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FIDUCIARIES

DEFINITION OF FIDUCIARY RELATIONSHIPS

Definition: Principal can expect the fiduciary to act in the principal's interests in the relationship in a fiduciary manner

Evidence: includes ascendancy, influence, trust, vulnerability, confidence or dependence

Role of Fiduciary critical matter; must be so closely **aligned with principal's interests** that the principal can expect a '**fiduciary expectation**'

IDENTIFYING FIDUCIARY RELATIONSHIPS

Categories

Hospital Products v United States Surgical Corporation (1984) 156 CLR 41	- USSC (US Company) manufactured surgical products and entered into an oral contract with Blackman as the Australian distributor. - Since USSC's products were not patented in Australia, Blackman's company Hospital Products Limited (HPI) repackaged and rebranded them for sale domestically and internationally as a competitor. HPI broke contractual obligations to USSC; but HPI did not owe any fiduciary obligations to USSC.	• Classes of fiduciary relationships includes - partners, principal and agent, director and company, master and servant, solicitor and client, tenant-for-life and remainderman. • Status-based relationships list is not closed—There is no reason to suppose these categories are closed (Gibbs CJ); guardian and ward (Dawson J)
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Types

1. Parents and child are not fiduciary relationship in AUS

M(K) v M(H) (1992) 96 CLR (4th) 289, 232	La Forest J: - Parent-child relationship is 'inherently fiduciary' Canadian case - Not recognised in Australian courts. Canadian fiduciary principles are proscriptive rather than prescriptive.
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2. Financial adviser and client

Daly v Sydney Stock Exchange (1986) 160 CLR 371	- Patrick Partners (stockbroking firm) broker advised Dr Daly against investing on the stock exchange and recommended that money should be lent to the broking firm. - Daly accepted the advice and made the loan. - The Firm became insolvent and the loan was not repaid. - Daly sued the Sydney Stock Exchange seeking compensation from their fidelity fund. Breach of fiduciary duty owed to Dr Daly by Broker failing to inform of its negative financial position.	Reasons for a Fiduciary Relationship - inherent in the giving of 'advice': a) Stockbroking firm held itself out as having expertise in advising on investments is approached for advice and undertakes to give it.. (Brennan J) b) Client relied on the advice which the firm gave him. • Fiduciary Obligation Duty to disclose - obligation to make full and accurate disclosure of: a) the broker's own interests in the transaction to the client, and (conflicts of interest) b) that the transaction was likely to be disadvantageous. (no profit rule) • Duty arises because a relationship of confidence exists between parties.
Pilmer v Duke Group Ltd (in liq)	- Accountants engaged by a company (Kia-Ora) to provide a report to its shareholders required by ASX Listing Rules, as to whether the proposed takeover price offered by Kia-Ora for shared in Western United was fair and reasonable.	

(2001) 207 CLR 165, 197 [72]	- The report was prepared incompetently and stated the price was fair and reasonable. - No fiduciary relationship - advisers did not give advice or make representations about the takeover to the Company. However, accountant acted in breach of contractual and tortious duties.	
Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq) (2012) 301 ALR, [743]	- Financial adviser (Grange) owed fiduciary obligations to its client (Swan Council). Financial advisers had fiduciary relationship according to the ' essence ' of a fiduciary relationship stated by Mason J in Hospital Products v USSC .	
Principles		
ABN AMRO Bank NV v Bathurst Regional Council (2014) 24 FCR 1, [1070]	Principles of a fiduciary relationship: 1) Fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person 2) In the undertaking, the principal must act in the interests of the beneficiary rather than the principal's own interests 3) Depends on the particular circumstances of the case 4) Characteristics of fiduciary relationship not exhaustively defined (not closed list) 5) Not subjective expectations of the parties - Beach Petroleum NL v Kennedy (1999) 48 NSWLR 1	
Elements to Establish		
Hospital Products v United States Surgical Corporation (1984) 156 CLR 41	*always start with this case - HPI was engaged to act bona fide and reasonably with due regard to the interests of USSC; could not act solely in it's own interests without reference to the interests of USSC. - Therefore, characteristics of a fiduciary relationship exist. - HPI breached fiduciary obligations acting in own interests carrying on a distributorship business for its own benefit and not as a trustee for USSC. - This is based on HPI's general responsibilities to protect and promote the market for USSC's products in Australia. Mason J's approach (minority) - distil the essence or the characteristics of the relationship. *This minority judgment has been adopted as the test for fiduciary obligations by the HCA. Ref to John Alexander's Clubs v White City Tennis Club (2010) 241 CLR, 34 [86]	Elements of a fiduciary relationship: a) Relationship of trust and confidence - per Boardman v Phipps; eg. trustee and beneficiary, agent and principle, solicitor and client, employee and employer, director and company, and partners b) Undertaking - Fiduciary undertakes or agrees to act c) For another person - For/on behalf of/in the interests of another person d) Discretion - in the exercise of a power or discretion e) Legal interests - which will affect the interests of that person legally or practically. f) Special opportunity - Fiduciary has a special opportunity to exercise power or discretion to the detriment of the other person g) Vulnerability - who is vulnerable to abuse by the fiduciary of their position. Eg. not a mere sub-contractor. • Fiduciary relationships cannot be superimposed upon the contract to alter the operation which the contract was intended to have upon its true construction.

<i>Breen v Williams</i> (1996) 186 CLR 71	Factors indicating a fiduciary relationship: 1. Existence of a relation of confidence 2. Inequality of bargaining power 3. Undertaking by one party to perform a task or fulfil a duty in the interests of another party 4. Scope of one party to unilaterally to exercise a discretion or power which may affect the rights or interests of another 5. Dependency or vulnerability on the part of one party that causes that party to rely on another	
Vertical Relationships (**Hospital Products v United States Surgical Corporation (1984) 156 CLR 41)	<u>Undertaking Test:</u> Mason (minority)'s Criteria for fiduciary duty: • Relationships of trust and confidence • Fiduciary undertake or agrees to act • For or on behalf of or in the interests of another person • In the exercise of a power or discretion • Which will affect the interests of the other person in a legal or practical sense • The fiduciary has the special opportunity to exercise the power or discretion to the detriment of the other person, and • There is vulnerability of the other person to abuse the fiduciary of his position	
Horizontal Relationships (United Dominions Corporation Ltd v Brian Pty Ltd (1985) 157 CLR)	- United Dominions Corporation (UDC) entered into a JV agreement w/ Brian and Security Projects (SPL) to build a shopping centre financed by borrowings of UDC and SPL owned the land. - Upon development, the shopping centre was realised at a substantial profit, but Brian was not repaid its financial contribution or 9.2 % profit share under agreement. - Without Brian's knowledge or consent SPL entered into other mortgage agreements with UDC for two other properties. - Whether or not a JV is fiduciary depends on the form of the particular JV and the content of obligations undertaken. HCA held <u>fiduciary relationship existed between Brian and UDC.</u> The agreement was a <u>commercial enterprise with a view to profits to be shared</u>; JV property was held upon trust. Breach of fiduciary obligations meant that UDC could not rely on the mortgage to deny Brian's entitlement under the JV agreement.	<u>Trust and Confidence Test:</u> • Fiduciary relationships of prospective partners commence when <u>reach an informal arrangement to assume a relationship of trust and confidence</u>; and <u>partied proceed to take steps to establish or implement</u> the agreement.

Relationship between Contractual and Fiduciary Obligations

**Breen v Williams (1996) 186 CLR 71	- Ms Breen had surgery to fix complications from breast implants performed by Dr Williams. - She sought a declaration that she had a proprietary interests in her medial records and that the doctor-patient relationship was fiduciary. HCA held there was no fiduciary relationship in doctor-patient relationship to give right of access to medical records. - The court agreed that doctors are fiduciaries, but only in matters concerning conflicts of interest or secret profits (the "negative" duties we discussed earlier). - A fiduciary duty does not create "positive" obligations to act (like a duty to provide records). - The duty is meant to protect the patient from the doctor's self-interest, not to grant a general right to information	Relationship between contractual and fiduciary obligations (Gummow J): • Mere presence of a contract does not exclude the coexistence of concurrent fiduciary duties, and the contract may, in particular circumstances, provide the occasion for their existence. • Does not deny a contractual term may be so precise in its regulation that there is no scope to create a fiduciary duty.
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SCOPE OF FIDUCIARY OBLIGATIONS

1. Identifying the '**subject matter**' of fiduciary obligations

**Breen v Williams (1996) 186 CLR 71	• Relationship b/w medial practitioner and patient who seeks skilled and confidential advice and treatment is fiduciary. • Scope - extends to provision of medical treatment after, or in the course of, consultation with the patient (ie. not to provision of medical records). • It is necessary to identify the subject matter over which the fiduciary obligations extend (Brennan CJ) • The scope of the fiduciary duty must be moulded according to the nature of the relationship and the facts of the case - Mason J in Hospital Products
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2. According to the **nature** of the relationship and facts

Howard v Commissioner of Taxation (2014) 253 CLR 83	- Howard was a member of a JV where other JVs breached their fiduciary duties by diverting a business opportunity away from the JV. - Issue of scope of fiduciary obligations in Howard's position as director of Disctronics - to question of whether the compensation was part of his assessable income or held in trust on behalf of Disctronics (ie. non-assessable for tax purposes). HCA held Howard received the award of equitable compensation on his own account and did not owe fiduciary obligations to Distrionics to account for the award. Ie. attempted to stretch fiduciary obligations to avoid paying tax; not in Disctronics' interests.	• Scope - 'to be moulded according to the nature of the relationship and facts of the case' Eg. directors as shareholders are not breaching fiduciary duties by making decisions that affects their interests in promoting the interests of the company. Contrast, directors who make decisions to adv themselves. • Fiduciary obligations - by suing and recovering equitable compensation from defaulting venturer, Howard did not obtain a gain or profit by reason or by use of his position as a director of Disctronics.
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