

TOPIC 3 – FIDUCIARY RELATIONSHIPS AND BREACH OF FIDUCIARY DUTY

INTRODUCTION

Fiduciary law is one of the most important doctrines within equity. It is concerned with protecting certain special relationships of trust, confidence, and loyalty, and ensuring that those entrusted with power do not abuse that position.

Unlike common law obligations (such as negligence or contract), fiduciary law:

- does not focus on reasonableness or care
- does not depend on agreement or consent
- is not primarily concerned with compensating loss

Instead, fiduciary law is concerned with maintaining the integrity of relationships by preventing misuse of entrusted power.

The core idea is that where one party is placed in a position where they can affect another's interests, equity requires that they act with undivided loyalty.

Fiduciary duties are proscriptive, not prescriptive:

- They do not require fiduciaries to act positively in any particular way
- They prohibit certain types of conduct

As stated in *Chan v Zacharia*, fiduciary duties are concerned with preventing fiduciaries from:

- entering into positions of conflict
- making unauthorised profits

Thus, the two fundamental rules are:

1. The conflicts rule
2. The profits rule

These rules operate strictly, meaning liability may arise even where:

- the fiduciary acted honestly
- no loss was suffered
- the principal could not have obtained the benefit

EXISTENCE OF FIDUCIARY RELATIONSHIPS

The first issue is whether a fiduciary relationship exists.

There is no single definition of a fiduciary. Courts instead identify fiduciary relationships by examining:

- what the parties have undertaken
- the nature of the relationship
- whether one party has assumed responsibility to act in another's interests

A fiduciary relationship typically involves:

- an undertaking to act for or on behalf of another
- trust and confidence
- power affecting the other party's interests
- vulnerability or dependence

Fiduciary relationships may be:

- Vertical → duties owed one way (trustee, director, agent)
- Horizontal → mutual duties (partners, joint venturers)

Courts recognise:

- accepted categories
- factual (non-standard) fiduciary relationships

(a) Accepted Categories:

These relationships are fiduciary because they inherently possess the characteristics that attract equity's protection.

When a relationship falls within an accepted category, the court will generally infer fiduciary status as a matter of law.

1. Trustee - Beneficiary:

A trustee holds legal title to property but must manage it exclusively for the benefit of the beneficiary.

- Trustee has control over property belonging in equity to another
- Beneficiary is vulnerable and dependent
- Trustee must act solely in the beneficiary's interest

Keech v Sandford (1726)

Facts:

- A trustee held a lease of a market stall for an infant beneficiary. When the lease expired, the landlord refused to renew the lease for the infant. The trustee then personally obtained the lease for himself.

Issue:

- Whether a trustee can retain a benefit obtained personally where it arose from the trust property, even though the beneficiary could not have obtained that benefit.

Outcome:

- The trustee was required to hold the renewed lease on trust for the beneficiary.

Reasoning:

- The Lord Chancellor emphasised that fiduciary obligations must be strictly enforced to prevent any possibility of disloyalty. Even though the beneficiary could not have obtained the lease, the trustee was not permitted to take advantage of the opportunity.

Significance (Exam Point):

- This case establishes the strictness of the no-conflict rule:
 - A fiduciary must not place themselves in a position of conflict
 - Liability arises regardless of good faith or absence of loss
 - The rule is designed to prevent temptation, not merely punish wrongdoing

2. Agent - Principal:

Agents have authority to act on behalf of principals and may affect their legal rights.

- Agents often possess discretion and confidential information

McKenzie v McDonald (1927)

Facts:

- The plaintiff engaged the defendant as a real estate agent to sell her farm. The agent advised her to exchange the farm for a hotel. Unknown to the plaintiff, the agent arranged to acquire the hotel at a lower price through an intermediary and then transferred it to the plaintiff at an inflated value, thereby making a secret profit.

Issue:

- Whether the agent breached fiduciary duty by failing to disclose his interest and making a secret profit.

Outcome:

- The transaction was set aside.

Reasoning:

- The agent had placed himself in a position where his personal interest conflicted with his duty to act in the best interests of the principal. Equity requires full disclosure of any personal interest.

Significance (Exam Point):

- Agents must:
 - avoid conflicts of interest
 - disclose all material facts
 - not make secret profits
- Failure to disclose is sufficient to establish breach.

3. Employee - Employer:

Employees, particularly those in senior or managerial roles, may owe fiduciary duties.

- Employees must act loyally and in good faith
- They must not misuse confidential information or opportunities

Warman International Ltd v Dwyer (1995)

Facts:

- Dwyer managed Warman's business operations and developed relationships with suppliers and customers. After leaving the company, he established a competing business using the knowledge and connections acquired during his employment.

Issue:

- Whether the employee breached fiduciary duties by exploiting opportunities arising from his employment.

Outcome:

- The High Court held that Dwyer breached fiduciary duty and was required to account for profits, although allowances were made for his own contributions.

Reasoning:

- The opportunity exploited by Dwyer arose directly from his fiduciary position and could not be appropriated for personal benefit.

Significance (Exam Point):

- Employees must not:
 - exploit business opportunities arising from their role
 - misuse confidential information
- Fiduciary obligations may persist beyond termination where the opportunity arises from the position.

4. Director - Company:

Directors manage company affairs and exercise control over company property and decision-making.

- Companies rely on directors
- Directors have significant discretionary power

Regal (Hastings) Ltd v Gulliver (1942)

Facts:

- Directors arranged for a company to acquire a cinema through a subsidiary. The company lacked funds, so the directors personally acquired shares in the subsidiary. The business was later sold at a profit.

Issue:

- Whether the directors were required to account for profits made personally.

Outcome:

- The directors were required to account for the profits.

Reasoning:

- The opportunity arose because of their position as directors. The court emphasised that liability arises from the existence of a conflict, not from dishonesty.

Significance (Exam Point):

- Directors must not profit from opportunities arising from their position, even if:
 - the company could not take the opportunity
 - the directors acted honestly

5. Solicitor - Client:

Solicitors act as advisers and representatives.

- Clients rely on their expertise
- Requires complete loyalty

Nocton v Lord Ashburton (1914)

Facts:

- A solicitor advised his client to release a mortgage securing a loan. The solicitor failed to disclose his own financial interest in the transaction.

Issue:

- Whether failure to disclose constituted breach of fiduciary duty.

Outcome:

- The solicitor was held liable.

Reasoning:

- A fiduciary must disclose all material facts. Failure to disclose a conflicting interest is itself a breach.

Significance (Exam Point):

- Fiduciaries must provide full and frank disclosure of any personal interest.

6. Partnership:

Partners act for mutual benefit.

- Each partner owes duties to the other
- Only accepted horizontal fiduciary relationship

Chan v Zacharia (1984)

Facts:

- Two doctors were in partnership and leased premises. After the partnership dissolved, one partner obtained a renewal of the lease in his own name without informing the other.

Issue:

- Whether fiduciary duties continued after dissolution.

Outcome:

- The High Court held that the partner must account for the benefit.

Reasoning:

- The opportunity arose from the partnership, and the relationship had not been fully wound up.

Significance (Exam Point):

- Fiduciary duties may continue after termination where:
 - there are incomplete dealings
 - opportunities arise from the relationship
- Deane J stated that fiduciaries must account for any benefit obtained: "by reason of or by use of his fiduciary position or opportunity or knowledge resulting from it"

7. Bankruptcy Trustee – Creditors:

Bankruptcy trustees act for the benefit of creditors and are entrusted with control over the bankrupt estate.

- They must administer assets for the benefit of others
- This attracts fiduciary obligations

(b) Factual (Non-Standard) Fiduciary Relationships:

Not all fiduciary relationships fall within accepted categories.

Per *Hospital Products*, a fiduciary relationship may arise where:

- one party undertakes to act for or on behalf of another
- there is trust and confidence
- one party has power affecting another's interests
- the other party is vulnerable

Hospital Products Ltd v US Surgical Corporation (1984)

Facts:

- A distributorship agreement allowed Hospital Products to distribute surgical staplers. The company later used knowledge gained from the relationship to manufacture competing products.

Issue:

- Whether the commercial relationship was fiduciary.

Outcome:

- The High Court held that no fiduciary relationship existed.

Reasoning:

- The relationship lacked an undertaking to act in the interests of another.

Significance (Exam Point):

- Not all commercial relationships are fiduciary. There must be an undertaking to act: “for or on behalf of or in the interests of another”

Breen v Williams (1996)

Facts:

- A patient sought access to medical records held by her doctor.

Issue:

- Whether the doctor owed fiduciary duties in relation to access to records.

Outcome:

- The High Court rejected the claim.

Significance:

- Fiduciary duties are limited and context specific.

United Dominions v Brian (1985)

Facts:

- Parties entered into a joint venture for property development. One party failed to disclose financial arrangements.

Outcome:

- The High Court recognised fiduciary obligations.

Significance:

- Joint ventures may give rise to fiduciary duties where there is mutual trust and shared purpose.

Habib v Commonwealth (2009)

Facts:

- The plaintiff alleged fiduciary duties in relation to detention overseas.

Outcome:

- The court rejected the claim.

Significance:

- Fiduciary duties may be denied on policy grounds.

SCOPE OF FIDUCIARY RELATIONSHIP

Even where a fiduciary relationship exists, fiduciary duties do not apply to everything the fiduciary does.

The doctrine is not all-encompassing. Instead, fiduciary obligations are confined to a defined scope, which determines:

- what subject matter the duties attach to
- whether particular conduct amounts to a breach

As confirmed in *Hospital Products Ltd v United States Surgical Corporation* and *Breen v Williams*, scope is confined to the undertaking actually assumed by the fiduciary.

This is critical in problem questions. You must always ask:

Did the alleged breach occur within the scope of the fiduciary relationship?

Scope is determined objectively by examining:

- the nature of the relationship
- the functions and responsibilities undertaken
- the actual course of dealings between the parties

Importantly, scope is not limited to formal agreements. It depends on the real substance of the relationship.

Birtchnell v Equity Trustees Executors and Agency Co Ltd (1929) 42 CLR 384

Facts:

- The case concerned a partnership where one partner engaged in business activities outside the formal scope of the partnership agreement. The dispute arose as to whether those activities fell within the fiduciary obligations owed between partners.

Issue:

- Whether fiduciary duties extended to activities that were not expressly covered by the partnership agreement.

Outcome:

- The High Court held that fiduciary obligations are not confined strictly to the express terms of the agreement.

Reasoning:

- Dixon J emphasised that fiduciary duties depend on the actual course of dealings and the nature of the relationship, rather than purely formal contractual boundaries.

Significance (Exam Point):

- Scope is determined by:
 - the substance of the relationship
 - what the parties actually did in practice
 - not merely what was written in the agreement
- This means fiduciary obligations may extend beyond formal contractual terms.

Grimaldi v Chameleon Mining NL (No 2) [2012] FCAFC 6

- Facts:
- Grimaldi was a senior executive who, although not formally appointed as a director, exercised significant influence and control over company affairs. He used knowledge and opportunities arising from his role to obtain personal benefits through related entities.
- Issue:
- Whether Grimaldi owed fiduciary duties and whether his conduct fell within their scope.
- Outcome:
- The Full Federal Court held that Grimaldi owed fiduciary duties and that his conduct fell within the scope of those duties.
- Reasoning:
- The court focused on the functions actually performed, rather than formal titles. Grimaldi's involvement in decision-making and access to corporate opportunities brought his conduct within scope.
- Significance (Exam Point):
- Scope is determined by:
 - what the fiduciary actually does in practice
 - the responsibilities assumed
 - the degree of influence exercised
 - Fiduciary duties may extend to de facto directors or officers, not just formally appointed ones.

Howard v Commissioner of Taxation (2014) 253 CLR 83

- Facts:
- Howard was a director who became involved in transactions through which he obtained financial benefits connected to corporate opportunities. The issue arose in a taxation context but required examination of fiduciary principles.
- Issue:
- Whether the benefits obtained were sufficiently connected to Howard's fiduciary position.
- Outcome:
- The High Court emphasised the need to identify whether the opportunity or benefit was acquired by reason of the fiduciary position.
- Reasoning:
- The Court focused on the connection between the fiduciary role and the opportunity obtained.
- Significance (Exam Point):
- Scope depends on whether the benefit or opportunity was obtained:
 - because of the fiduciary position
 - through use of fiduciary knowledge or authority
 - If the connection is strong, fiduciary obligations will apply.

BREACH OF FIDUCIARY DUTY

Once a fiduciary relationship and its scope are established, the next issue is whether there has been a breach.

As confirmed in *Chan v Zacharia*, fiduciary duties are concerned with two core prohibitions:

- conflicts of interest
- unauthorised profits

These rules are strict and operate independently of:

- intention
- honesty
- whether the principal suffered loss

General principles are reflected in *Keech v Sandford*, *Chan v Zacharia*, and *Breen v Williams*, which emphasise that fiduciary liability arises from the position occupied, not from wrongdoing in a moral sense.

Conflicts Rule:

A fiduciary must not place themselves in a position where:

- their personal interest conflicts with their duty, or
- there is a real and sensible possibility of conflict

This rule is preventative and applies even where:

- the conflict is only a real and sensible possibility (not actual conflict)
- no actual conflict arises
- the fiduciary acts honestly
- the principal benefits

Boardman v Phipps [1967] 2 AC 46

- Facts:
- Boardman was a solicitor to a trust. He became aware of an opportunity to acquire shares in a company in which the trust already held shares. Using information obtained in his fiduciary capacity, he purchased additional shares personally and made a substantial profit. The trust itself could not have acquired the shares.
- Issue:

- Whether Boardman breached fiduciary duty despite acting honestly and benefiting the trust.

Outcome:

- The House of Lords held that Boardman was liable to account for the profits.

Reasoning:

- Although Boardman acted in good faith and improved the value of the trust, he had placed himself in a position where his personal interest conflicted with his duty.

Significance (Exam Point):

- A breach occurs where there is a: “real sensible possibility of conflict”
- Even where:
 - the fiduciary acts honestly
 - the principal benefits
 - the opportunity was unavailable to the principal
- The rule is strict and preventative.

Farrington v Rowe McBride & Partners [1985] 1 NZLR 83

Facts:

- A law firm acted for clients whose interests conflicted in the same matter. The firm attempted to manage the conflict but continued acting for both parties.

Issue:

- Whether acting for clients with conflicting interests constitutes a breach of fiduciary duty.

Outcome:

- The court held that the firm breached its fiduciary obligations.

Reasoning:

- A solicitor owes undivided loyalty and cannot act for parties with conflicting interests.

Significance (Exam Point):

- Fiduciaries must avoid:
 - duty-interest conflicts
 - duty-duty conflicts
- This is particularly strict in professional contexts such as legal practice.

Pilmer v Duke Group Ltd (in liq) (2001) 207 CLR 165

Facts:

- Professional advisers provided valuation advice in the context of a corporate takeover. The plaintiffs alleged that the advisers owed fiduciary duties.

Issue:

- Whether the advisers were fiduciaries.

Outcome:

- The High Court held that no fiduciary relationship existed.

Reasoning:

- The advisers had not undertaken to act in the interests of the client in a fiduciary sense.

Significance (Exam Point):

- Not all professional relationships are fiduciary. The conflicts rule only applies where a fiduciary relationship exists.

Nocton v Lord Ashburton

Facts:

- A solicitor advised a client to release a mortgage without disclosing his own conflicting financial interest.

Issue:

- Whether non-disclosure of a conflicting interest constitutes breach.

Outcome:

- The solicitor was held liable.

Significance (Exam Point):

- A fiduciary must avoid conflicts and disclose all material facts. Failure to disclose a personal interest is itself a breach.

Hospital Products Ltd v US Surgical Corporation

Significance (Exam Point):

- Confirms that fiduciary obligations, including the conflicts rule, only arise where a fiduciary relationship exists. Not all commercial relationships attract fiduciary duties.

Conflicts AFTER Termination:

Fiduciary obligations may persist after the relationship ends, particularly where confidential information or continuing duties of loyalty are involved.

Prince Jefri Bolkiah v KPMG

Facts:

- An accounting firm acted for a former client and later accepted instructions from another client with adverse interests.

Issue:

- Whether fiduciary obligations continued after termination.

Outcome:

- The court held that the firm could not act where there was a real risk of misuse of confidential information.

Significance:

- Fiduciary obligations may continue after termination, particularly in relation to confidential information.

Spincode Pty Ltd v Look Software Pty Ltd

Facts:

- A law firm acted against a former client in related matters.

Outcome:

- The court restrained the firm from acting.

Significance:

- Demonstrates strict protection of confidential information even after the fiduciary relationship ends.

Schmidt v AHR Kalimpa Pty Ltd

Significance:

- Reinforces that fiduciary obligations may continue post-termination where the circumstances justify it.

Profits Rule:

A fiduciary must not make unauthorised profits arising from:

- their position
- opportunities
- knowledge obtained through their role

This applies even where:

- the principal suffers no loss
- the fiduciary acts honestly

The rule is strict and focuses on preventing fiduciaries from being influenced by personal gain, rather than compensating loss.

The rule applies strictly and is designed to remove any possibility of conflict between duty and personal interest.

Attorney-General for Hong Kong v Reid [1994] 1 AC 324

Facts:

- Reid was a senior prosecutor who accepted bribes in exchange for influencing prosecutions. He used the bribe money to purchase land in New Zealand.

Issue:

- Whether the bribes and property were held on trust for the Crown.

Outcome:

- The Privy Council held that the bribes were held on constructive trust for the Crown.

Reasoning:

- The bribes were obtained through Reid's fiduciary position and could not be retained for personal benefit.

Significance (Exam Point):

- Unauthorised profits:
 - must be disgorged
 - may be subject to proprietary remedies
- Fiduciary gains are treated as held on trust for the principal.

Regal (Hastings) Ltd v Gulliver (1942)

Facts:

- Directors personally acquired shares in a subsidiary because the company lacked funds and later made a profit when the business was sold.

Issue:

- Whether directors must account for profits made personally.

Outcome:

- The directors were required to account for the profits.

Significance (Exam Point):

- Fiduciaries must not profit from opportunities arising from their position, even where:
 - the principal could not take the opportunity
 - the fiduciary acted honestly

Boardman v Phipps [1967] 2 AC 46

Facts:

- A solicitor used information obtained from a trust to acquire shares personally and made a profit.

Outcome:

- The fiduciary was liable to account for profits.

Significance (Exam Point):

- Profits made using fiduciary knowledge or opportunity must be disgorged, even where the fiduciary acts in good faith.

Chan v Zacharia (1984)

Significance (Exam Point):

- A fiduciary must account for any benefit obtained:
“by reason of or by use of his fiduciary position or opportunity or knowledge resulting from it”

United Dominions v Brian (1985)

Significance (Exam Point):

- Failure to disclose and account for benefits obtained in a joint venture constitutes breach of fiduciary duty.

Grimaldi v Chameleon Mining NL (No 2) (2012)

Significance (Exam Point):

- Modern authority confirming that profits derived from fiduciary position, including through indirect structures or third parties, must be disgorged.

DEFENCES TO BREACH OF FIDUCIARY DUTY

Although fiduciary duties are strict, liability is not absolute. A fiduciary may avoid liability where the principal has given fully informed consent.

Fully Informed Consent:

For consent to be effective:

- there must be full disclosure of all material facts
- the fiduciary must disclose the nature and extent of the conflict or profit
- the principal must understand the situation
- consent must be freely given

Consent must be fully informed; partial disclosure or silence will not suffice.

The burden of proof lies on the fiduciary.

Queensland Mines Ltd v Hudson (1978) 18 ALR 1

Facts:

- Hudson was a director of Queensland Mines Ltd. The company had acquired mining tenements but lacked the financial resources to exploit them. Hudson informed the board that he intended to take up the opportunity personally if the company did not proceed. The board gave approval for Hudson to pursue the opportunity. Hudson subsequently developed the mining interests and made a substantial profit.

Issue:

- Whether Hudson breached fiduciary duty by exploiting a corporate opportunity for personal gain.

Outcome:

- The Privy Council held that Hudson was not liable for breach of fiduciary duty.

Reasoning:

- Hudson had fully disclosed the opportunity and his intention to pursue it personally. The board, acting with full knowledge, consented to his actions. This consent authorised the conduct that would otherwise have constituted a breach.

Significance (Exam Point):

- Fully informed consent operates as a complete defence where:
 - the fiduciary makes full and frank disclosure
 - the principal understands the nature of the conflict
 - the principal gives informed approval
- This case demonstrates that even clear conflicts or profits can be permitted if properly authorised.

Regal (Hastings) Ltd v Gulliver

Significance (Exam Point):

- Illustrates absence of consent. Liability arose because the directors did not obtain fully informed consent.

Boardman v Phipps

Significance (Exam Point):

- Even where fiduciaries act honestly, failure to obtain fully informed consent results in liability.

THIRD PARTY LIABILITY (BARNES v ADDY)

Fiduciary law may extend beyond the fiduciary themselves to impose liability on third parties who are involved in a breach.

This area is governed by the rule in *Barnes v Addy*, which identifies two distinct forms of liability:

1. Knowing assistance
2. Knowing receipt

These doctrines ensure that equity can respond not only to the wrongdoing fiduciary, but also to those who benefit from or facilitate the breach.

(a) Knowing Assistance:

A third party will be liable where they:

- assist in a breach of fiduciary duty
- have knowledge that their actions are assisting a breach

Unlike knowing receipt, this does not require receipt of property.
The focus is on participation in the breach.

Barnes v Addy (1874) LR 9 Ch App 244

Facts:
▪ Trustees misapplied trust property by transferring it in breach of trust. The property came into the hands of third parties who were not themselves trustees.

Issue:
▪ Whether third parties who receive or assist in the misapplication of trust property can be held liable.

Outcome:
▪ The Court of Appeal held that third parties are not automatically liable, but may be liable in two circumstances.

Reasoning:
▪ Lord Selborne LC distinguished between two types of liability:
- those who receive trust property with knowledge
- those who assist in a breach with knowledge

Significance (Exam Point):
▪ This case establishes the two limbs of third party liability:
- knowing receipt
- knowing assistance
▪ It confirms that liability depends on knowledge and involvement in the breach.

Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2007) 230 CLR 89

Facts:
▪ A fiduciary involved in a joint venture secretly acquired properties using associates and relatives. The properties were purchased through third parties, including family members, who were aware of aspects of the transaction.

Issue:
▪ Whether the third parties were liable for knowing receipt or knowing assistance.

Outcome:
▪ The High Court held that the third parties were not liable because the required level of knowledge was not established.

Reasoning:
▪ The Court clarified that liability requires knowledge that the transaction involves a breach of fiduciary duty. Mere suspicion or negligence is insufficient.

Significance (Exam Point):
▪ This is the leading Australian authority on third party liability.
▪ It establishes that:
- actual or sufficiently serious knowledge is required
- constructive notice alone is insufficient
- courts must carefully assess the state of knowledge

Consul Development Pty Ltd v DPC Estates Pty Ltd (1975) 132 CLR 373

Facts:
▪ A third party became involved in a land transaction where a fiduciary had breached their duty by diverting a business opportunity.

Issue:
▪ Whether the third party had sufficient knowledge to be liable.

Outcome:
▪ The High Court analysed different levels of knowledge and their relevance to liability.

Reasoning:
▪ The Court distinguished between different degrees of knowledge, including actual knowledge, wilful blindness, and constructive knowledge.

Significance (Exam Point):
▪ This case is important for understanding the knowledge requirement.
▪ It demonstrates that:
- liability depends on the quality of knowledge
- different levels of knowledge may be sufficient depending on context

Ancient Order of Foresters in Victoria Friendly Society Ltd v Lifeplan Australia Friendly Society Ltd (2018) 265 CLR 1

Facts:
▪ Senior employees of Foresters secretly diverted business opportunities to a competitor, Lifeplan. Lifeplan knowingly participated in the scheme by assisting the employees in transferring clients and business operations.

Issue:
▪ Whether Lifeplan was liable for knowing assistance in breach of fiduciary duty.

Outcome:
▪ The High Court held that Lifeplan was liable for knowing assistance.

Reasoning:

- Lifeplan had actual knowledge of the employees' breach and actively participated in it.
- Significance (Exam Point):
- Confirms modern principles of knowing assistance:
 - participation in breach is required
 - knowledge must be sufficiently serious
 - liability arises where the third party is knowingly involved

- (b) Knowing Receipt:**
- A third party will be liable where they:
 - receive property that is subject to a fiduciary obligation
 - receive it for their own benefit
 - have knowledge that the property was transferred in breach of fiduciary duty
 - The focus is on receipt of property, not participation in the breach.
 - The recipient must have sufficient knowledge of the breach at the time of receipt.

Barnes v Addy (1874) LR 9 Ch App 244

Significance (Exam Point):

- Establishes knowing receipt as a separate limb of third-party liability.

Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2007) 230 CLR 89

Facts:

- A fiduciary secretly acquired development opportunities using third parties, including family members.

Issue:

- Whether the third parties were liable for knowing receipt.

Outcome:

- The High Court held that the third parties were not liable due to insufficient knowledge.

Reasoning:

- Mere suspicion or negligence is insufficient; knowledge must be sufficiently serious.

Significance (Exam Point):

- Leading Australian authority on knowing receipt
- Requires actual or sufficiently serious knowledge
- Constructive notice alone is insufficient

Grimaldi v Chameleon Mining NL (No 2) (2012)

Significance (Exam Point):

- Confirms modern application of knowing receipt
- Liability arises where a third party receives property with knowledge of its improper acquisition

Quince v Varga (2008) 23 VR 304

Facts:

- A third party received funds that had been misappropriated in breach of fiduciary duty.

Issue:

- Whether the recipient was liable for knowing receipt.

Outcome:

- The court imposed liability.

Reasoning:

- The recipient had sufficient knowledge of the breach.

Significance (Exam Point):

- Demonstrates application of knowing receipt where:
 - property is received
 - knowledge of breach is present

REMEDIES FOR BREACH OF FIDUCIARY DUTY

Fiduciary remedies are primarily gain-based rather than loss-based, reflecting equity's focus on deterrence and accountability.

Equity provides a wide range of remedies designed to:

- strip gains from fiduciaries
- restore the principal's position
- prevent ongoing or future breaches

Remedies are divided into:

1. Personal remedies
2. Proprietary remedies

Personal Remedies:

These operate against the fiduciary personally.

1. Account of Profits:

This is the primary remedy in fiduciary law.

- Fiduciary must disgorge gains obtained from breach
- Focus is on stripping profit, not compensating loss
- Allowances may be made (*Warman v Dwyer*)

2. Equitable Compensation:

- Monetary remedy for loss
- More flexible than common law damages

3. Rescission:

- Sets aside transactions affected by breach

4. Injunction:

- Prevents threatened or continuing breaches

Proprietary Remedies:

These give the principal rights in specific property.

1. Constructive Trust:

- Property obtained through breach is held on trust for the principal
- Gives the principal a proprietary interest
- This is particularly significant where:
 - property has increased in value
 - insolvency is involved

2. Equitable Lien:

- Provides a security interest over property
- Allows recovery of value rather than full ownership

Election of Remedies:

The plaintiff must choose between inconsistent remedies.

For example:

- cannot claim both compensation and full profit recovery for the same conduct

The principle is that there must be no double recovery.

Key Principle:

Fiduciary remedies are designed to be:

- strict
- deterrent
- preventative

They focus on stripping gains and maintaining the integrity of fiduciary relationships.

FINAL OVERVIEW

Fiduciary law operates through:

- identifying fiduciary relationships
- defining their scope
- enforcing strict duties of loyalty
- prohibiting conflicts and unauthorised profits
- providing powerful remedies

It is one of equity's most important doctrines because it ensures that positions of trust are not abused.