

Strict no-profit rule:

1. Was there a profit made through information or opportunities obtained by being a fiduciary?

Conflict of interest rule:

1. Would a reasonable person believe there was a conflict of interest between the fiduciaries action and the principal's interests?

Has a commercial fiduciary relationship arisen?

Chirnside and Arklow

1. Has there been an undertaking, either express or implied, by one party to act in the fiduciary interest of another?
 - a. Is there a fiduciary relationship in the contract?
 - i. K can specify obligations which exclude the possibility of fiduciary obligations.
 - b. Are the circumstances of the relationship such that one party expects loyalty and/or trust and confidence in the other party? (Chirnside)
 - i. What are the reasonable expectations of the parties in those circumstances? (Chirnside)
 - ii. What are the aspects of the relationship? (e.g. nature of interactions, actions taken together, role of parties, agreements to perform actions)
 - iii. Is it a joint venture that involves a partnership to make and share profits and costs of the project? (Elias CJ - Chirnside?)

Amaltal and Paper Reclaim

1. What is the party doing for another person in a business context?
2. for that purpose were they acting on the other parties behalf/putting another's interest before their own/reposing trust and confidence in another?
 - a. This can be implied or assumed based on the conduct of the parties.
 - i. [In K, there is a fiduciary undertaking in relation to a particular thing being done].

Constructive Trust

Lankow v Rose

1. Was there a valuable contribution to the trust property?
 - a. It can be a direct or indirect contribution
 - b. Contribution needs to exceed the benefits the claimant has gained from the trust property.
 - c. Does not include contributions to the relationship??
2. Was there a reasonable expectation by the claimant of an interest in the trust property?
 - a. Trustees have acted in a way that indicated the claimant had an interest?

Sham Trust

1. There is a presumption against reading documents as shams, because the person who asserts it is a sham will benefit to the detriment of the ostensible beneficiaries - *National Westminster Bank v Jones*
2. Has a trust deed been created, where the subjective intention of all the parties intended something different, or intended for there to be no rights and obligations were at all? (*Official Assignee*)
 - a. Balancing Test Factors - *Rosebud v Bublitz*
 - i. Disregard for trust obligations/other beneficiaries interests.
 - ii. Use of property for another's benefit to expense of beneficiaries.
 - iii. Settlor control - trustees do what Settlor wants
 - iv. Poor administration
 - b. [It may later become a change if the parties agree to change their arrangement but the trust documents are not changed - *Ben Nevis Forestry*].

Illusory Trusts

Webb v Webb

1. Are powers reserved to the settlor inconsistent with an intention to irrevocably relinquish a beneficial interest? (Is there separation between beneficial ownership and legal ownership?)
 - a. How easy was it to recover property?
 - b. Is it a highly discretionary trust?
 - c. Is the settlor the sole trustee?
 - d. Is there an express negation of fiduciary duties?
 - e. Are the terms of the trust deed being given effect to?
 - i. If recovery of property requires assent of a truly independent person, or would have been subject to an enforceable fiduciary duty, it is an effective trust.
 - ii. If settlor had uncontrolled power to recover the property, he cannot have divested beneficial ownership of the property, it is an ineffective trust.

Notes: Different rights of parties...

Trustees

- Common law: normal full proprietary rights, legal ownership.
 - Have rights to sell property, enter into K's in relation to it.
- Equity: their proprietary rights/ownership are held for the benefit of others, don't have beneficial ownership.

Beneficiaries

- Common law: have no legal rights.
- Equity: they have beneficial ownership of the trust property so are liable for ownership obligations.
 - Liable for tax/ to creditors.