the authority and discretionary power to act for the principal, and have access to confidential information belonging to the principal → Agents affect their principal's rights and liabilities through their actions. The principal, in turn, relies on the agent's honesty, loyalty, special knowledge and skill
Employers - Employees	<i>Warman v Dwyer</i> Implied term of employment contracts, employees owe a duty of fidelity to their employer. Employees have the duty to act honestly, loyally, and in the best interest of the company
Directors - Companies	<i>Regal (Hastings) v Gulliver</i> Directors owe a fiduciary duty to the company → Companies places its trust and confidence in the directors, and are vulnerable to the directors decisions → Directors represent the company, manages its affairs, and is the person upon whom the company helplessly relies

	<table border="1"> <tr> <td data-bbox="300 105 491 324">Solicitors - Clients</td><td data-bbox="491 105 1445 324"> <p><i>Nocton v Lord Ashburton</i></p> <p>Solicitor represents their clients → Solicitors are agents of the clients → Obligated undivided loyalty to that client → cannot act for an opposing party or profit out of the relationship → Serves as an advisory function and benefits the client's interest rather than their own</p> </td></tr> <tr> <td data-bbox="300 324 491 577">Bankruptcy trustees - Creditors</td><td data-bbox="491 324 1445 577"> <p>When sb goes bankrupt → they are appointed a bankruptcy trustee to go through all of the bankrupt assets → The bankruptcy trustee's job is to get those assets and bring them in in the interest of the creditors and payout the creditors → ministering the bankrupt estate specifically for the interest of the creditors</p> </td></tr> </table>	Solicitors - Clients	<p><i>Nocton v Lord Ashburton</i></p> <p>Solicitor represents their clients → Solicitors are agents of the clients → Obligated undivided loyalty to that client → cannot act for an opposing party or profit out of the relationship → Serves as an advisory function and benefits the client's interest rather than their own</p>	Bankruptcy trustees - Creditors	<p>When sb goes bankrupt → they are appointed a bankruptcy trustee to go through all of the bankrupt assets → The bankruptcy trustee's job is to get those assets and bring them in in the interest of the creditors and payout the creditors → ministering the bankrupt estate specifically for the interest of the creditors</p>
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Non-accepted categories	<p><i>Hospital Products Ltd v USSC</i></p> <ul style="list-style-type: none"> • Guardian - Child (may be under specific circumstances) • Parent - Child • State - Children • Doctor - Patient (<i>Breen v Williams</i>) (in some cases, there may be a fiduciary relationship) • Generally, the giving of advice does not give rise to fiduciary relations (<i>Pilmer; Breen</i>) 				
Factual fiduciary relationship	<p>OTF, the relationship between [P] and [D] is one of [facts]. Although this is not a recognised fiduciary relationship (FR), the categories are not closed and thus a FR may nevertheless be established in fact (<i>Hospital Products</i>).</p> <p><u>Vertical factual FR (duties owed one-way)</u></p> <p>OTF, [P] may argue that the relationship between [P] and [D] is analogous to that of an [agent-principal/ established category], where [characteristic of relationship]. Similarly, [P] and [D] [similar facts]. [P] may argue that as a [established category] is an established category of fiduciary relationships (<i>case law</i>), and [P] and [D]'s relationship is similar to that of an [established category], there exists a fiduciary relationship between the parties.</p> <p>Further, [P] may argue that per <i>Hospital Products</i>, there exists multiple indicia of a fiduciary relationship between [P] and [D], including [indicia].</p> <ul style="list-style-type: none"> + <u>Undertaking to act in the interest of another</u> Per <i>Hospital Products</i>, a factual fiduciary relationship arises when the potential fiduciary has committed an act for, on behalf of, or in interest of another in a manner that affects the other person's legal interests. OTF, [D] has undertaken to act [conduct/negotiating/performing action] on behalf of [P], and in the best interest of [P]. [P] may argue that as stated in <i>Hospital Products</i>, the expression ['for'/'on behalf of'/'in the interests of'] signifies that [D] acts in a representative character in the exercise of his responsibility to [P], which constitutes a fiduciary relationship. + <u>A relationship of trust and confidence</u> [P] may further contend that there was mutual trust and confidence between the parties, as [D] was entrusted with the confidential information regarding [facts]. Therefore, [D] was expected to preserve that trust by refraining from any conduct that would undermine it, which indicates a fiduciary obligation (<i>Hospital Products</i>). + <u>Power to affect the principal's interests</u> Additionally, [P] may argue that [D] had the power to affect [P]'s legal interests (<i>Hospital Products</i>). As [D] had the full discretion/authority/information to [facts/conduct], his actions in [conduct] would affect [P]'s interests in [facts]. + <u>Vulnerability or disadvantage/Reliance</u> In particular, [D]'s conduct places [P] in a position of reliance and vulnerability to [D]'s decisions (<i>Hospital Products</i>). OTF, as [D] held full power and discretion to [exercise conduct], [P] ultimately relies on [D] to act with loyalty, integrity, and good faith, as well as is 				

	<p>vulnerable to any abuse of action by [D]. Such imbalance of power strengthens [P]'s argument that [D] owed fiduciary obligations to protect [P]'s interests.</p> <p>+ <u>Holding of property</u> (rare)</p> <p>Therefore, it is likely that [D] will be found to have owed a fiduciary obligation to [P], as the relationship between the parties is analogous to that of a [established category], and [FR indicia].</p> <p><u>Horizontal factual FR (duties owed both ways)</u></p> <p>OTF, [P] may argue that the relationship between [P] and [D] is analogous to that of a partnership, where both parties carry on the business with the common view to profit, and there is mutual confidence that the parties would only engage in particular activities or transactions that brought a joint advantage. Similarly, [P] and [D] agreed to/operated the activity [similar facts]. [P] may argue that as a partnership relationship is an established category of fiduciary relationships (<i>Chan</i>), and [P] and [D]'s relationship is similar to that of a partnership, there exists a fiduciary relationship between the parties.</p> <p>Further, [P] may argue that per <i>Hospital Products</i>, there exists multiple indicia of a fiduciary relationship between [P] and [D], including [indicia].</p> <p>+ <u>Undertaking to act in the interest of another</u></p> <p>Per <i>Hospital Products</i>, a factual fiduciary relationship arises when the potential fiduciary has committed an act for, on behalf of, or in interest of another in a manner that affects the other person's legal interests.</p> <p>OTF, [D] has undertaken to act [conduct/negotiating/performing action] on behalf of [P], and in the best interest of [P]. [P] may argue that as stated in <i>Hospital Products</i>, the expression ['for'/'on behalf of'/'in the interests of'] signifies that [D] acts in a representative character in the exercise of his responsibility to [P], which constitutes a fiduciary relationship.</p> <p>+ <u>A relationship of trust and confidence</u></p> <p>[P] may further contend that there was mutual trust and confidence between the parties, as [D] was entrusted with the confidential information regarding [facts]. Therefore, [D] was expected to preserve that trust by refraining from any conduct that would undermine it, which indicates a fiduciary obligation (<i>Hospital Products</i>).</p> <p>+ <u>Power to affect the principal's interests</u></p> <p>Additionally, [P] may argue that [D] had the power to affect [P]'s legal interests (<i>Hospital Products</i>). As [D] had the full discretion/authority/information to [facts/conduct], his actions in [conduct] would affect [P]'s interests in [facts].</p> <p>+ <u>Vulnerability or disadvantage/Reliance</u></p> <p>In particular, [D]'s conduct places [P] in a position of reliance and vulnerability to [D]'s decisions (<i>Hospital Products</i>). OTF, as [D] held full power and discretion to [exercise conduct], [P] ultimately relies on [D] to act with loyalty, integrity, and good faith, as well as is vulnerable to any abuse of action by [D]. Such imbalance of power strengthens [P]'s argument that [D] owed fiduciary obligations to protect [P]'s interests.</p> <p>+ <u>Holding of property</u> (rare)</p> <p>Therefore, it is likely that [D] will be found to have owed a fiduciary obligation to [P], as the relationship between the parties is analogous to that of a partnership, and [FR indicia].</p>
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❁ SCOPE OF FIDUCIARY RELATIONSHIP

The next issue is to identify the scope of the relationship and whether [D]'s alleged breach falls within that scope. Per *Birtchnell*, a scope inquiry involves defining the subject matter to which fiduciary obligations apply, and that [D]'s alleged misconduct will not be governed by his/her fiduciary duties if they fall beyond that scope. This is ultimately a question of fact and depends on each case (*Grimaldi*).

Applying the test in *Birtchnell*, the scope of the relationship is determined by looking at the 'actual circumstances' of the fiduciary relationship.

OTF, [D]'s [obligations/responsibilities/contract] involves [facts]. Therefore, such [responsibilities] form the subject matter over which [D]'s fiduciary duties extend over.

Consider:

- SCOPE IS NOT TO 'act in the best interest of the principal' !!! → specifically state the conduct, what sorts of dealings may be governed by the relationship

- Terms of the contract between the parties (*Hospital Products*)
If the contract is the relationship, the contract is the most salient and the scope will be what is within the terms of the contract; FR can co-exist with contractual obligations
- Character of the relationship (*Birtchnell*): regular course of dealings, the partnership agreement
→ Substance over form - Course of dealings will supersede if it conflicts with the contract terms
- Time and place that the activity took place; relevant fiduciary profession: Does the fiduciary have to do everything in the name of the company, or is he allowed to step outside and conduct the business in his own name?

Ordained by past practice

Scope of the FR may arise without contractual foundations giving rise to it. In order to determine what functions and responsibilities [D] had assumed, past practices may be considered. Given [D] has performed [function] over [year] period, it may be said that fiduciary obligations extend over this function (*Grimaldi*)

Evolved over time/regular course of dealings

[D] may attempt to argue that by performing [action], he/she was acting differently to what was initially undertaken in the written contract, and therefore outside the scope of the fiduciary relationship.

However, [P] may counter by arguing that similarly to *Birtchnell*, the functions and responsibilities assumed by the parties had broadened over time through the course of dealings actually pursued, even though they went beyond the contract. Thus, [P] may contend that the scope of the fiduciary relationship is not limited to the contract, but also the course of dealings they engaged in, including [D]'s conduct of [facts]. As equity looks at substance over form, and [D] had been regularly engaging in [conduct] for an extended period, such functions will likely supersede the contract and still fall within the scope of the fiduciary relationship.

Partnership agreement

Per *Birtchnell* and *Hospital Products*, the scope of a fiduciary's duty may be inferred from both the terms of the partnership agreement and the actual course of dealings themselves. [P] may argue that [a series of conduct] sufficiently demonstrates that there is a course of dealings 'actually pursued', and as such dealings conflict with the contract, the former should supersede as equity prioritises substance over form (*Birtchnell*).

Director-Company relationship

The conduct of [D] will fall within the scope of the FR if they are so related to the company affairs that it can be properly said to be done within the course of management (*Regal Hastings*). OTF, [P] may argue that [D]'s actions in [conduct] were undertaken in the course of managing or advancing the company's interests, thereby falling within the scope of [D]'s fiduciary obligations.

Subject matter to doctor-patient relationship

In the case of doctor-patient relationships, duties and obligations that arise from fiduciary relationships can only come from the aspects of the relationship that exhibit characteristics of trust, confidence and vulnerability (*Breen*). Thus, the scope of the fiduciary obligations will attach to matters of diagnosis, advice and treatment.

[P] may argue that since [D]'s misconduct was [improperly executing corrective procedure], this would fall within the subject matter of provision of medical treatment, therefore comfortably within the scope.

- + [P] may argue that the misconduct of [D] fell within the scope of the subject matter of provision of medical treatment during/after consultation as [reason].
 - Where a medical practitioner has advised the patient to undergo treatment at a particular private hospital in which the medical practitioner has an undisclosed financial interest
 - Where the medical practitioner prescribed one of a number of equally suitable pharmaceutical drugs for the undisclosed side benefits from the manufacturer of those drugs
- + [D] may argue that because they were requesting access to medical records from [P], akin to *Breen v Williams*, this was not within the subject matter which fiduciary obligations can extend over in the context of doctor-patient relationships

As the scope of [D]'s fiduciary obligations has been established, it needs to be determined whether his/her alleged misconduct falls within such scope. OTF, [D] [misconduct]. This likely constitutes [pursuing an opportunity in favour of his own interests rather than the principal's/misappropriation of a corporate opportunity/conduct]. As [D]'s actual functions and responsibilities involved [that activity], [conduct] will likely fall within the scope of FD owed to [P].