Equity and Trusts – Problem Question
Summary
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The Fiduciary Principle

Establishing a fiduciary relationship
Is there a fiduciary relationship under one of the established categories?

Status Based Relationships
These are relationships that are presumed to give rise to fiduciary duties:

Trustee and beneficiary
*Keech v Sandford*
FACTS: the trustee of a lease renewed the lease in his own name

Held: the only person of all mankind who cannot have the lease, was the trustee

Director and company
*Regal Hastings*

FACTS: 

Held: 

Director and shareholders
*Glavanics v Brunninhausen*
FACTS: Skima Pty Ltd had 6000 shares. The Plaintiff held 1000 shares (G) and the Defendant (B) held 5000 shares. The Defendant had sole effective control over the company. The Defendant received an unexpected offer from a third party to purchase the assets of Skima. The Defendant negotiated with the third party without informing the Plaintiff.

ISSUE: does the Defendant, as director, owe a fiduciary duty to the Plaintiff, as a shareholder?

Held: the absence of a direct fiduciary obligation between a director and shareholder is an aspect of acceptance of the company’s legal personality, however, the importance of the corporation personality is diminished when

- The directors deal with shareholders for the purchase or sale of shares, particularly where there are direct dealings and the transaction is not conducted with the anonymity of transactions on the stock exchange
- And where there are very few members, very few directors and their relationship are not impersonal, but close.

Where there is such a venture, the vulnerability of the shareholders to abuse of the director’s position is unusually high.

Held: in this case, the court found there to be a fiduciary relationship.

Lawyer and Client
*Tyrell v Bank of London*
Held: RULE: ‘There is no relation known to society, of the duties of which it is more incumbent upon a court of justice strictly to require a faithful and honourable observance, than the relation between solicitor and client.’ (CB 128)

= Creation of lawyer and client as a fiduciary relationship

Farrington v Rowe McBride
FACTS: A firm of solicitors advised its client, Farrington, to invest the damages that the client received in a land development company. The company was another client of the firm of solicitors – that relationship was not disclosed to Farrington.

Held: The rule is that no conflict can be allowed to exist, with the consequence that great difficulties may confront a solicitor who elects to act for two clients in the one transaction.

The court looked at the relevant facts: the appellant had no investment experience and in that nature of his vocation could not be expected to have any; the need for him to invest the money he received
by way of damages to meet his loss of earning power was paramount; it was for that very reason he sought the respondent’s advice. They owed him a duty to obtain proper and adequate security to protect his advances.

**Partners**
DEFINITION: the relation between people carrying on a business in common with the view of profit (s 6 of the Partnership Act 1963 (ACT)).

**Chan v Zacharia**
FACTS: Chan and Zacharia were partners in a medical practice. They leased a premise to conduct their medical practice. The lease was for a term of three years, with an option to renew. After the partnership was terminated, Chan refused to exercise the option to renew the lease jointly with Zacharia, despite requests from Zacharia. Instead Chan approached the leasor separately seeking a renewal of the lease is his own name, offering a premium for the renewed lease.

SCOPE: ‘The partnership in the present case was a relationship of confidence between the two doctors. It encompassed both the practice of their profession and the ownership of the plant and equipment and the tenancy of the premises with or within which that practice was carried on.’

Even after the dissolution of the partnership, ‘each doctor, by reason of his position as a former partner, remained under fiduciary obligations in respect of the partnership property.’ (They limited the scope because of the circumstances) The fiduciary obligation ‘persisted for the purposes of winding up the affairs of the partnership’.

In this case, in relation to the rights under the lease, Dr Chan had the fiduciary obligation to act in the interests of the dissolved partnership.

**Agent and Principle**
Who is an ‘agent’? (Dal Pont, Law of Agency (2nd ed, 2008)
An agent has the power to create legal relations between P and a 3rd party.
An agent can affect legal relations between P and a 3rd party.
An agent is authorised to act on behalf of, or represent, P in relation to some matter.

**Duty–Interest Conflict**

**McKenzie v McDonald**
FACTS: The plaintiff, a widow, owned a small farm. She wanted to sell her farm and live in Melbourne. She wanted to sell the farm for £4.10 an acre. The defendant was an estate agent. The defendant told the plaintiff that she should reduce the price to £4. The defendant then suggested that he buy the farm from the plaintiff at £4 and for the plaintiff to buy a shop he owned in Melbourne for £2000 (found to be worth only £1550).

HELD: The defendant set out to make a bargain for himself at her expense – underestimated the value of the farm and over-estimated the value of the shop. (CB 140)

**Client – Client Conflict**

**Kelly v Cooper**
FACTS: Concerned a real estate agent. The owners of two adjacent houses both instructed the same real estate agent to sell their houses.

DILEMMA: In the case of an estate agent, it is their business to act for numerous principals.
Where properties are of a similar description, there will be a conflict of interest between the principals each of whom will be concerned to attract potential purchasers to their property rather than that of another.
Yet, despite this conflict of interest, estate agents must be free to act for several competing principals otherwise they will be unable to perform their function.

UNACCEPTABLE SOLUTION: It cannot be sensibly suggested that an estate agent is contractually bound to disclose to any one of his principals information which is confidential to another of his principals.

HELD: Hence, there must be an implied term of the contract with the agent that he is entitled to act for other principals selling competing properties and to keep confidential the information obtained from each of his principals.
LIMITATION ON SCOPE: The fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation of the contract.

NOTE: Will examine this principle more closely in Hospital Products next week

FOR NOW: The scope is to be determined in reference to the contract of agency. Need to look at the facts very closely and if there is a contract, you must look at the contract

IN THIS CASE: The scope of the fiduciary obligation does not cover the conduct of the agent in this case who acts for multiple principals. There is no breach of duty, whether contractual or fiduciary, because the contract of agency envisaged that they might such a conflict of interest.

Facts-based relationships
To establish a facts base relationship, must rely on the indicia of a fiduciary relationship which was outlined in the Hospital Products v USSC.

Two Step process:
1. Look at the indicia and see if the requirements are met on the facts so as to create a fiduciary relationship
2. Look at the scope of the relationship
   a. THINGS TO NOTE HERE: if there is a contract, has it been completed? What if the person does not have the financial ability to engage in the venture?

Indicia
The critical feature of these relationships is that the fiduciary undertakes 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 that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of the other person who is accordingly vulnerable to abuse by the fiduciary of his position (Hospital Products v USSC per Mason J)

Hospital Products v USSC
FACTS: USSC manufactured surgical stapling devise. HPI acted as the exclusive distributor for USSC in Australia. HPI manufactured its own surgical staples based directly on the American product and sold them as HPI’s own products. USSC sued HPI for account of profits and constructive trust, which are equitable remedies (these remedies are not available for breach of contract, so have to show that there is a breach of equitable law).

APPLICATION: Applied the above indicia and held both elements were present, so then went on the enquire about the scope of the relationship

SCOPE: Because USSC entrusted HPI with the responsibility of protecting and promoting the market for USSC’s products in Australia, HPI was a fiduciary in protecting and promoting USSC’s Australian product goodwill.
• Its responsibility in procuring orders, making sales and effecting deliveries of USSC’s products in Australia armed HPI with a power and discretion to affect USSC’s product goodwill.
• HPI had a special opportunity of acting to the detriment of USSC which was, accordingly, vulnerable to the abuse by HPI of its position.
• The indicia is weaved into the terms of the scope
• What aspects of the relationship makes USCC vulnerable to abuse – not all dealings would be covered by the scope of the fiduciary relationship, but only those where vulnerability arises would be covered

FIDUCIARY VERSUS CONTRACTUAL RELATIONSHIP: The existence of a basic contractual relationship has in many situations provided a foundation for the erection of a fiduciary relationship as the contract is the first thing which brings the parties together and it can be evidence of an undertaking.

BUT a fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction (per Mason J).

The scope of the fiduciary relationship must be consistent with the scope of the contractual obligation.

HELD (WITH REGARDS TO SCOPE): HPI could make some business decisions by reference to its financial interests, without subordinating them to the promotion of the market for USSC’s products, so long at any rate as HPI did not deliberately do something, or omit to do something, for the purpose of destroying or injuring that market of USSC’s products.
• HPI also has to take into account USCC’s interests
• Although HPI was entitled to prefer its own interests to the interests of USSC in some situations...in no
circumstance could it act solely in its own interests without reference to the interests of USSC. This, as it
seems to me, fixed HPI with the character of a fiduciary in relation to those activities mentioned.

HELD: there are two obstacles to the acceptance that there was a fiduciary relationship between Hospital products
and USSC

1. The arrangement was a commercial one entered into by parties at arm’s length and on equal footing; it was
open to USSC to include in its contract whatever terms it thought necessary to protect its position.
2. It was clear that the whole purpose of the transaction from Mr Blackman’s point of view as USSC knew, was
that he, and later HPI should make a profit; so in the performance of the contract, conflict between the
interests of HPI and USSC was likely to arise, and any such conflict was not necessarily to be resolved in
favour of USSC.

Grimaldi
Captures what a fiduciary should be

A person will be in a fiduciary relationship with another when and insofar as that person:
• Has undertaken to perform such a function for, or
• Has assumed such a responsibility to, another
• As would thereby reasonably entitle that other person to expect that he or she will act in that others
interest.

Knowledge

Galambos v Perez

FACTS: P voluntarily made various cash advances, totalling about $200 000, to her employer Galambos, not at the
request of Galambos and often without informing him beforehand. When the firm was placed in receivership and
Galambos declared bankrupt, Perez found herself an unsecured creditor and recovered nothing.

ARGUED: by Perez that herself and Galamos were in a fiduciary relationship so that the $200,000 could be placed in
constructive trust, she then would not be in the position of unsecured creditor but she would have a remedy by
which she could recover the money (equitable compensation, equitable trust etc)

INDICIA:
1. What is required in all cases is an undertaking by the fiduciary, express or implied, to act in accordance with the
duty of loyalty reposed on him or her.
   • Galambos never requested the loan.
   • There was no undertaking that Galambos was to act in Perez’s best interest in relation to the cash advances.

2. It is fundamental to the existence of any fiduciary obligation that the fiduciary has a discretionary power to affect
the other party’s legal or practical interests.
   • Galambos had no discretionary power over Perez’s interests.

HELD: in the absence of the above two elements, there was no fiduciary relationship

Joint Venture Indicia

United Dominions Corporation v Brian

FACTS: contrasts a partnership from a joint venture.

HELD: The relationship between participants in a joint venture, which is not a partnership may nevertheless be a
fiduciary one if the necessary confidence is reposed by the participants in one another.
• Even in a partnership it is really the mutual confidence between partners which imposes fiduciary
duties upon them and the same confidence may, in appropriate circumstances, be found to exist between
participants in a joint venture

Pre-Contractual creation of a fiduciary relationship

LAC Minerals v International Corona Resources

FACTS: LAC (much bigger company than Corona) approached Corona to negotiate a mining joint venture. In the
course of negotiation, Corona disclosed to LAC the results of its exploratory drilling. LAC later developed the mine on
its own.

ISSUE: is there a fiduciary relationship between LAC and Corona?
   The parties here had not advanced beyond the negotiation stage. Indeed, they had not as yet identified what
precisely their relationship should be.

Court said the supply of confidential information is therefore at best a neutral factor.

HELD: The practice among geologists to act honourably towards each other is no doubt admirable and a practice to
be fostered, but it should not be used to create a fiduciary relationship where one does not exist.