

Fiduciary Relationship

What relationship attract fiduciary obligations?

INTERESTS PROTECTED BY FIDUCIARY DUTIES

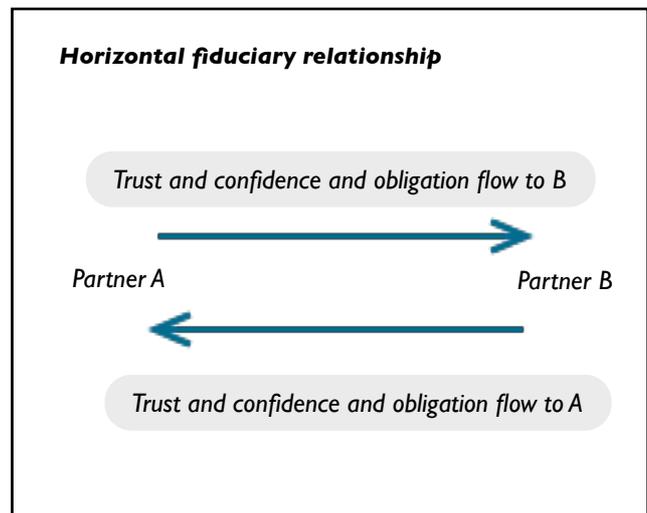
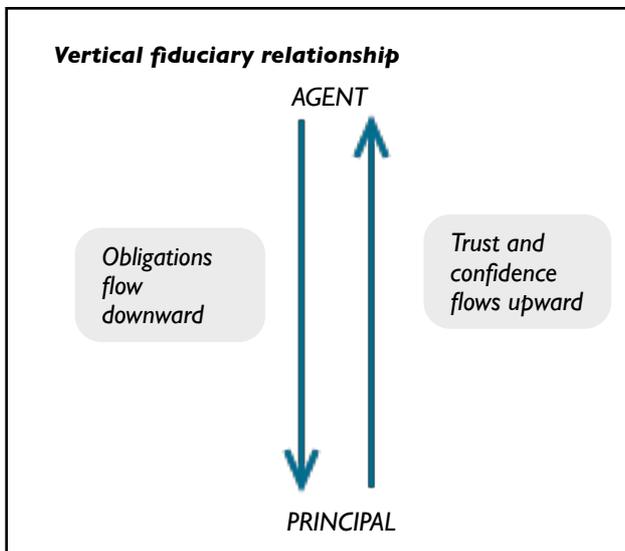
- a. Fiduciary duties are primarily used to protect economic and proprietary interests: [Nocton v Lord Ashburton](#).
- b. However, in cases like [Giller v Procopets](#), Australian equity has begun to recognise damages for mental distress and aggravated damages (at least in cases of breach of confidence).

PRESUMED FIDUCIARY RELATIONSHIPS

- a. trustee and beneficiary: [Hospital Products Ltd v United States Surgical Corp.](#)
- b. director and company: [Regal \(Hasting\) Ltd v Gulliver](#);
- c. legal practitioner and client: [Nocton v Lord Ashburton](#);
- d. agent and principal: [McKenzie v McDonald \[1927\] VLR 134](#).
- e. partner and partner: [United Dominions Corporation Ltd v Brian Pty Ltd](#).

DETERMINATION OF FIDUCIARY RELATIONSHIP (OTHER THAN THE PRESUMED CATEGORIES)

- a. No single characteristic can explain the fiduciary phenomenon, but the followings are indicative.
- b. Primary character of a fiduciary relationship: [Hospital Products Ltd v United States Surgical Corp.](#)
 - i. The undertaking to fulfil an obligation in the interest of another;
 - This element must be satisfied to establish a fiduciary relationship: [John Alexander's Clubs Pty Ltd v White City Tennis Club Limited](#).
 - ii. Inequality of bargaining power;
 - iii. The scope for one party to unilaterally exercise a discretion or power which may affect the rights or interests of another;
 - i.e., power to affect the principal's interests;
 - iv. The reliance on the principal and its vulnerability.
- c. Additional consideration
 - i. The existence of a relation of confidence; , i.e., solicitor v client; director v company; etc.
 - ii. Property holding
 - Trustees are the legal owner of property they hold on behalf of the trust;
 - Similarly, partner are co-owners of partnership property.
 - Directors have control of the company property, though they do not have ownership.



Fiduciary Obligations

Fiduciary obligations

NATURE OF THE DUTIES

- a. The essence of fiduciary obligations is that the fiduciary is precluded from acting in any other way than in the interests of the person to whom the duty to so act is owed. In short, the fiduciary obligation is one of **'undivided loyalty'**.
- b. Strict duties
 - i. The fact that there was no intent to defraud on the part of the fiduciary is irrelevant: [Nocton v Lord Ashburton](#).
 - ii. A fiduciary's liability arises even if the person to whom the duty is owed was unlikely or even unable to have made a profit from an opportunity exploited by the fiduciary: [Warman International Ltd v Dwyer](#).
- c. Negative duties (**Proscriptive duties**)
 - i. A fiduciary's obligation 'does ... not impose positive legal duties on the fiduciary to act in the interests of the person to whom the duty is owed': [Breen v Williams](#).
 - ii. It is therefore fallacious to claim that a fiduciary must "act" in the best interests of the principal. Such positive duties are better regulated by contract, tort or other equitable doctrines: [Pilmer v Duke Group Ltd \(in liq\)](#).

CONFLICTS BETWEEN INTERESTS AND DUTIES

- a. Unauthorised remuneration
 - i. Cases within this category cover situations in which a fiduciary, in the actual performance of his or her duties, obtains financial benefits beyond those that are authorised: [Reading v R](#).
- b. Assuming a double character
 - i. Cases in this category involve transaction in which a fiduciary acts in that capacity on the one hand and as an undisclosed principal on the other: [Armstrong v Jackson](#).
- c. The profits and conflicts rule
 - i. The general rule is that a fiduciary is not allowed to put himself in a position where his interest and duty conflict: [Chan v Zacharia](#). — with two sub-rules (see below)
 - ii. But a fiduciary can make a benefit or profit if it is not obtained in his fiduciary capacity: [Boardman v Phipps](#).
 - Speaking differently, a breach of duty must be identified in relation to the subject matter over which the duty is claimed: [Breen v Williams](#).
 - Accordingly, a partner may make a profit from information obtained in the course of the partnership business where he does so in another firm which is outside the scope of the partnership.

The profits and conflicts rule

DUTY NOT TO MAKE AN UNAUTHORISED PROFIT

- a. A fiduciary cannot make an unauthorised profit: [Boardman v Phipps](#).
- b. The inability of the principal to obtain the benefit is immaterial: [Board v Phipps](#).
- c. The fact that there was no intent to defraud, i.e., acting honestly, is irrelevant: [Board v Phipps](#).
- d. What is decisive is that if there is a conflict, or at least a possibility of a conflict, between the fiduciary's duty and interest, the **informed consent** of the principal is required, i.e., unanimous consent: [Board v Phipps](#).

DUTY NOT TO MISUSE OF POSITION

- a. The rule requires a fiduciary to account for any benefit or gain obtained or received by reason of or by use of his fiduciary position or of opportunity or knowledge resulting from it: [Chan v Zacharia](#).
- b. Whether the principal has the capacity to make the transaction is irrelevant: [Regal \(Hasting\) Ltd v Gulliver](#).
- c. The fact that the fiduciary acts lawfully, in good faith and indeed for the benefit of their principal is immaterial: [Regal \(Hasting\) Ltd v Gulliver](#).
- d. The conflict interests are existing interest, rather than those past interest in completed dealings: [Pilmer v Duke Group](#).
- e. An expectation of future interest may not be sufficient also: [Pilmer v Duke Group](#).

CONSEQUENCE OF BREACH OF THE PROFITS AND CONFLICTS RULE

- a. Any such gain or benefit is held by the fiduciary as constructive trustee, and that constructive trust arises from the fact that a **personal benefit or gain has been so obtained** or received and it is immaterial that there was no absence of good faith or damage to the person to whom the fiduciary obligation was owed: [Chan v Zacharia](#).

It follows where a partner obtains, without the consent of their co-partner, a renewal in their own name of a lease of partnership premises, there is a rebuttable presumption of fact that the renewed lease was obtained by use of his or her fiduciary position, and that he or she holds it as constructive trustee for the partnership. This presumption extends to the case where a partnership has been dissolved and the assets are in course of realisation: [Chan v Zacharia](#).