Fiduciary Relationships

STEP 1: WHETHER THERE IS A FIDUCIARY RELATIONSHIP	
Test A: Presumed Relationship	
Rule	The presumption of fiduciary obligations apply to recognised categories of relationships all involving an undertaking to act exclusively in the other party's interests: **Hospital Products**
Categories	Trustee X Beneficiary || Solicitor X Client || Director X Company || Employee X Employer* || Agent X Principal || Co-Partners || Settlor X Trustee || Executor X Beneficiaries of Deceased's Estate
Test B: Vertical Relationship	
Definition	One party has greater resources, skill or information → reasonable expectation that the fiduciary will subordinate their self-interests for the beneficiary: **News v Australian Rugby League**
	Beneficiary is usually vulnerable + reliant on the fiduciary, while the fiduciary is the "expert" with more resources + skill (that they represented): **Daly**
Rule	Fiduciary duties arise only where a party has undertaken to act exclusively in another's interests: **Hospital Products**
Undertaking Test	1 One party expressly or impliedly undertakes or agrees to act on behalf of, or in the interests of another 2 In the exercise of power or discretion 3 Which affects the other's interests in a legal or practical sense
Features	[Entitlement to Expect] Beneficiary is entitled to expect the fiduciary will act in their interests to the exclusion of their own or a third-party's interests: **Grimaldi**
	[Multifactoral Approach] There is an inequality of bargaining power (resource + skill disparity), relationship of confidence / trust / control, dependency + vulnerability: **Breen v Williams**
	[Essence] Beneficiary is vulnerable + at the mercy of fiduciary because they cannot protect themselves fully; fiduciary acts as a representative rather than own interests: **Hospital Products**
	Key feature is that they undertook to act EXCLUSIVELY + SOLELY in the beneficiary's interests with undivided loyalty: **CBA v Smith**
Financial Advisor	NOT a settled category YET but is becoming an emerging recognised category → must use undertaking test: **Daly**
	Advisor who undertakes to give investment advice the client relies on (from expertise they represented) will owe fiduciary duties of full disclosure, impartiality + avoidance of conflicts: **Daly**
Examples	Bank undertakes to provide independent advice + act exclusively in the customer's interests for their benefit but did not disclose they are acting for another party: **CBA v Smith**
	NOT doctors as they only owe a professional duty of care to all patients, not a special requirement to act exclusively in the patient's interests with undivided loyalty: **Breen**
	Directors in charge of company funds will owe a fiduciary duty to the company as there is an expectation they will act exclusively in the company's interests rather than 3rd parties: **Grimaldi**
	NOT commercial arrangements where parties are on equal fitting, free to pursue their own interests such as making profit, setting their own prices: **Hospital Products**
Test C: Horizontal Relationship	
Definition	Where resources, skill + information are shared for the purpose of achieving a common goal in a partnership: **UDC**
Rule	A horizontal fiduciary relationship exists where the parties have placed a high degree of mutual trust + confidence in each other in pursuit of a joint enterprise: **UDC**
Duties	Parties owe duties to act in the interests of the partnership IN GOOD FAITH rather than exclusively for each other: **UDC**
	Duties may exist even before a formal contract if parties were already acting on the basis of mutual trust to proceed with the project: **UDC**
	Does not need to formally labelled a "partnership"; only needs to be substantially of partnership nature: **UDC**
	One party cannot secretly secure a collateral advantage from the partnership without disclosure or consent: **UDC**

STEP 4: WHETHER THE TRUSTEE CAN RECOVER EXPENSES FROM ADMINISTERING THE TRUST	
Step 1: Were Expenses Properly Incurred?	
Definition	Liability for expenses such as rates, legal fees + debts from contract, tort or tax → can be limited by agreement such as trustee signing "as a trustee + not otherwise": **Robinsons**
Rule	Expenses are presumed proper unless proven otherwise, but indemnity is limited to expenses properly incurred: **Beddoe**
Test	Trustee may sometimes be indemnified even for breaches, with **fraud, bad faith or conduct outside authority being the only bar** (approach in NSW): **Gatsios**
	Test depends on nature of the duty breached, where improperly incurred expenses would be bad faith, dishonesty or conduct outside scope of trust management: **Nolan**
	Expenses may still be indemnified if it was a technical, minor breach → such as negligent remortgaging: **Nolan**
	Clear Accounts Rule: Right of indemnity reduced where breach caused loss to trust → eg. property incurred $2000 but the trustee misapplied $1000 → indemnity reduced to $1000
Examples	Liability to pay for damage caused to neighbour's property by a contractor reasonably employed for ordinary course of trust management are properly incurred: **Raybould**
	Trustee found liable for misleading conduct but mere breach of statutory duty or negligence DOES NOT BAR indemnity: **Gatsios**
	Negligent remortgaging of trust property does NOT bar indemnity as negligence alone is not sufficient since it does not fall below standard of prudent business people: **Nolan v Collie**
GO TO STEP 5	If it was a breach of trust instigated by a beneficiary, leading to liability for damages, it will come out of the beneficiary's share
If properly incurred, the right of indemnity is established	
Step 2: Right of Indemnity	
Rule	Trustee has an equitable right to recover properly incurred expenses from management of trust property for the beneficiaries (recovered from trust fund): **Carter Holt**
	TA s 59(4) Implied Indemnity: Trustee may reimburse themself, or pay a discharge out of the trust property all expenses incurred in execution of the trustee's trusts or powers.
	Creates a lien / charge over trust assets where the trustee cannot be compelled to surrender property to the beneficiary until right of indemnity is satisfied: **Buckle**
Priority	Right of indemnity takes priority over beneficiary interests: **Buckle**
	Court may authorise sale of trust property held by the trustee to satisfy the right of indemnity
	Right of indemnity survives the trustee's removal from office: **Belar**
A) Exoneration	Outstanding debt owed to third party who carried out work for the trust → trustee gets a proprietary interest in trust assets to pay it: **Carter Holt**
	Subrogation: Third parties engaged by the trustee to do work for the trust (eg. accountant) where they are owed a debt for their work, is an unsecured creditor where the trustee's right of indemnity can be subrogated (they stand in the shoes of the trustee) → entitled to be paid before any other creditors of the trust: **Octavo**
	Trustee went insolvent so liquidator sought indemnity from beneficiaries for the debt → each beneficiary was liable to indemnify the trustee proportionately to their interest: **Broomhead**
	If a trustee goes **bankrupt**, the trust property goes to the bankrupt trustee's liquidator, but creditors can only access the part needed to cover the trustee's unpaid trust expenses, and any unpaid expenses also stop the beneficiaries from ending the trust early: **Boencsch**
B) Reimbursement	Trustee paid for expenses with their own personal funds where they wish to be reimbursed from trust funds
Exclusionary Clauses	Generally cannot be excluded by the trust instrument since the right is intrinsic to trust relationship: **Jonco**
	Corporations Act s 197: Holds director liable to discharge the debt if the corporation cannot discharge it or due to exclusionary clauses (that are valid)

Beneficiary Rights To Trust Property (Termination)

STEP 1: WHAT ARE THE BENEFICIARY'S GENERAL RIGHTS	
Right of Due Administration	Can commence proceedings to enforce / compel performance, incl. removal of the trustee
	TA s 6: Assistance from the court to remove trustee
Proprietary Claim	Allows the beneficiary to follow / trace trust property into the hand of a third party for its return
STEP 2: WHETHER THE BENEFICIARY HAS THE RIGHT TO OBTAIN TRUST PROPERTY	
Test A: Rule Against Perpetuities	
Rule	If there is no vesting (ownership) date in the trust instrument, the duration limit of an express trust is 80 years, where property title goes to the beneficiary at the end of the trust
Exceptions	Charitable trusts expire when funds run out
Test B: Right to Terminate Trust	
FIRSTLY, DETERMINE IF THE TRUST IS FIXED OR DISCRETIONARY AS THERE ARE DIFFERENT TESTS	
Rule	Beneficiaries may terminate a trust early to acquire legal ownership of trust property if they satisfy the requirements: **Saunders v Vautier**
1) Unanimous	All beneficiaries must unanimously agree to terminate the trust for a DISCRETIONARY trust: **Saunders**
	Fixed Trust: However, a beneficiary of a fixed trust can claim their individual (severable share) interest in the trust, over objection of other Bs if the trust is not terminated: **Beck v Henley**
	Fixed Trust: For this to occur, the property must be divisible + the division MUST NOT cause prejudice to the other beneficiaries: **Manfred** // Such as a plot of land: **Beck**
2) Legal Capacity	All beneficiaries must be of age with the requisite legal capacity (if one of them is a minor, then the trust cannot be terminated): **Saunders**
3) Absolute Interest	Beneficiaries must have an absolute, vested, indefeasible interest → power to obtain trust property they are entitled to (even without termination): **Saunders**
	Beneficiaries under a discretionary trust have no proprietary interest in possession, but only a right to be considered by trustees: **Clarke v Ebdon**
Limitations	Trust cannot be terminated if the trustee has an unsatisfied right of indemnity: **CPT Custodian**
	Cannot be terminated if a complete list of Bs cannot be made as then every B cannot be identified / unanimously consent (cannot just satisfy 3 certainties test): **McPhail**
	Contingent trusts eg. gift to A if she enrols in law, otherwise to B → both need to unanimously end the trust because they hold the entire interest between them: **Cox v Archer**
Examples	21yo nephew under a trust for stock management wanted to terminate but the trust property was meant to be transferred to him when he was 25 → entitled to termination: **Saunders**
	The nephew could terminate the trust because he was solely entitled to the interest: **Saunders**
	Eg. trust held for A for life, remainder for B → they are both absolutely entitled to the trust property + may terminate if they have legal capacity
	Discretionary trusts sometimes have a narrow class of Bs who will be entitled to property on vesting date, with a wider class of Bs who are objects of the trustee's direction → the wider class would not need agree as they do not have absolute interest: **Mandie**
	Unit holders has separate, individual rights to units → not a collective right to trust property as a whole so the Saunders rule could not apply: **CPT v Custodian**
	Siblings absolutely entitled two separate voting shares in a company were divisible, thus could be claimed individually without unanimity if no prejudice: **Beck**

Defences to Breach of Trust

STEP 1: WHETHER LIABILITY FOR THE BREACH IS EXCULPATED	
Test A: Exculpation From Trust Instrument	
Rule	Liability can be expressly excluded by the trust instrument, but clauses removing liability for actual fraud + dishonesty are invalid: **Armitage**
	Ambiguous clauses are construed contra proferentum → against the trustee: **Wight v Olswang**
Test for Dishonesty	A professional trustee is dishonest if NO reasonable trustee would think the act was in the beneficiary's interests: **Walker v Stone**
	Acting in good faith is an "irreducible core" of trustee duties that cannot be excluded → dishonesty construed narrowly NOT including lack of diligence / imprudence, negligence.: **Armitage**
	Knowing their actions are contrary to B's interests (preferring his own interests rather than trust duties) or being recklessly indifferent to those interests: **Armitage**
Implied	Express power for trustees to receive trust property→ impliedly excluded liability for remaining trustees who did not receive property when one ran away with it: **Wilkins**
	Implied exculpation may come from trust terms such as terms that expressly authorise them to receive funds: **Walker v Stone**
Example	Clause provided that no trustee shall be liable for loss or damage unless caused by their own actual fraud: **Armitage**
	Duties That Cannot Be Excluded: Duty to obey terms of the trust: **Youyang** // Duty to perform obligations in good faith / honestly for B's benefit: **Armitage**
Steps	(1) Meaning of the clause + purpose + what does it exclude (2) Is the clause valid or does it infringe on irreducible core (3) If valid, does it apply to the facts of the breach
Test B: Exculpation From Statute (General Defence)	
Rule	TA s 85(2)**:** Relief may be given by the Court if the trustee has acted <u>honestly + reasonably</u>, and it is <u>fair to excuse them for the breach</u> (two limb test)
	Onus is on the trustee to prove that they acted honestly + reasonably (BOTH, not just one): **Re Stuart**
Examples	If the trustee acted honestly but not reasonably, though they did not cause any real damage to the beneficiaries → they may be excused: **Umpherstone**
	Court is less likely to excuse a professional trustee + also if circumstances show they should not be excused because it is unfair to the beneficiaries: **Australasia**
	Following Legal Advice: Loss caused by reliance on legal advice in the administration of trust → ought to fairly be excused: **Marsden v Regan**
	The judge noted that if the trustee had sought proper legal advice and followed it, he might have been protected by s 85(2)—but he didn't: **Dalrymple**
	Taking legal advice is not an automatic excuse if the trustee failed to consider other risks such as insurance: **Re Evans**
Test C: Exculpation From Statute (Wilful Default – when someone else commits the breach)	
Rule	TA s 59(2): Trustee is only answerable + accountable to their OWN acts, not for those of any other co-trustee or agent unless it happens through the trustee's <u>own wilful default or neglect</u>
	Trustee that employs an agent is not liable for their default, only their OWN wilful default → threshold is that they KNEW or MUST have known they were failing their duty: **Dalrymple**
	Wilful default includes negligence → carelessness when appointing / supervising an agent will not be protected when they understand their duty of care + failed to act to standard: **Dalrymple**
Example	Trustee A signs a blank transfer form + gives it to Trustee B with no instructions or precautions so B stole the money by depositing funds into his personal account → A liable: **Dalrymple**
	Trustee not excused if they were recklessly careless / negligent in taking no precautions when letting a co-trustee control property alone → a reasonable person would have known: **Dalrymple**

Principles of Tracing

	STEP 1: WHETHER THE CLAIMANT HAS A RIGHT TO TRACE
Rule	Beneficiary must (1) have an equitable + proprietary interest in the property where there was a (2) breach of trust (3) recipient had KNOWLEDGE → becoming a constructive trustee: **Foskett**
Example	Breach of trust where trustee used the money to pay a life insurance policy → money could be traced into the payment made to his children after he died 2 years later since their money paid for part of the insurance: **Foskett**
Note	No fiduciary obligation is required
	Definition of Principles
Following	Following the same asset as it travels,
Tracing	Tracing the substitute of the asset (tracking value as it moves between hands), not merely a transfer between accounts where original asset still exists: **Robb Evans**
Claiming	Seeking recovery of the specific property they had equitable rights over → if $10k is misapplied from trust money, used to buy a painting that depreciates to $8k, then there is a proprietary claim over the painting + personal claim for remaining $2k
	STEP 2: WHAT IS THE RELEVANT TRACING RULE
	Test A: Mixes Trust Money With Personal Money
Spends Some	There is an irrebuttable presumption that the trustee spent their own money first + preserved trust money in the remainder of the funds left: **Re Hallet**
	Claimant is entitled to an equitable lien over the asset / account to secure repayment of the value of its property: **Re Hallet**
	Solicitor entrusted with bonds sold them, then banked proceeds in his own account, spending some → claimant had equitable lien over the account to secure repayment of bond proceeds which took priority over the solicitor's other creditors: **Re Hallet**
Purchases Property	Trust money is presumed to be invested in property to preserve the claimant's interest: **Re Oatway**
	Trust money ($3k) deposited into personal account → $2k withdrawn from mixed funds to buy shares → rest of account dissipated → trust money presumed to be in shares: **Oatway**
	Presumption that trust money was invested into property to preserve claimant's interest applied to protect beneficiary interests so the trust could claim the shares: **Re Oatway**
	Equity will always prioritise + go to great lengths to preserve the beneficiary's interest: **Re Oatway**
Makes Payments In & Out	**Lowest Intermediate Balance Rule:** You can only claim the lowest balance of the account because once the mixed account drops below the amount of your trust money, the missing portion is treated as permanently spent, and later deposits cannot replace it: **Lofts v MacDonald**
	When the account balance drops below the amount of trust money stolen, the mission portion of the trust money is treated as spent / gone forever → later deposits do not replenish the trust money as they are the trustee's own money (eg. your $1k stolen, they spend $800 of the mixed fund, they earn $800 from a job = $200 claimable)
	If the bank account is overdrawn after the mixing, then P cannot obtain a proprietary remedy but can obtain a personal remedy (unless D is bankrupt): **Carr v Council**
	Builder mixed $1.6k trust money → after spending, account balance was $842 → made personal deposits, account balance $2824 → equitable lien only for the $842 as YOU CAN ONLY HAVE WHAT IS LEFT OF YOUR MONEY: **Lofts v MacDonald**
	Exception: Unless the subsequent deposits into the mixed fund was with the intention of benefitting P + transfer is legally / equitably valid (not tracing though): **Lofts v MacDonald**
Successful Investments	Beneficiaries are entitled to a proportion of the investment which represents their contribution to the making of the investment, such as increase in house value: **Scott v Scott**

	STEP 3: WHETHER RELIEF IS BARRED BY UNCLEAN HANDS
Rule	Unclean hands may bar relief if there is a direct connection between the conduct + the dispute, and if it was a moral and legal depravity: **Black Uhlans**
	Step 1: Causative Link
Causation	GENERAL immorality, dishonesty or criminality is insufficient → must be specific to the dispute + directly linked: **Black Uhlans**
	Fraud committed by one club member to secure a bank loan had no causation with the purchase money contributions of other members: **Black Uhlans**
	Step 2: Moral + Legal Depravity
Depravity	Inducement by false / misleading statements is a legal depravity that procured a contract by misrepresentation so the contract cannot be enforced: **Hewson**
	Denial of an injunction seeking to prevent a client from breaching the contract but P HERSELF did not even perform her part of the contract properly: **Harrigan**
	Mere breach in agreement with how shares were insured is insufficient as there is no injury to D: **Geltch**
	Equity does not demand that people live blameless lives so it must be a severe immoral act: **Loughrin**
	Examples: Misrepresentations (Cadman), beneficiary leading trustee to commit a breach of trust (Gertcken), serious breaches of covenants (Goddard), using wife's name to mislead / delay future creditors (Gascoigne)
	Public Interest Order granted for delivery + destruction of documents likely to mislead others, despite P having unclean hands: **Money**
	Step 3: Proportionality
Proportionate	Usage of unclean hands bar must be proportionate to the unclean wrong → the harm that may be caused by NOT granted the remedy cannot outweigh the immoral wrong: **Argyll**
	Duke threatened to expose the Duchess' sexual exploits, arguing that she had already exposed his drug use, breaching confidentiality → exposing the Duchess would cause more harm than the breach of confidentiality: **Argyll**
Redemption	P may wash their hands of unclean conduct by taking steps to redeem themselves BEFORE court proceedings: **EDPI**
	STEP 4: WHETHER RELIEF IS BARRED BY HARDSHIP
Rule	Equity denied relief where the remedy itself would cause unreasonable + unjust hardship to D
	Step 1: Unreasonable Hardship to D
Threshold	High threshold that is more than mere financial hardship: **Van Vlymen** // Unpalatable commercial results are NOT hardship: **Humes**
Onus	D must show that hardship amounting to an injustice would be inflicted AND it would be unreasonable: **Suttor**
Examples	Less sympathy where D is an author of his own misfortune: **Linfield**
	Couple contracted to sell a house but during the delayed transaction, the woman gave birth to two kids, lost a led due to cancer + dependent on nearby family to take care of her where she would lose the support if she were to vacate the premises: **Patel v Ali**
Alternative	Rare for a complete remedy to be denied altogether + usually there is some entitlement to damages → such as compensation instead of SP: **Patel v Ali**
Note	Hardship usually used for injunctions + specific performance
	Step 2: Proportionality
Rule	Hardship from D must be balance against hardship that P would experience if the remedy is refused: **Giumelli**