

LAWS2385: EQUITY & TRUSTS FINAL EXAM NOTES PREVIEW

SCAFFOLD

FIDUCIARY RELATIONSHIP

The relationship between [X] and [Y] is [choose from below]

Ad hoc fiduciary relationship

On the facts, no status-based fiduciary relationship arises between [X] and [Y]. However, fiduciary relationships may also arise on an ad hoc basis (*Breen v Williams*).

1. **Undertaking Test**: Although the relationship is not status-based, equity will recognise a relationship as fiduciary where a representative is bound to act in the interests of the principal (*Hospital Products*). [X] arguably undertook on behalf of [Y] to **expand on facts - e.g. gave financial advice, suggested an investment etc**. This was done in [X]'s interests, suggesting that an undertaking occurred
2. **Multifactorial Test**: Indicia to be taken into account when determining whether a fiduciary relationship arises (*Breen*)
 - a. **Trust and Confidence** (*Daly v Sydney Stock Exchange*): [B] placed trust and confidence in [A] by [facts]
 - b. **Inequality / Vulnerability**: [B] was dependent or vulnerable, given **lack of expertise / reliance on A's specialist knowledge / informational inequality**
 - c. **Discretionary Power**: [A] could unilaterally affect [B]'s position by deciding **eg whether to recommend, execute, or structure a transaction**

Taken together, these factors suggest that [X] was entitled to expect that [Y] would act in [X]'s interests and not prefer its own, supporting a fiduciary character to the relationship.

Scope of fiduciary relationship

[choose one category of FR] is a status-based fiduciary relationship (*Hospital Products*). This fiduciary relationship means that [X] owe the fiduciary obligation, loyalty, to the beneficiary, [Y]; as well as must uphold fiduciary duties such as the no-conflict and no-profit rules. However, 'fiduciary duties are not infinitely extensible'; with fiduciaries only owing obligations in respect of their undertaking (*Howard*). The scope of such obligations is to be determined with respect to the nature of the parties relationship, being a **insert relationship**, and the course of dealings (*Howard*).

1. **Partnership style JV's**
 - a. Here, [A] and [B] are engaged in a common enterprise. They have combined resources to acquire and exploit **property/project**, share in profits, and rely on each other's performance. This resembles the joint venture in *United Dominions v Brian*, which the High Court treated as 'partnership like' for fiduciary purposes. That supports recognition of mutual fiduciary duties between the venturers in relation to the project. The fact that the

arrangement is commercial does not preclude fiduciary obligations where there is a high degree of mutual trust and confidence and an expectation of loyalty to the joint enterprise (*United Dominions; Chan v Zacharia*).

Equitable Compensation [if loss was suffered]

[X] is entitled to equitable compensation, since it is payable for any loss occasioned by a breach of trust (*Nocton v Lord Ashburton*)

The value of compensation is [expand using below]

1. **Misapplication of trust property:**
 - a. The issue is whether [Y] can obtain equitable compensation for [X]'s misapplication of trust property when [describe the wrongful dealing using the facts].
 - b. Analogous to *Youyang and Dawson*, [X] as trustee misapplied the trust property when [expand], failing to adhere to the trust terms. By [describe: paying funds to unauthorised recipient, failing to obtain required security, investing outside mandate], [X] misapplied trust property and failed to perform this primary obligation. In turn, [Y] suffered a loss, meaning [X] is now obligated to restore the full amount of the trust property, either via a proprietary remedy or through monetary value (*Dawson*).
 - c. Regarding personal remedies, it is likely that [Y] can advance a claim for substitutive compensation (*Re Dawson and Youyang*), entitling them to a monetary sum for the substituted value of the asset dissipated. The amount is assessed by asking what the trust fund would have contained had the breach not occurred, then substituting that value in money. On these facts, if [describe counterfactual: the trustee had obtained the security / invested in accordance with mandate], the fund would now stand at [insert amount]. [Y] is therefore entitled to a monetary award of [value], being the substituted value of the dissipated asset
 - d. Accordingly, [X] is liable to [Y] for substitutive equitable compensation equal to [amount], reflecting what the trust fund should now contain had the misapplication not occurred.
2. **Breach of fiduciary duties:** [X] breached their fiduciary duty when [expand – breach of no profit/conflict rule].
 - a. Equitable compensation is an inappropriate remedy for no profit rule breach; as per *Nocton*, equitable compensation should only be called for in respect of the no conflict rule.
 - b. Applying the distinction drawn in *Agricultural and Rural Finance v Jackson*, it is likely that [Y] can advance a claim for reparative compensation (*Nocton and O'Halloran*), entitling them to a monetary sum which make up the value of the loss suffered by the trust estate.

- c. In order to repair the loss, [X] will be required to compensate [Y] for **[expand using the facts]**. This is assessed with the full benefit in hindsight (*Canson Enterprises*). Had [X] complied with their fiduciary duties and acted only in [Y]'s interests, **[describe counterfactual: the trust would have retained asset A, would not have entered transaction B, would have sold at time C]**. On that hypothesis the trust estate would now be worth **[insert amount]**. In fact it is worth only **[insert amount]**. The difference of **[value]** represents the loss reparable by equitable compensation.
- d. To the extent that **[subsequent event, independent decision by [Y]]** breaks the causal link, the court may treat that part of the loss as too remote from the breach and exclude it from the calculation, following the approach in *Canson Enterprises*. In order to quantify the loss in reparative compensation, a causal link between the breach and loss must be established – this is/isn't satisfied because **[expand]**.
- e. On this basis, [Y] can advance a claim for reparative equitable compensation for **[identify heads of loss]**, measured by the difference between the actual position and the position that would have existed had [X] discharged their fiduciary duties

i. NOTE: If [X] made an unauthorised profit, then add a separate AoP analysis

3. **Breach of lower trustee duty of performance (i.e. breach of care and skill):**

- a. There was also a breach of [X]'s duty of performance, that being a failure to exercise care and skill **[expand on the facts]**. Whilst it is not settled what type of equitable compensation [Y] is entitled to, *Nocton and O'Halloran* provides that [X] will only likely be able to advance a claim for reparative compensation, entitling them to a monetary sum which makes up for the value of the loss suffered by the trust estate. In order to repair the loss, [X] will be required to compensate [Y] for **[expand using the facts]**. This is assessed with the full benefit in hindsight (*Canson Enterprises*). To the extent that **[market crash, regulatory change, beneficiary's independent decision]** would have produced the same loss even with proper care, that component should be excluded as not caused by the breach

Tentatively, [X] will/won't be able to claim equitable compensation in the form of a substitutive/reparative sum for **[expand]**.

PROPRIETARY REMEDY

The issue is whether [X] can assert the beneficiary's proprietary claim against [Z] as a third party. This is likely because the third party has the property in their hands, proven through tracing/following. Hence, the effect of this claim is that [X] as trustee will hold the property on constructive trust for [Y] as beneficiary.

- Since a new asset is bought, it does not appreciate in value, [X] will be entitled to an equitable lien over the [property] to secure repayment of the value of the property

A proprietary claim may not be advised for [X] as:

- The property is untraceable because [expand – completely used up assets, unidentifiable parties etc]
- The recipient/third party is a good faith purchaser for value without notice
- The beneficiary has, in good faith, changed their position upon receiving the property

Specific Performance

Specific performance, as a remedy available to [beneficiary], will only apply if there is a breach of contract. [X] may seek an order of specific performance as an equitable remedy against [Y] considering the following:

1. **Court must have jurisdiction to award specific performance.** There was/wasn't a specifically enforceable contract for valuable consideration [expand], which [X] did/did not breach when [expand].
 - a. The consideration [X] provided was/wasn't nominal; hence it is unlikely the court will have jurisdiction to award specific performance b. Although there was not a specifically enforceable contract, Price v Strange provides an exception for part performance of an oral agreement Although damages is a common law award for breach of contract, [X] This was a contract for
 - i. Sale of chattels: *Doughan v Ley*
 - ii. Sale of land: *Loan Investment v Bonner*
2. **The court should then question whether the discretionary factors apply before determining if [X] may be granted an order for specific performance:**
 - a. A plaintiff seeking equity
 - b. Supervision is the obligation to be specifically performed must be sufficiently certain and precise to make the defendant's duty in complying with the order clear. This is/isn't satisfied; a court would/wouldn't be able to determine whether the order has been broke
 - i. Carrying out a business in commercial circumstances (*Argyll*); then
 - ii. Construction contracts as an exception to the supervision rule (*Wolverhampton*)
 - iii. Personal service contracts cannot be specifically performed (*Patrick v Maritime*)
3. Tentatively, [X] will be likely/unlikely to be granted the equitable remedy of specific performance. If the application fails, [X] may still claim common law damages or equitable compensation