

Imposing Obligations Of Fidelity And Good Faith As Matters Of Conscience

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Fiduciary Responsibility and the Duties of Loyalty and Good Faith

The legal responsibility for ultimate faithfulness and loyalty amongst people or toward one another is termed as Fiduciary. It relates to the principle stating that fidelity and good faith are the main duties every master deserves from their agents and servants. One owing to the duties comes out of a court of equity imposing obligations of fidelity and good faith as matters of conscience or from contractual laws. Basically, Fiduciary goes hand in hand with the term trustee as one form of fiduciary relationship.

Powers belonging to a fiduciary also belong to another person. In order to benefit from the benefits of the beneficiary, the fiduciary has to exercise certain rights to the latter. He or she must never let any personal conflict of interest determine their decision-making, relationships and responsibilities to the beneficiaries and instead should practice high levels of goodwill and care in promoting or protecting the interests of the other. It is forbidden to practice many forms of permissible behaviours when it comes to observing the ties pertaining to fiduciary. The fiduciary duties are effective not to trustees for clients, solicitors, agents and principals. In the past years, the bone of contention as to whether a specific relationship is subjected to fiduciary duties and commitments can be handled by looking into the forms of relationships that had similar scenarios. The beneficiary might highly or uniquely be vulnerable or rather at the mercy of the fiduciary having the control of the power and discretion; he can have the scope to excusing power, and the fiduciary can unilaterally use the discretion bestowed upon them to interfere with the beneficiary's practical or legal interests as evident in the fiduciary obligation.

Fiduciary duties bestow the most responsibility to the parties that hold the duties of the fiduciary. It also acts altruistically in that the main gain is the beneficiary to the detriment of the fiduciary. Despite the faults, the fiduciary obligations must always give some outcome to the vulnerable parties. Guarantors are not fiduciaries because they never breach their duties by not obtaining the desired outcomes for the beneficiary. A schism has been observed between Canada and Australia following the fiduciary obligation, and both have divergent options or views on the matter. The courts in Canada widely use the principle of allocating liabilities in parts that are traditionally deemed as contract law, as well as the province of tort. On the other hand, Australia experiences fewer fiduciary cases as the courts have been utilizing the doctrine of unconscionability and turning the provisions of the Trade Practice Act. The doctrine of unconscionability and fiduciary principle gives diverging sets of

standards of protective liability.

Professional Relationships and the Scope of Fiduciary Obligation

Union officials, physicians, psychiatrists, and the majority of minority shareholders comprise the additional fiduciary class in the United States. The same fiduciary principle is considered proscriptive in Australia. This means that the connotation of positive duties on the part of the beneficiary and the fiduciary is not incorporated into the fiduciary principle. The main concern is the maintaining of loyalty, which comes to work when fiduciaries seek personal gains by improperly taking advantage of the relationship. Loyalty and fiduciary have some close relationships, as identified by many commentators. The concept of unequal bargaining and undue influence can be linked to the fiduciary principle because they are designed to protect vulnerable parties while transacting with others who might take advantage of the relationship. On the other hand, undue influence sheds more light on unconscionable appearances and the sufficiency of consent. Basically, the fiduciary obligation helps in monitoring the wrong use of loyalty.

Equity subjects are centered on fiduciary principle because the loyalty involved. Fiduciary fights against improper gain and conflict of interest. When situations causing conflicts between improper gain and personal interest are to be avoided, a duty is imposed on fiduciaries, thus reflecting the strictness of the rule in both cases and showing a possibility of conflict that must be shunned. In spite of the indications that courts put into making these laws flexible, the results of obtaining still give the notion that the transparency of the fiduciary is still an incomplete defence. (*Bristol and West Building Society v Mothew*, 1996) Where conflicts of personal interest exist, or there is a possibility of a significant conflict with duty or loyalty that one has partaken, the fiduciary will be deemed liable to account for the principal of gains or any benefits received or obtained. The jurisdictions by which these rules are found, and Lord Herschell states that it is very inflexible of the Court of Equity when one in a fiduciary takes advantage of a situation or relationship by positioning their interest first and making profits for themselves. The rules never appear to him to be founded upon the societal principle of morality, and therefore, he regards the rules to be suited to human nature and can change over time. It is dangerous when a person holding a fiduciary gets moved to satisfy their own interest, thus prejudicing the persons they should be protecting.

The fiduciary is bound to take actions in the interest of the beneficiaries, and that explains the main juxtaposing characteristics of the fiduciary relationship, which is complete loyalty to securing the beneficiaries' interest other than that of the fiduciary. Thus, when a conflict of interest comes up, it is an ultimate breach of fiduciary duties. The purpose of a fiduciary in a relationship is to secure only the interests of the beneficiary but not their own. The fiduciary principle when used or demonstrated to maintain the integrity, utility, and credibility of the persons in the relationship, hence protecting the interest of the society. The valuable societal, personal, and economic interests are protected by this

law. In order to maintain utility and integrity of the relationships which the roles of a party is somehow perceived to be in the service of the other then we have to insist upon a fine loyalty in that particular service.

Loyalty, Conflict of Interest, and the Protection of Beneficiaries

The distinguishing factor of loyalty can be discerned in the case where the relationship is considered to be fiduciary in nature, and the placing interests of the loyalty of the fiduciary can be ensured. There is no doubt that in Australia, as well as Canada, loyalty and its associated notions of confidence and trust are the foundations of the fiduciary principle. Another foundation that contours the principle currently appears to be marked differently in each of the jurisdictions. We are left wondering where, how, and why the courts in each jurisdiction became divergent.

Unlike in the United States and Canada, in recent years, Australia has encountered a burgeoning of fiduciary cases. The courts, in general, have shown no obvious inclination to broaden the fiduciary principle and obligation. There has appeared to be a notable decrease in the number of cases whereby a breach of fiduciary obligation has been handled outside the stipulated categories. To be specific, since 1990, there have been no successful cases of fiduciary duty breach. The cases in which the fiduciary principle relies on the Australian courts always indicated a reluctance to widen the traditional stipulated fiduciary obligations. Moreover, any reliance on vulnerability is a key indication that fiduciaries are lacking in Australian case law. The imposition of a duty of ultimate good faith has been seen by the Court as clearly inappropriate in light of the earlier cases in which a doctor is in a duty of care to treat his or her patients with reasonable integrity and skills. The Court denies that the fiduciary obligation should be applied in an expensive way so that it can act as a supplement to tort law and aid in providing a basis for creating new forms of civil wrongs. In accordance with this, all the members of the Courts reiterated that the fiduciary principle in Australia is only deemed proscriptive. The High Court seemed so determined to maintain a sharp distinction between fiduciary law and tort law whereby an abuse of loyalty is not an issue and no conflict has occurred in any action that must be necessarily founded in breach of contract or in negligence.

The courts on the doctrine of unconscionability have increasingly been reliant in the last decades rather than increasing in the actions based on breach of fiduciary duty. As Mason CJ recently noted in the Courts, imposition of a remedial constructive trust is available for actions for both breach of unconscionable conduct and breach of confidence, taking pressure off the fiduciary relationship as the [passport to the proprietary relief and therefore having focused attention on other equitable doctrines. Also, the enacted Trade Practices Act was amended by inserting the IVA, entitled with the Unconscionable Conduct Section 51AA, which essentially codifies the common law while, on the other hand, s51AB extends the common law notion of unconscionability though it is linked in context to the supply of goods and services. Of most importance is the effect of s52 of the Trade Practices Act, and

arguably, it is becoming the most rapidly persuasive law in Australia. The core centre of attraction of using the Trade Practices Act rather than equitable actions or common law, for instance, that of breach of the law of fiduciary duty, lies in the wide array of available remedies. (American Law Institute, 2006) The Trade Act is used mostly in circumstances that are misinterpreted, thereby providing a concise route to finding liabilities rather than arguing that the bank is standing as fiduciary to the customers. Additionally, in Australia, actions based on negligence or misstatements can be available.

Directors' Duties Under the Corporations Act

In s9 of the Corporations Act, 2001, a person is validly appointed as the director, and even though not validly appointed, for simplicity purposes, a director will be used. The Corporation Act 2001 has four main duties for directors. Diligence and Care are the first duties. The duty requires directors to act with high degrees of care and intelligence with a reasonable person, and the same is applied in common law.

Insolvent trading stipulates that directors have the duty to ensure that the company does not trade while insolvent or when suspected to be insolvent. Financial information, on the other hand, gives the directors the mandate to take reasonable steps in ensuring compliance with the obligations of the Corporation Act 2001, which relates to keeping the recording of financial reports.

The Act encourages the disclosing of matters pertaining to the company affairs in which they have a personal interest. Further, it encourages shareholder approval for public companies' related party transactions. Also, the director's market interest is disclosed. For the companies listed, there is a continuous disclosure of the available market information, which may affect the company's share price value. A breach of duty comes out when a company enters a risky transaction without a prospect of making a profit or when a manager does not inform the board of the investments. The business judgment rule can aid in the safe harbour of the situation of the directors in relation to claiming a breach of diligence and care.

Good Faith, Corporate Purpose, and Ethical Governance

The good faith principle requires a director to act in the best way to uphold the company's interests and purpose. This includes revealing and managing the conflicts within, thus ensuring transparency, fidelity, and trust, commonly known as a fiduciary duty, which is imposed by common law and duty required in the Corporation Act 2001.

Breaching directors' duties laws leads to numerous. First off, criminal sanctions are extreme penalties for failure to comply with the duties and laws of the corporation and the other laws guiding the

companies' activities. For instance, in a cartel, conduct under competition law can lead to 10 years of imprisonment or high fines. It is illegal for a corporation to indemnify its officers against all costs or any financial penalties. This can be considered to be in line with the good faith duties and is deemed as dishonesty and recklessness and thus can attract a 5-year imprisonment. Civil sanctions stipulate in the Corporations Act that directors are liable to substantial fines. Shareholders, in turn, can take action against directors who fail to comply with duties. Australian Securities and Investments Commission (ASIC) and courts have the power to disqualify directors for long periods of time for failure to comply with their duties under the Corporations Act.

References

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