(LAW 3111) Equity Exam Notes

F = Fiduciary

Pr = Principal

FDR = Fiduciary Relationship

BoFD = Breach of Fiduciary Relationship

Rship = Relationship

k = Contract

T'ee = Trustee

S'tor = Solicitor

Ag/ment = Agreement

1. Background Context

‘The **separate body of law,** developed in the Court of Chancery, which **supplements, corrects, and controls** the rules of common law (CL)’ (*Butterworths Encyclopaedic Australian Legal Dictionary*).

- Equity operates on a discretionary basis compared to other areas of law, it aims to fill gaps for deficiencies in the common law; it operates **on** the CL, it is not an independent body of law but a separate area of **judge made law.** It recognises different levels of ownership unknown to the CL.

- It is sensitive to the changing circumstances in society, its values, norms etc and thus needs to be flexible so that it can respond to any of these deficiencies in the CL.

- Softens and modifies the injustices in CL, provides remedies where at law they are either inadequate or non-existent (glosses the law);

1.2 Equitable Obligations

- Equitable duties are private law duties recognised and enforced independently of the CL (e.g. BoC, BoFD);

1.3 Equitable Remedies

- Responses to breaches of private law duties, historically administered by the Court of Chancery.

- Equitable relief is **discretionary**
    - In **exclusive jurisdiction**, remedies are available for breaches of equitable duties (e.g. account of profits for BoFD).
    - In **auxiliary jurisdiction**, remedies are available to enforce legal rights (e.g. specific performance or injunction for breach of a k).

1.3.2 Zones of Jurisdiction

1. Exclusive Jurisdiction - rights and obligations recognised **only** in equity (e.g. trusts), equity **creates** and **enforces** these rights.

2. Auxiliary Jurisdiction - **supplements** the CL - provides remedies to support/enforce legal rights e.g. injunction; helps enforce a legal right

3. Breach of Fiduciary Duties (FD) and Relationships (FDR)

1. **Establish the FD**
    a. Accepted category?
    b. Proven category?
2. **Scope of the Rship**
3. **Has the F breached the conflict or the profit rules?**
    a. State the rules BEFORE applying facts (see p. 11 for conflicts, p. 15 for profits)
4. **Are any defences open to the F?**
    a. Can D argue informed consent?
5. **Are remedies available?**
    a. FIRST, consider personal rems
    b. Second, consider ppty rems
        i. If both are available, look to see if there's any issue of bankruptcy/insolvency, if not – explain **ppty rems are superior**
6. **Is there 3P involvement?**
    a. *Barnes v Addy* - address all elements of knowing receipt or knowing assistance
7. **What remedies are available against a 3P?**
    a. Personal Liability
8. **CONCLUDE**

BoFD and FDRs

Sits exclusively in the jurisdiction of equity. A FDR vests a strong level of responsibility, a full range of equitable remedies apply, including proprietary remedies. P's can also obtain remedies against 3P's

- A **fiduciary** (f) is an individual who holds a **legal** or **ethical rship** of **trust** with one or more parties.
- A **principal** (pr) is the person **whose interests the fiduciary is meant to protect or act for,** the person **who is owed loyalty.**
    - Typically, a fiduciary prudently takes care of money, or other assets for <u>another</u>.
- The standard of a FDR is held to and the nature of their obligations is **<u>higher and harsher</u> than other areas of law** such as k's.
    - (*Sandford, Phipps*) FDR's are not imposed lightly, and act as both a protection for the principal and a **deterrent** for the fiduciary.

P will argue that there exists a FDR btw/n them and the D.

Inherent in FDRs is a **position of vulnerability,** where one party places **reliance on the other** (Pr relies on F) (*Hospital Products*). FDs seek to protect against **self-seeking behaviour** in the context of such rships by requiring that the F entirely **subordinates** their interests to **those of the Pr.**

Deane J in *Chan v Zacharia,* a F must not breach the

- **Conflicts Rule** (F cannot, in any matter falling within the scope of their service, have a personal interest/inconsistent engagement w/ a 3P/cannot put themselves in a significant position of conflict)
- **Profits Rule** (F cannot make a secret profit/commission/misuse their position or knowledge or opportunity to result in a possible benefit to them/a 3P)
- ***Unless***, this is freely and informedly consented to by the beneficiary or is authorised by law

3.1 Establishing a Fiduciary Rship (Accepted Categories)

Generally, there is a degree of trust btw/n parties. Rships arise in either an **accepted category** or a non-factual (proven) category. Economic interests are **required.**

First, the relationship between P and D falls within an accepted category of FDR. As recognised in [authority], D is a [trustee/agent/solicitor] and P is the [beneficiary/principal/client]. Accordingly, equity readily recognises that D owes fiduciary obligations to P, and P need not prove the existence of a FDR OTF.

Accepted categories (non-exhaustive)

- **Trustee [F] - Beneficiary** (*Sandford*)
- **Partner - Partner** (Chan v *Zacharia*) [both F's]
- **Agent [F] - Pr** (*McDonald*)
- **Senior Employee [F] - Employer** (*Dwyer*)
- **Director [F] - Company** (*Regal (Hastings) Ltd*)
- **Solicitor [F] - Client** (*Nocton v Lord Ashburton*)
- **Bankruptcy Trustees - Creditors**

Trustee [F] – Beneficiary

Strongest example of FD, the t'ee owes FDs to the beneficiaries; FDs are necessary to give effect to the express or implied undertaking of a trustee to give undivided loyalty to the beneficiary's interests. T'ee companies also owe FDs,, t'ees have positive statutory obligations imposed as well as negative fiduciary ones.

Keech v Sandford

- A t'ee held a lease on trust for an infant beneficiary. When the lease was due to expire, the l'lord refused to renew it for the infant but offered it to the t'ee personally. The t'tee accepted and profited.
- **Held:** The t'ee breached the FD owed to the beneficiary. Even though the beneficiary could not obtain the lease, the t'tee could not take the opportunity for himself.

Exam Tips

1. Answer the Question IMMEDIATELY

Every issue should begin with a direct conclusion, immediately identify

- Who has the claim;
- Against whom;
- The cause of action; and,
- The broad basis for liability.

Signal to the examiner that you understand the legal issue and have already reached a reasoned conclusion. The remainder of the answer should explain how and why you have reached the conclusion.

2. Structure Every Cause of Action into Its Legal Elements

Every equitable claim should be broken into its constituent legal elements, with each element analysed separately before moving to the next.

Avoid discussing multiple legal issues within the same paragraph.

Instead, move sequentially through the doctrine.

For example, a breach of fiduciary duty question should generally proceed as follows:

1. Establish the existence of the fiduciary relationship.
2. Determine whether the impugned conduct falls within the scope of that relationship.
3. Consider whether the conduct breaches the conflicts rule.
4. Consider whether the conduct breaches the profits rule.
5. Address any available defences.
6. Reach a final conclusion.

Following this sequence demonstrates a logical understanding of the doctrine and makes your reasoning significantly easier for the examiner to follow.

3. Law Before Facts

Step 1: State the governing legal principle.

Step 2: Cite the relevant authority.

Step 3: Explain the principle.

Step 4: Apply the facts.