LAW5008 PRINCIPLES OF EQUITY

EXAM NOTES

Contents

FIDUCIARY OBLIGATIONS

EXISTENCE OF FIDUCIARY RELATIONSHIPS

1. Introduction

The first step is establishing whether a fiduciary relationship exists.

→ Go to (1) accepted categories **or** (2) factual categories

2. Accepted categories

As the relationship falls within the accepted category of X, a fiduciary relationship exists (Hospital Products).

Accepted categories:

- **Trustee and beneficiary**: a classic fiduciary relationship where the trustee holds property or powers for the beneficiary's benefit.
- **Agent and principal**: the agent acts on behalf of the principal and must pursue the principal's interests within authority.
- **Solicitor and client**: a relationship of trust and confidence where legal advice and representation create fiduciary duties.
- **Director and company**: directors owe duties to the company because they control corporate decision-making and assets
- **Partners**: partners owe each other duties of loyalty and good faith in managing the partnership
- **Employer and employee:** usually confined to the employee's functions and responsibilities.
    - As the [fiduciary] is responsible for [broad/real responsibilities], which is a broad responsibility, there is likely an accepted fiduciary relationship.
    - As the [fiduciary] is responsible for [thin/narrow responsibilities], which is a narrow responsibility, there may be an accepted fiduciary relationship. → Quick analysis of factual category in alternative.

Joint venturers: while the parties label themselves as joint venturers, the substance of the venture will determine whether the venture is a partnership (go to factual categories).

3. Factual categories

As this relationship does not appear to fall within an accepted category, it will have to be established on the facts.

3.1 Hospital Products test

According to Mason J, a fiduciary **undertakes** to act for the principal in the exercise of a **power or discretion** which will affect the principal's legal or practical interests, making them **vulnerable** (Hospital Products).

Apply: identify undertaking + power/discretion + principal's vulnerability.

Hospital products: HPI agreed to act in USSC's interests in promoting and protecting its Australian market. HPI had discretion over how to carry out the undertaking: how to build the market, manage relationships, build products. USSC was at the mercy of HPI's exercise of its

discretion with no oversight or alternative. USSC couldn't intervene or check on what HPI was doing. **Held:** minority found a limited fiduciary relationship.
<u>3.1.1 Additional principles as relevant</u>
3.1.1.1 Arm's-length commercial parties
Sophisticated commercial entities dealing at arm's length lack the hallmarks of accepted fiduciary categories, as the parties are serving their own interests (Hospital Products – majority found no fiduciary relationship for this reason).
3.1.1.2 Equity won't supply what parties chose not to bargain for
Equity will not supplement what sophisticated commercial parties deliberately left out of their bargain or contradict what a contract expressly permits. If there was an opportunity for conflicting interests to be built into a contract from the start, parties will generally not be found to owe each other fiduciary obligations (Hospital Products).
3.2 Multifactorial approach
According to the multifactorial approach in Breen, certain circumstances point towards the existence of a fiduciary relationship. **Apply relevant indicia:** - Relation of confidence (*additional consideration*) - Inequality of power (*additional consideration*) - Acting in another's interests *(supplements undertaking)* - Unilateral discretion exercised *(supplements power/discretion)* - Dependency or vulnerability *(supplements vulnerability)* As relevant – claim of a positive obligation, e.g. to hand over records: though several indicia are present, there may not be a fiduciary duty as [party] is claiming there was a positive obligation, whereas fiduciary duties are proscriptive, similar to Breen's claim.
Breen v Williams: B wanted to participate in class action, so she needed to access medical records from subsequent treatment by W. B argued there was a fiduciary duty from the doctor-patient relationship and W had to hand over records (positive obligation). **Held**: though several indicia were present, there was no fiduciary duty for W to provide B with access to records, as fiduciary duties are proscriptive and have a representative character.
3.3 As relevant: before formal agreement of a fiduciary relationship
The issue is whether a fiduciary relationship can arise before a formal agreement is reached. Equity looks at the whole course of dealing to determine whether there was a fiduciary relationship, not just the moment of formal execution of an agreement (UDC). In UDC, several factors in the course of dealing indicated a fiduciary relationship [apply all to facts]: 1. The arrangement had moved beyond negotiation. 2. The relationship bore all the hallmarks of a partnership, an accepted fiduciary category.

3. The formal agreement would have confirmed that a fiduciary relationship already existed.
3.4 As relevant: advisory role assumption
An ordinary commercial relationship can become fiduciary through the assumption of an advisory role, as the fiduciary undertakes to act in the principal's interests (CBA v Smith).
CBA v Smith: Smiths wanted to purchase rural property. Dungan from CBA became heavily involved. Dungan withheld a bank valuation showing the property was worth significantly less than the purchase price. He concealed the vendor owed a debt to CBA, who would recover if the sale proceeded. **Held:** bank-customer relationship became fiduciary when Dungan assumed an advisory role.

ASSIGNMENT OF PROPERTY RIGHTS IN EQUITY

Assignment is the immediate transfer of an existing proprietary right, vested or contingent from the assignor to the assignee (Norman). To ascertain who [owns/is entitled to] each asset it must be determined whether the assignment has been successful at law or in equity.

→ Apply below to each asset separately.

1. Present or future right?

As relevant:

- **Dividends/interest:** Interest that will accrue on a loan that <u>could be repaid</u> at will and dividends that <u>might be declared</u> on certain company shares is future property, so cannot be assigned (Norman – assigned expected dividend (w/o declaration) and loan repayable at will – future interests). → Future
    - C.f. declared dividend – the shareholder is owned a debt and it is existing property. → Present
- **Trust income:** A trust beneficiary's gift of trust income from future years is an assignment of future property, as the future years hadn't arisen yet (Williams – assigned trust income he wasn't entitled to yet). → Future
- **Right that already exists / right to tree v fruit:** Assignment of a right that already exists is the transfer of an existing proprietary right. A right that may bear no fruit is still assignable (Shepherd – assigned right to royalties). → Present

The property is:

- **Present:** present property as [reason, e.g. it already exists / is owned by assignor].
- **Future:** future property as it is [not yet in existence, not yet owned, transferor does not have rights in it yet].

2. Present property right

2.1 Value given

Assignment will be enforced like a contractual right. Property has passed at law.

2.2 No value given (gift)

Whether the assignment was good depends on the kind of property.

<u>2.2.1 Legal property</u>

The [property] is legal property, as it is [land, shares, chattels, legal debts etc].

Is the assignment complete according to the relevant transfer rules below?

- **Yes:** Successful legal assignment has passed at law.
- **No:**
    - Equity will not perfect an imperfect gift. It will look at what was actually done and intended (Milroy). Equity may regard the assignment as complete, provided the donor has done everything that is necessary for the donor alone to do (Corin v Patton – Patton meant the gift, signed the transfer but did not produce duplicate certificate of title).
    - Has the donor done all alone they can do?

- **Yes:** Assignment recognised by equity. Property in the asset has passed in equity.
- **No:** Assignment fails.

- **Part chose:** As [party] did not complete all the legal steps per s134 [e.g. transferred part of the debt], legal title has not passed. However, equity may recognise the assignment. → Go to equitable property.

2.2.1.1 Transfer rules

Legal property	Legal requirements
Torrens land	1. Proper instrument of transfer, signed + 2. Produce the duplicate certificate of title + 3. Registration with the titles office
Chattel	Delivery of the chattel with intention of transferring legal ownership OR Deed of assignment
Legal chose in action	Per s134: 1. Outright transfer of the whole debt, not by way of security or conditional + 2. In writing, signed by assignor + 3. Express written notice to the debtor of assignment.

2.2.2 Equitable property

2.2.2.1 Part chose in action

Equity will recognise a partial transfer of a legal chose in action where the assignor has to manifest an intention to make an immediate and irrevocable transfer. For part choses in action, there is no requirement for transfer to be in writing as s 53(1)(c) PLA does not apply.

2.2.2.2 Not part chose in action

The [property] is equitable, as it is [shares held on trust, partnership interest, beneficial interest under trust, equitable mortgage/lease]. This property cannot be assigned at law, but may be assigned in equity.

The requirements are that (1) the assignor has to manifest an intention to make an immediate and irrevocable transfer and (2) the transfer must be assigned in writing, signed by the assignor or their agent (s53(1)(c) PLA). [Apply 2 requirements].

- **2 requirements met:** Assignment recognised by equity. Property in the asset has passed in equity.
- **2 requirements not met:** Assignment fails.

3. Future property right

3.1 Value given

Where future property is assigned for value, equity gives effect to it the instant it exists (Norman; Tailby – assigned debts). This relates to the equitable maxim ‘equity treats as done that which ought to be done’. The assignment fastens onto each item of property the moment

it comes into existence and can be identified, with no need for any fresh act of transfer (Holroyd v Marshall).
3.2 No value given (gift)
Fails – cannot assign future property right for value. Equity will not recognise any voluntary transfer of future property rights due to the equitable maxim ‘equity will not assist a volunteer’.
4. Mere personal right
Fails – cannot be assigned.