

# Equity LAW3111 Notes

In any scenario, first: IDENTIFY WRONGDOING/IMPUGNED CONDUCT...

- *Acting disloyally*
- *Exploiting trust*
- *Diverting/usurping business opportunities/financial benefits: took for [self/third party] an opportunity that properly belongs to the principal*
- *Acquisition of undisclosed benefits*
- *Exploitation of knowledge or opportunity acquired in a fiduciary capacity*
- *Taking bribes and secret commissions*
- *Commercial exploitation*
- *Self-dealing*
- *Fraudulently procuring...*
- *Helping herself to money intended for the principal*

## Existence of Fiduciary Relationship?

**Horizontal** fiduciary relationships are associative. Parties to them collaborate. Each is a fiduciary in relation to the other. *Partners, joint venturers and parties with incomplete dealings* are fiduciaries of this type

- You are a principal and also a fiduciary

**Vertical** fiduciary relationships entail the subordination of one party to another (or others). Duties are owed on a one-way basis. Trustees, company directors, employees, agents and solicitors are fiduciaries in vertical relationships. The majority of fiduciary relationships are of this vertical type

### (a) 'Accepted categories'

**Write:** The relationship between P and D, **[the relationship]**, was categorically fiduciary.

- Trustees and beneficiaries (**Keech v Sandford**)
  - Equity takes it as a given that the trustee undertakes to subordinate their interests to those of the beneficiary who reposes trust, faith and reliance in the trustee as the legal owner of property
  - Trustee undertakes to hold and manage property for the benefit of the beneficiary

#### INDICATORS OF FIDUCIARY RELATIONSHIP EXISTING IN FACT

- **Undertaking** or agrees to act for or on behalf of or in the interests of another ('on behalf of' → UDC)
- Acquired a '**particular capacity**'/'**special opportunity**' to affect the plaintiff's interests legal/practical sense
- **Armed with power/discretion** to detriment legal/practical interest
- **Vulnerability** or abuse/disadvantage
- **Entrusting**
- Relationship of trust and confidence
- Holding of property
- Power imbalance
- The only one with the ability to...
- Analogous to the categorically fiduciary relationship between:
- Subordination of self-interest

#### POSSIBLE LINES OF ARGUMENT

- Granted, there was no formal partnership (cf *Chan v Zacharia*); but there was one in substance (UDC) as:
  - There was a common view to profit (UDC)
  - The relationship based on mutual trust and confidence (UDC)
  - There was an undertaking to subordinate self-interest to joint interest (UDC)
  - The facts are analogous to UDC, where SPL was acting on behalf of Brian
- The breach occurred before a formal agreement was executed...
  - Could be argued that no fiduciary relationship existed at the time of [the alleged wrongful conduct] – because no formal agreement had yet been executed (UDC)
  - However, intending [partners]/parties in negotiation may still owe duties to each other (UDC)
    - In UDC, SPL was **acting on behalf of Brian**
    - Both parties had taken **steps to implement the agreement**: UDC had made payments on account of its share (as equity participant) of the cost of each venture; and Brian had paid its share of the cost of the hotel project
    - There was a **relationship of mutual confidence and trust** like in UDC

**THEREFORE, A VERTICAL/HORIZONTAL FIDUCIARY RELATIONSHIP EXISTED.**

#### Scope?

Was D's impugned conduct, [impugned conduct], within the scope of his fiduciary duties?

In determining 'scope', the court will ascertain the subject-matter over which fiduciary obligations extended (Birtchnell). This involves a consideration of the actual responsibilities assumed by [D] (Grimaldi)

### NOW DEFINE SCOPE

- Scope antecedently defined (Grimaldi)
  - Scope ordained by past practice (Grimaldi)
  - Scope left to the fiduciary's discretion to determine (Grimaldi)
  - Scope evolved over time, which is commonly the case with **partnerships** (Grimaldi)
  - Broad and general, which is characteristic of **company-director** functions (Grimaldi)
  - "Clear mis-execution of his antecedently-defined duty to..."
  - "P may characterise the undertaking as...that characterisation, for present purposes, is too broad and imprecise"
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- Undivided loyalty
  - Duty of utmost honest and candour (recognised in UDC)
  - Trust and confidence

#### EXAMPLE

The **subject matter** of his duty **relates to** the business of the company of which he is a director. **That is**, the business of manufacturing medical equipment for sale at a profit. Frank's conduct in misappropriating company equipment for his own purposes falls within the scope of that business.

#### KEY WORDS

- "Within the line of..."
- "It was in the discharging of that responsibility that..."

### Possible Counterarguments

- D will argue that their duties, like most **specific agencies**, were narrow and circumscribed, limited to [scope] (Grimaldi)

- Like in **Howard**, [party] is trying to stretch the fiduciary mantle to [collateral purpose]; D's [impugned conduct] had **nothing to do with the vindication or protection** of P's [specific business/interests/pursuit]
- D will argue that their failure to perform a positive act cannot be within scope, as fiduciary obligations are **strictly proscriptive** (**Breen**). However, the obligation here was simply to avoid dishonest/disloyal conduct – therefore not prescriptive and within scope.
- D will argue that P's action turns on their failure to exercise reasonable care in [investing funds] – there was no fraud, or intention to further D's own interests at P's expense. This was a matter of **general carelessness**, which would be regulated under contract or negligence law, and falls outside the scope of his equitable duty.

## Breach

### No Conflict

- Duty to avoid conflicts **Boardman; Chan**
- **Identify: interest-duty conflict or duty-duty conflict**
- Failed to avoid the possibility of conflict...
  - real, sensible possibility (Lord Upjohn in **Boardman**)
  - significant possibility (Deane J in **Chan**)
  - real or substantial possibility **Hospital Products**
- Strict, principle-based duty
  - **Keech** Sandford ought to have let the lease run out, than to renew for himself
  - **Regal Hastings** despite no fraud & **company also benefitting**
  - **Boardman** despite good faith & **the Trust also benefitting**

If Boardman were called on to advise the trust about whether they (in his stead) should purchase the shares, this might conflict with his personal interest in buying the shares – EVEN THOUGH the trust said it didn't have the funds to purchase, and wouldn't purchase more shares

Whether or not the trust or the beneficiaries in their stead could have taken advantage of the information is immaterial
- Examples of conflict:
  - Taking an asset in own name (**Chan; Keech**)
  - Majority shareholders benefiting at minority's expense (F could argue no conflict, but the court will not conflate the interests of the majority with

## Topic 3 Fiduciary Relationships And Breach Of Fiduciary Duty

### Factual Categories

#### Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41



Topic	'Factual' or non-standard categories – Manufacturer/Distributor Breach of duty - the conflicts rule
Facts	<ul style="list-style-type: none"> <li>• The <b>United States Surgical Corp (USSC)</b> invented and patented a <b>special type of surgical stapler</b>, used instead of traditional stitches in surgery</li> <li>• <b>Blackman</b> was a dealer in NYC, and then became their <b>exclusive distributor</b> (an employee) in Australia</li> <li>• There was <b>no formal written contract</b> but an Agreement between parties was embodied in a letter from USSC to Blackman &amp; representations made at an earlier meeting –</li> <li>• Agreement contained express <b>“best efforts” and “no competing products” terms</b>:             <ol style="list-style-type: none"> <li>1. “Blackman would establish a marketing organisation”</li> <li>2. “Blackman would devote its <u>best efforts</u> to distributing USSC products and building market for USSC products to the <u>common benefit</u> of USSC and himself”</li> <li>3. “Blackman would not deal in products in competition with USSC’s products”</li> </ol> </li> <li>• Blackman visited Australia and discovered that surgical staples were not yet widely used, and the staples were not patented in Australia</li> <li>• Blackman moved to <b>Australia</b> and established a company, Hospital Products Ltd, which <b>became the sole distributor of staples</b> in Australia</li> <li>• He would not have been able to develop this business without his exclusive dealership rights</li> <li>• Blackman then hired engineers to reverse engineer the products; he repackaged USSC products as his own</li> <li>• Eventually, he <b>started competing with the US products</b> instead of selling them</li> <li>• As a result, the USSC had a <b>clear case for breach of contract</b> (breach of an exclusive distributorship agreement), which would <u>entitle them to damages for losses shown</u></li> <li>• However, USSC also wanted to claim Hospital Products’ profits (that had been made using their technology); they could get this if they obtained an equitable remedy called an <b>‘Account of Profits’</b> [Exclusive Jurisdiction] – but for this, they <b>needed a cause of</b></li> </ul>

	<p><b>action in equity</b></p> <ul style="list-style-type: none"> <li>USSC therefore argued that Hospital Products Ltd owed them a <b>fiduciary duty</b> [special duty to act in their interests], and had breached said duty (based on express "best efforts" and "no competing products" terms of their agreement)</li> </ul>
Issue	Did Hospital Products Ltd owe USSC a fiduciary duty? If so, was this duty breached?
Ruling	<p><b>[Majority] Gibbs CJ, Wilson and Dawson JJ:</b> The manufacturer-distributor arrangement between USSC and HPI was <b>not a fiduciary relationship</b> and did not involve general fiduciary duties. The plaintiff's <b>remedy was limited to damages</b> for breach of the distributor's duty to use best efforts to promote the sale of the plaintiff's products in Australia</p> <p>The distributor was in no sense a fiduciary, and there could be no constructive trust because...</p> <ul style="list-style-type: none"> <li>There was <b>no implied term that distributor would not do anything inimical to the market in Australia</b> for USSC surgical stapling products</li> <li>The <b>express term</b> of the contract...requiring the distributor to use its "best efforts" to build up the market for, and distribute, the products in Australia "to the common benefit" of both manufacturer and distributor <b>did not, of itself, impose a general fiduciary duty</b> on the distributor <b>to seek no profit or benefit for itself or to disregard its own interests where they conflicted with the manufacturer's [profit and conflict rule not enforced/activated]</b></li> <li>Neither that ("common benefit" term) nor any other provision of the contract transformed the relationship into a <b>partnership or joint venture</b></li> <li>There was <b>nothing in the contract which either authorised the distributor to act on behalf of the manufacturer in the sense of acting as agent for a principal or which required the distributor generally to subordinate its own interests to those of the manufacturer</b></li> <li>The relationship between a manufacturer and a distributor is not, in itself, ordinarily a fiduciary one, even if the distributor enjoys sole rights of distribution</li> <li><b>Although both parties have a common interest</b> in ensuring that the distributor sells as much of the product as possible, this is <b>just a truism of the marketplace and not a legal principle</b>. In seeking such sales, the distributor is ordinarily acting in pursuit of his own interests. <b>It is in the pursuit of his own interests that he acts to the advantage of the manufacturer by generating more sales of the product</b></li> <li>For the purposes of the <b>conflict rule</b>, a fiduciary is "simply, someone who undertakes to act for or on behalf of another in some particular matter or matters – Gibbs</li> </ul>