

The characteristics of fiduciary relationship law equity essay

Law



**ASSIGN
BUSTER**

Introduction Agency is normally described as a " fiduciary relationship which exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation"[1]. This description brings out a distinctive trait of agency that an agent is treated as a fiduciary and hence owes fiduciary obligations to his principal. Although there is a dictum which appears to suggest that an agent's duties are " dependent upon the terms of the contract"[2]between the agent and principal, it is well established that the notion of fiduciary obligation stems from equity and is independent of contract. It is submitted that the fiduciary character of agency has important consequences. Firstly, the imposition of fiduciary duties on an agent regulates his conduct as it imposes a high standard of conduct on him. Essentially, it serves to deter him from engaging in mischievous conduct which may be " opportunistic or self-serving"[3]. It is vital to discourage an agent, who has undertaken to act in the interests of the principal, from misusing his position to the detriment of his principal's interests. Secondly, the fiduciary character of agency has repercussions on the range of remedies available to the principal. A successful claim for a breach of fiduciary duty will give rise to equitable remedies such as an account of profits. In certain cases, this may be advantageous for the claimant as the profits may be substantially higher than his loss caused by the breach of fiduciary duty. Characteristics of Fiduciary Relationship Company directors, trustees, solicitors and agents are clear examples of positions that attract fiduciary obligations. Despite the existence of such examples, it has been

argued that the concept of a fiduciary relationship is elusive of definition. Support for this assertion may be found in *Hospital Products Ltd v United States Surgical Corporation*[4] where Dawson J stated that "no satisfactory, single test has emerged which will serve to identify a relationship which is fiduciary"[5]. For this reason, the term fiduciary has been described as "one of the most ill-defined...terms in our law"[6]. Nonetheless, judges have attempted to describe in general terms what constitutes a fiduciary relationship. Lord Millett in *Bristol and West Building Society v Mathew*[7] identified a fiduciary to be "someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence"[8]. It is submitted that the above definition illustrates some of the necessary characteristics needed to identify a fiduciary relationship. Firstly, for a person to be a fiduciary, he must have undertaken to advance the interests of another. Where such a position has been assumed by one party to any legal relationship then that party's position is potentially a fiduciary one[9]. The position of an agent to the relationship exists for the benefit of the principal. Therefore, an agent is a fiduciary. Secondly, it appears that the presence of a power to alter the principal's legal position is a characteristic which should signify a fiduciary relationship. Millet LJ pointed out that fiduciary relationships are often referred to as relationships of trust and confidence. This seems to suggest that fiduciary obligations attach to the position of trust in which a person has been placed. Agents are placed in a position of trust by being empowered to act for and to alter the legal relations of the principal. By virtue of this trust, agents may be entrusted with assets that belong to the principal. It is

arguable that where an agent is trusted with power, the agent has the autonomy to exercise it to the detriment of the principal. For example, an agent may accept bribes or purchase property from his principal at an undervalue because material information is withheld. Such conduct is inconsistent with the agent's undertaking to act for the benefit of the principal. Therefore, in circumstances where an agent has the power to alter his principal's legal position, it seems appropriate for Equity to intervene and supervise the relationship by holding the agent to the fiduciary's strict standard of conduct. Thus, the fiduciary obligation is a necessary feature of the agency relationship to control the manner in which an agent deals with and exercises his power[10].

Scope of Fiduciary Duties

General Obligation of Loyalty

Millett LJ in *Mathew* explained that: "[t]he distinguishing obligation of a fiduciary is the obligation of loyalty. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict..."[11]

From the foregoing, it may be seen that there is a general obligation on an agent, as a fiduciary, to act for the benefit of his principal. The fiduciary doctrine is not comprised merely of a single and simply duty to be loyal. Rather, there are several specific duties under the umbrella of the general obligation of loyalty, such as the duty to avoid conflict of interests and the duty to avoid making unauthorised profits. These are supplemental duties which reinforce the general obligation of loyalty[12]. These fiduciary rules are "founded upon the highest and truest principles of morality"[13]. They are construed broadly and operate strictly in favour of the principal. A fiduciary is capable of committing a breach of fiduciary duty even though he

acted honestly and in good faith[14]. Therefore, it is probably easier for the principal to prove that there has been a breach of fiduciary duty than a breach of contract or tort. Conflict of Duty and Interest An agent must not, except with the informed consent of the principal to whom he owes fiduciary duties, " put himself in a position where his duty and interest conflict"[15]. It is expected that the agent will act bona fide for the principal's benefit and not misuse his position to further his own interests. Recently, Jacob LJ in *Imageview Management Ltd v Jack*[16] reiterated and stressed the importance of the no-conflict duty. In this case, a football agent undertook to find the defendant employment with a United Kingdom (UK) club and to " use its reasonable endeavours to promote the [defendant] and act in his best interests"[17]. The agent entered into an agreement with Dundee United and the agent was paid a £3, 000 fee to secure a work permit for the defendant. The side deal to obtain the work permit was not disclosed to the defendant. The defendant stopped paying the agency fee to the agent when he found out about the work permit contract. The claimant brought a claim against the defendant to seek payment for the unpaid agency fees. Jacob LJ emphasised that the " law imposes on agents high standards"[18] and that an " agent's own personal interests come entirely second to the interest of his client"[19]. As a result, the Court of Appeal held that in making the side deal with Dundee United, the agent allowed a conflict to arise between duty and interest. The agent had acted in breach of the fiduciary duty which he owed to the defendant. The football agent could have avoided a breach of duty by making a full disclosure of the work permit contract to the defendant. Therefore, the defendant was entitled to the return of commission he had

paid the agent under their agency agreement. Furthermore, the agent had to account for the £3, 000 made as a result of the side deal and his right to remuneration was forfeited. This case further reiterates the point that even though the agent's breach of duty did not cause the principal to suffer any loss, the law is "concerned not with merely damages such as those for a tort or breach of contract but with what the remedy should be when the agent has betrayed the trust reposed in him - notion of equity and conscience are brought into play"[20]. Therefore, the no-conflict rule is applied strictly to serve as a "real deterrent to betrayal"[21]. There is a tendency for courts to scrutinise transactions between agent and principal. Any such transaction will be closely scrutinised by the court to ensure the agent has not used his fiduciary position to secure an advantage inconsistent with the duty to avoid a conflict of interest. The case of *McPherson v Watt*[22] illustrates the point that an agent cannot purchase the property he is engaged to sell on his principal's behalf without full disclosure of all the facts to the principal. The defendant, a solicitor, acted as an agent for two ladies who wished to sell their house. The defendant purchased the property in the name of his brother so as to conceal the fact that he was purchasing the property for himself. The House of Lords held that the defendant had breached his fiduciary duty when he allowed a conflict of duty and interest to exist and failed to make a full disclosure of his interest to his principal. Therefore, it was inappropriate to order specific performance of the contract of sale. This rule is applied to sub-agents who may themselves be fiduciaries. In *De Busshe v Alt*[23], a sub-agent was appointed to sell a steamship at a certain price. The sub-agent was unable to sell the ship at that price and purchased

the ship himself at that price. He then sold the ship to a Japanese prince at a higher price and made a profit from the transaction without the principal's consent. The court held that the sub-agent was liable to account for the secret profit. Although it was held in *Balsamo v Medici*[24] that the sub-agent was not liable to account to the principal, it is submitted that *De Busshe* can be distinguished on the grounds of there being a contractual privity between the principal and the sub-agent[25]. In *De Busshe*, the principal had consented to the delegation by his agent to the sub-agent to sell the steamship. Therefore, this was a valid delegation and there was a privity of contract between the principal and the sub-agent. Consequently, that sub-agent owed normal duties of an agent and was liable to account to the principal for the secret profit. An agent may not sell his own property to his principal without full disclosure of all material facts. In the case of *Lucifero v Castel*[26], the agent was instructed to purchase a yacht for the principal. Instead, he purchased the yacht for himself and resold it to the principal at a profit. This was concealed from the principal. The agent was held liable to account for the profit made as a result of placing himself in a position of conflicting interests. If the agent fails to make full disclosure, the principal has a choice of remedies. The principal may rescind the contract and this generally one of the primary remedies. On avoidance of the transaction, the principal is entitled, as a general rule, to an account of the profits. Where the right to rescission is lost as where *restitutio in integrum* is impossible or where the principal does not wish to rescind the contract, the principal may claim equitable compensation under the principle of *Nocton v Ashburton*[27] for any loss suffered. Where the agent has purchased the

principal's property, the latter can claim any profit on a resale or the difference between the price paid by the agent and the value of the property. Furthermore, the agent's right to commission must be forfeited as he has committed a repudiatory breach of his contract of agency. There is authority which suggests that the court may impose a constructive trust over property purchased by an agent in breach of fiduciary duty even if the agent has not made a profit from that transaction. In *Soulos v Korkontzilas*[28], the defendant was an estate agent acting for the claimant. The claimant instructed the defendant to purchase an estate in a building. The vendor advised the defendant that it would accept \$260, 000. The defendant failed to disclose this fact to the claimant and purchased the property for himself. The claimant sought a declaration that the defendant held the estate on constructive trust for the claimant and, to do equity, offered to pay the purchase price and to reimburse the defendant any operating losses suffered in the interim. The claimant's claim was upheld. While emphasising the importance of the deterrence function of fiduciary duties, McLachlin J asserted that " courts of equity have always been concerned to keep the person who acts on behalf of other to his ethical mark"[29]. As a result, Her Honour was of the view that " if real estate agents are permitted to retain properties which they acquire for themselves in breach of a duty of loyalty to their clients...the trust and confidence which underpins the institution of real estate brokerage will be undermined"[30]. Nevertheless, it is arguable that the issue of whether personal or proprietary orders should be available to take away an agent's wrongful gains was inadequately addressed by the court[31]. There has been considerable controversy whether it is appropriate

for the agent to hold such gains on constructive trust for the principal. One argument, drawing strength from *Lister v Stubbs*[32], is that personal orders are appropriate. On the other hand, *Attorney-General for Hong Kong v Reid*[33] is authority for the proposition that a breach of a fiduciary duty should allow the principal to claim a trust over the agent's gains. The dissenting judge, Sopinka J did not address the possibility of a personal order. Instead, his Lordship held that the constructive trust is "only available as a response to subtractive unjust enrichment and not as a means of taking away the gains of wrongdoing"[34]. This seems to suggest that the claimant is not entitled to any remedy unless he has suffered a loss. It is submitted that this does not sit well with the well-established principles of equity.

Conflict of Duty and DutyThe no-conflict duty also operates to prevent an agent from acting for two or more principals in the same transaction. This rule serves to ensure that the fiduciary's loyalty is undivided. Therefore, in *North & South Trust Co v Berkeley*[35], Donaldson J emphasised that: "[f]ully informed consent apart, an agent cannot lawfully place himself in a position in which he owes a duty to another which is inconsistent with his duty to his principal... "[36]. In such situations, the agent may not act entirely in the interests of either principal. Furthermore, the agent may cause loss to one principal by failing to disclose information acquired in connection with the other principal since the disclosure of such information would be a breach of duty to the first principal. Therefore, where an agent acts for two different principals in the same transaction without their informed consent he is automatically in breach of the rule[37]. The general principle is relaxed where estate agents are concerned where they may be acting for more than

one principal who may have conflicting interests. An estate agent is under a duty to secure the best price for the principal's property. Thus, the agent's duty of confidentiality owed to one principal is in direct competition with the duty to disclose material facts for the benefit of his other principal. In *Kelly v Cooper*[38], the claimant instructed the defendants, a firm of estate agents to sell his house. The defendants were also instructed by the owner of an adjacent house to sell that house. A prospective purchaser approached the defendants and offered to buy both houses. Without informing the claimant of the agreement to buy the adjacent house, the defendants sold both houses to the purchaser. The claimant discovered this and brought proceedings against the defendants claiming damages for breach of their duty in withholding material information and placing themselves in a position where their duties and interests conflicted. The Privy Council (PC) held that estate agents had to be free to act for several competing principals otherwise they would not be able to fulfil their functions. Therefore, a term had to be implied into contracts with such agents that they were entitled to act for other principals selling competing property and that they were to keep confidential information obtained from each of the principals[39]. The defendants were not in breach of their duty in failing to inform the claimant of the agreement to buy the adjacent house and their financial interest in that sale did not give rise to a breach of fiduciary duty. The facts of *Kelly* involved the agent in a conflict of duties owed to separate principals. The PC distinguished *Kelly* from cases such as *Berkeley* where agents act for separate yet competing principals in the same transaction. Therefore, the PC's decision essentially suggests that "unrelated agencies were to be kept

in water-tight compartments"[40]. It is submitted that this causes certain difficulties. It is arguable that where a conflict arises between competing principals and the agent continues to act for both, he will breach his duties to one or the other unless he makes a full disclosure of the facts to his principal. Therefore, the defendant in Kelly should have sought the consent of both principals before carrying out the transactions. In the absence of dual consent, it is submitted that the defendant should have terminated at least one of the agencies. As Smith has rightly concluded, " it is ironic that divided loyalties were sanctioned under the aegis of fiduciary obligation". The principal has a choice of several remedies where there has been a breach of the duty-duty rule. It seems that any affected transaction is likely to be rescindable at the innocent principal's behest as against the other party who was aware of the double employment[41]. Both principals are unable to avoid a contract effected between them if they are unaware of the double employment as " both have been victims of [the agent's] wrongdoing"[42]. Therefore, " neither should have the right to undo the transaction against the wishes of the other"[43]. The respective principals will be entitled to equitable compensation for any loss suffered as a result of the agent's breach of fiduciary duty[44]. Finn noted that " the fiduciary's breach of duty will often be simply a technical one with the consequence that the aggrieved [principal] will not be able to show that he has suffered more than nominal damage"[45]. Therefore, both principals have the right to refuse the agent his fees or commission where each is unaware of the double employment[46]. However, the principal can lose the right if he discovers the double employment and acquiesces in it[47]. If only one of the principals is

unaware of the double employment, any fees received by the agent from the other principal constitute a secret profit and can be recovered by the first principal. Furthermore, the agent's right to fees will be forfeited[48].

Confidential Information The broad principle of equity is that an agent " who has received information in confidence shall not take unfair advantage of it. He must not make use of it to the prejudice of him who gave it without obtaining his consent"[49]. This duty arises whenever information is imparted by the principal to the agent in confidence. In *Phipps v Boardman*[50], it was suggested that this duty may be explained on the basis that such information is property[51]. However, " the most sterile of the debates which have arisen around the subject of information received in confidence is whether or not such information should be classified as property"[52]. The information and the circumstances of communication must possess certain characteristics before protection is given. Furthermore, " if only some information is described as property...to call that information property is merely to add yet another consequence to a decision taken for reasons quite unrelated to property considerations"[53]. This duty depends on whether the agent's position was such that it gave him access to special information which he would otherwise not have obtained. Thus, in *Nordisk Insulinlaboratorium v CL Bencard Ltd*[54], the claimant's stock of insulin was seized and sold to the defendants who acted as the claimant's agents before the war. The defendants resold the stock at a profit. The court held that the agency had terminated before the stock was sold to the defendants and they had not acquired any special knowledge about the stock before or after termination of the agency. They were not aware of the method of making

insulin which was the claimant's business. Consequently, the defendants did not have to account for the profit made. It is suggested that the agent's scope of responsibility in this area has been broadened by the decision in Phipps. In this case, it was held that the information gained by the agent, while acting as solicitor for the principals, was property belonging to the principal. Thus, any profit made from the use of such information belonged to the principal notwithstanding that the agent had been acting bona fide throughout and that the principal had refused to use the information for his own benefit. It is arguable that the decision may be viewed as "harsh and restrictive"[55] as it seems to suggest that the opportunity to make a profit is sufficient to hold an agent liable to account for such profit. In terms of remedies, the principal may seek an injunction to restrain the agent from making any further use of the information[56]. An agent will be liable to account for the profits made where confidential information has been misused. The principal may sue for damages for breach of contract. It has been suggested that in the absence of a contractual action, damages may be awarded in equity. Damages may be assessed on the basis of the price which the owner would have charged for the information[57].

Bribes and Secret Commissions

An agent who takes a bribe or receives a secret commission from any third party who deals with his principal will be in breach of his fiduciary duty to that principal. The agent will be jointly and severally liable along with the briber to the principal for the sum of the bribe or secret commission. An agent who receives a bribe may also incur criminal liability[58]. A well-known definition of bribe was formulated by Slade J in *Industries & General Mortgage Co Ltd v Lewis*[59]: "A bribe means the

payment of a secret commission, which only means that the person making the payment makes it to the agent of the other person with whom he is dealing; that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent"[60].

The objection to such bribes lies in their corrupting tendency as it encourages an agent not to perform faithfully his duty to his principal.

Therefore, once it has been established that a bribe has been given, the court will not inquire proof of corrupt motive. The courts will "presume in favour of the principal and as against the briber and the [agent] bribed, that the [agent] was influenced by the bribe; and this presumption is irrebutable"[61]. The principal has various remedies open to him when he discovers that the agent has been bribed. Where the bribe was given in connection with a contract between the principal and the briber, the principal is entitled to rescind that contract, provided that restitution in integrum is still possible. The position was stated by Millett LJ in *Logicrose Ltd v Southend United FC Ltd*[62] where "it is well established that a principal who discovers that his agent in a transaction has obtained or arranged to obtain a bribe or secret commission from the other party to the transaction is entitled...to elect to rescind the transaction ab initio or, if it is too late to rescind, to bring it to an end for the future"[63]. An agent who takes a bribe or secret commission may also forfeit his right to commission or remuneration that he would have otherwise received. As a result of the agent committing a repudiatory breach of his contract of agency, the

principal may elect to terminate the agency[64]. The principal may recover from the agent and the briber, jointly or severally, damages for fraud. It had been held that a principal could obtain from his corrupt agent the amount of the bribe he had accepted since this was a 'secret profit'. He could also sue the agent and the person giving the agent the bribe, jointly and severally, to compensate the principal for any loss or damage resulting to him from the agent's acceptance of the bribe. Such liability existed cumulatively with the agent's liability to account for the bribe. However, the PC in *Mahesan s/o Thambiah v Malaysia Government Officers' Cooperative Housing Society Ltd*[65] decided that the principal had alternative, not cumulative, remedies of (a) claiming the amount of the bribe from the agent, as money had and received by the agent and (b) suing for damages for fraud in respect of the actual loss sustained by the principal in consequence of his entering the transaction in relation to which the bribe had been given[66]. Effect of this decision is that a principal is unable to recover both the amount of bribe and its loss caused by the agent's fraudulent conduct, but has to elect between them although such election did not have to be made until the time for entry of judgment in the principal's favour. Judgment has been criticised on a number of grounds. Firstly, in reaching this decision, the PC relied on the decision of the HOL in *United Australia Ltd v Barclays Bank Ltd*[67]. It was held in this case that where the same facts gave rise to two causes of action against a defendant, one for damages for an action in tort and the other based upon money had and received, the claimant must elect between these two remedies although the election is not final until judgment is satisfied. Tettenborn disapproves of the decision reached in *Mahesan*[68]. He argues

that the United Australia case concerned a waiver of tort, which was not in issue in Mahesan. Thus, it was inappropriate to extend the principle in United Australia to every case where a claimant has two causes of action, one in tort and the other in quasi-contract, he must always elect between the two. Secondly, it is suggested that the PC's decision is a sound one as it "precludes double recovery in respect of the same 'wrong', loss or damage"[69]. Furthermore, Fridman is of the view that the agent was liable for the bribe and the society's loss because the society was unable to sue M. In other situations, it is more probable that the principal will pursue different remedies against different parties to corruption. Although this appears to be a strong argument, it is submitted that the decision in Mahesan could not be justified on policy grounds. The PC argued that if they had allowed the respondents to recover both the bribe and the loss they had suffered, the respondents would receive an undeserved windfall. However, it is well established that a principal can recover unauthorised profits made by an agent even though he gains a windfall as established in the Phipps case. Arguably, this is necessary to discourage bribery and the "interests in discouraging secret profits override the interests in preventing people from getting undeserved windfalls"[70]. Therefore, the respondents should have succeeded in their claims in tort and restitution. Essentially, the effect of the decision in Mahesan narrows the remedies available to the principal and it is submitted that this is an unsatisfactory outcome as "subsequent developments in the law of bribed agents...have tended in the direction of recognising a deterrent...policy in the law which Mahesan impliedly repudiates"[71]. The principal may seek restitution from the agent. In this

situation, " the principal whose agent has received a bribe from the other party to the transaction is entitled to recover the amount of the bribe from the agent whether he affirms or repudiates the transaction itself"[72]. There has been considerable controversy whether equity will require the agent to hold such gains on constructive trust for the principal. *Lister v Stubbs*[73] is authority for the proposition that where a fiduciary receives a bribe or secret commission, he does not hold it on trust for his principal. The relationship between them is that of debtor and creditor, not trustee and beneficiary. Effect of the decision was that the fiduciary was the owner at law of the bribe or other property received by him in breach of duty the principal had no claim in equity to the proceeds of the bribe but merely a personal claim to its recovery from the fiduciary. However, in 1994, the Privy Council in *Attorney-General for Hongkong v Reid*[74] declined to follow *Lister* and held that a fiduciary who receives a bribe holds it in trust for his principal. Lord Templeman asserted that *Lister* "...is not consistent with the principles that a fiduciary must not be allowed to benefit from his own breach of duty"[75]. The Privy Council asserted that if a bribe consists of property that increases in value or is a cash bribe invested advantageously, the agent will benefit from the breach unless he is accountable not only for the original amount or value of the bribe but also for the increased value of the property or money representing it. Thus, in equity, the subject-matter of the bribe becomes the property of the principal as it is unconscionable for the fiduciary to benefit from his own breach of duty. This has strengthened " the position of the principal in making restitutionary claims against the bribed agent"[76]. It seems that the prevailing view in English law is now that the remedy is

personal and not proprietary. Recently in *Sinclair Investments (UK) Ltd v. Versailles Trade Finance Group Plc*^[77] the COA held that in most cases there will only be a personal liability to account. It held that the principal is not entitled to a proprietary remedy " unless the [bribe] is or has been the beneficially the property of the [principal] or the [agent] acquired it by taking advantage of an opportunity which was properly that of the [principal]"^[78]. One of the advantages of a proprietary remedy is that the principal " is entitled to recover the bribe or its proceeds in priority to the agent's other creditors"^[79]. However, proponents of the personal remedy argue that there is no reason why innocent creditors of an agent should be ousted by an earlier proprietary interest of which the creditors could not have had notice. A proprietary remedy should only be available where the claimant's property has been misapplied. In cases of bribery, the agent receives the money from a 3rd party and not from the principal. Consequently, the principal does not have a proprietary basis for the claim. Therefore, it is argued that the personal remedy is " sufficient to vindicate the policy against bribery"^[80]. However, it is submitted that a stronger case can be made for a proprietary remedy. Firstly, the fiduciary's duty not to profit from his position is policy driven. The function of such a duty is to deter the fiduciary from being swayed by personal interests rather than duty. Thus, a breach of duty requires the fiduciary to " disgorge the profit he has made, and to be effective the disgorgement must in full"^[81]. In cases where the agent has received a bribe and invested in property or shares, he should not be allowed to retain the profit made by investing the money as it does not implement the policy of law. This may result in the principal receiving a windfall but it is

submitted that this is better than the fiduciary retaining the profit. Full disgorgement aids in enforcing the fiduciary's obligation to make the profit for the principal and not for himself. Secondly, the concern for the creditors where the agent has become insolvent is misconceived. It is strongly argued that the creditors have no legitimate claim to the bribe since it was never meant to be the agent's property. Middle Ground? Conclusion It may be seen that the fiduciary character of agency has important repercussions. The imposition of the obligation of loyalty on the agent ensures that the integrity of the trusting relationship between the principal and the agent is not bruised. As a fiduciary, the agent is subject to a strict standard of conduct. The remedies that flow from the breach of a fiduciary duty are significant for the agent, principal and third parties. An agent may be called upon to account for any profit made in breach of a fiduciary duty as the wrongdoing is "treated in a punitive, rather than compensatory manner". In the event a constructive trust is ordered by the court, it may be detrimental for third parties if the agent is insolvent. Nevertheless, it is submitted that "these consequences are explicable and justifiable on the basis of the higher standard expected of the fiduciary, and flow logically from it".