

# The modern concept of trust law equity essay

Law



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A Trustee does indeed owe elaborate duties to the beneficiaries of a Trust, they are not limited to those listed above, some duties are common to all fiduciary relationships and some are particular to a Trust relationship, the Courts have found that the extents of the duties will also vary according to the type of fiduciary relationship, and so the extents of those duties will also need to be considered in the context of a Trust Relationship. To consider the question and nature of the duties alluded to, it is first helpful to consider the legal meaning of the key terms in the question posed; i. e.

## **Trust**

Precise definition of the modern concept of 'Trust' has caused many difficulties for writers on the subject mainly because of the wide variety of situations in which it has come to be applied[1], Perhaps the most comprehensive definition and one approved of in Snell's Equity is that suggested by Keeton and Sheridan as follows;" A trust is a relationship which arises wherever a person (called the Trustee) is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of persons (of whom he may be one and who are termed beneficiaries) or for some object permitted by law, in such a way that the real benefit accrues, not to the Trustee, but to the beneficiaries or other objects of the Trusts".[2]There are several ways in which Trusts can be classified, for example, by the manner of their creation, by virtue of their objects which they seek to benefit or the nature of the duties which they impose on the trustee, this has resulted in many species of Trusts being developed and placed in various legal categories , all have these have their own distinguishing legal features & characteristics and further discussion on

these is beyond the scope of the question posed above, suffice to say that all fall within the definition above and all place certain fiduciary duties on Trustees. Trust Law although originating from the Courts of Equity in response to the sometimes harsh result of strict application of the common law, and as a result of tax avoidance schemes of the feudal system (Uses) , is now governed in Ireland by a variety of legislation.[i]3

## **Fiduciary**

Although, as will be seen below, a precise definition is not possible, a fiduciary relationship has been described, in broad terms, as:—one in which a person undertakes to act on behalf of or for the benefit of another, often as an intermediary with a discretion or power which affects the interest of the other who depends on the fiduciary for information and advice.[4]The concept of ‘ fiduciary relationships’ is arguably one of the most important to have arisen from the courts of equity. Although much has been written on the nature and scope of fiduciary relationships, a precise definition of the term ‘fiduciary’ has proved elusive.[5]Finn has described the term ‘fiduciary’ as one of the most ill-defined, if not altogether misleading terms in our law[6]. Although there have been attempts at providing a definition[7], courts and commentators have concluded that the term defies definition[8]and some have gone even further and argued that attempts at a definition are unwise or inappropriate.[9]Shepherd concluded that a fiduciary relationship exists whenever any person receives a power of any type on condition that he also receive with it a duty to utilise that power in the best interests of another, and the recipient of the power uses that power.[10]

## **Trustee**

Is the person [natural or legal] appointed to the Trust to give effect to the words creating the Trust on the subject matter of the Trust, for the benefit of the objects of the Trust.

## **Beneficiaries**

is the person or persons who are entitled to the benefit of any trust arrangement..

## **Obligations & Duties.**

It is well established that a trustee stands in a fiduciary relationship to the beneficiaries of the trust.[11]The relationship between trustees and beneficiaries is generally viewed as the archetype of a fiduciary relationship[12], other examples of recognised fiduciary relationships include company directors and their company[13], principals and their agent[14]and solicitors and their client[15]. Furthermore, fiduciary duties are the cornerstone of the relationship between trustees and beneficiaries. Not only is a trustee subject to the specific obligations imposed by the terms of the trust instrument, the fiduciary position of a trustee subjects him to onerous negative obligations in equity which are discussed further below.[16]Shepard identified two distinct features of all types of fiduciary relationships[17],(a) discretion and power, fiduciaries invariably have discretion or power to act on behalf of or for the benefit of another party[18].(b) Duties and Obligations, which is the feature we are concerned with by the question posed here. The creation of duties arises from the fiduciaries scope to use their discretion and power to the detriment of the interests of the beneficiary. And thus in equity a duty arises to protect the interests of the

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beneficiary[19], the nature and scope of fiduciary duties is not fixed. Fiduciary duties are principles which require flexibility in their interpretation and application. A classic example of this is found in the development of the standard of care required of trustees in exercising their powers of investment. Historically caution and conservatism were held as the cardinal principles in determining whether a trustee had displayed the requisite standard of care[20]. However the standard required has evolved over time to reflect the realities of modern investment and fiduciary decision-making. Consequently, it will now be generally acceptable for a trustee to take a prudent degree of risk in order to generate a greater profit for the trust[21]. The fiduciary concept has perhaps been one of the most judicially active areas of the law, the Courts have found elaborate duties to exist to which a fiduciary should be put on notice, or perhaps more accurately there is one overarching obligation with numerous sub categories of duty which logically follow from the principle. According to Pearce and Stevens, —" the fiduciary position of a trustee subjects him to onerous negative obligations in equity, which are designed to prevent him from abusing his position by acting in his own interests at the expense of the interests of the beneficiary"[22]. the views of Millett LJ in the English case *Bristol and West Building Society v Mothew*[23] provide a useful outline of the principle obligation and its consequences, he stated that the distinguishing obligation of a fiduciary is the obligation of loyalty, that is that the principle is entitled to the single-minded loyalty of his fiduciary , from this obligation flows certain duties which will be considered in more detail below, these are; A Fiduciary must act in good faith. A fiduciary must not make a profit out of his trust. A fiduciary must not place himself in a position where his duty and his interest

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may conflict. A fiduciary may not act for his own benefit or the benefit of a third person without the informed consent of his principal. While these duties are defining characteristics of all fiduciary relationships, their exact scope will vary depending on the particular fiduciary relationship, In *A. G. v Blake* Lord Woolf MR stated: " There is more than one category of fiduciary relationship, and the different categories possess different characteristics and attract different kinds of fiduciary obligations." [24] So it is necessary then to consider the exact scope of the duties listed above in the context of a Trustee relationship, in addition there are other fiduciary duties particular to a Trustee such as; The general duty of care in administering the trust. The duty to take personal responsibility for the administration of the Trust. The duty to treat all beneficiaries fairly. The duty to keep accounts and provide information to the beneficiaries. The duty not to delegate. The duty to distribute. The duty to Invest In the interests of expediency and given the constraints on the word count of this essay I will consider only some of the duties outlined above in more detail as follows;

### **A Fiduciary must act in good faith.'**

As can be discerned from the nature of the word, it has obvious links to the term ' bona fide', It goes hand in hand with the Trustees principle obligation of single minded loyalty, that a Trustee has a duty to act in good faith [25], that is to act honestly and with fidelity in the interests of the beneficiaries, this was considered in the case of *Armitage V Nurse* [26] where Millett LJ that the duty to act in good faith " is the minimum necessary to give substance to the trust", it is thus a fundamental duty without which there would be no substance to the Trust.

### **A fiduciary must not make a profit out of his trust.**

The principle obligation of loyalty operates to reduce the risk of Trustees taking advantage of their position in order to make a personal profit, this issue arose in the case of Keech v Sandford[27] where there was an attempt by the trustee to renew a lease in his own name which had previously been held in trust for an infant, the Court held that there was no question of fraud, but that the rule must be strictly applied even when it appeared that the only person in the world who could not profit from the enterprise was the Trustee, the strict application of this rule has led to seemingly unjust findings in cases, there are however some exceptions to this rule, while generally and at common law a Trustee is not entitled to remuneration for his services, a trustee may gain remuneration for services rendered where there is an express clause in the trust deed, or where it is authorised by statute, by Court direction, or by contract with the beneficiaries. In Dale v IRC[28] it was stated that remuneration for services by the trustee was not repugnant to the fiduciary duty, but that he who has a duty shall not make take any secret remuneration or profit which has not been authorised by law.

### **A fiduciary must not place himself in a position where his duty and his interest may conflict.**

As it can prove difficult to determine the true motives of trustees, equity laid down the strict rule that they must not place themselves in a position where their duty and their own interests or the interests of a third party may conflict, this rule was enunciated in the case of Huntington Copper and Sulphur Co Ltd v Henderson[29]. and also Bray v Ford[30] where Lord Herschell stated ;"—Human nature being what it is there is danger of the

person holding a fiduciary position being swayed by interest rather than duty ... It has therefore been deemed expedient to lay down this positive rule".

### **The general duty of care in administering the trust.**

Trustees owe a duty to the beneficiaries to exercise care in carrying out their functions The standard and scope of this general duty of care is applied to trustees is more rigorous than the standard of care generally applied in the tort of negligence, ie that of the " reasonable person" The demand for the more rigorous standard stems largely from the fact that, traditionally, the trust has been regarded as the highest form of fiduciary relationship.

### **The duty to take personal responsibility for the administration of the Trust.**

Trustees are under a duty to take personal responsibility for administrative decisions, the rationale underpinning this duty stems from the fact that—" the office is viewed as one where confidence is placed in the abilities of the particular individual and it is therefore expected that he should personally look after the interests of the beneficiaries." [31] This duty is complimentary to ' the duty not to delegate' referred to above. However, there are as always exceptions to this rule, such as Section 17 of the Trustee Act 1893, provides that a Trustee may entrust trust funds to professionals such as a Solicitor or banker. Section 24 further provides that a Trustee will be indemnified for any acts or omissions of his fellow trustees, or of bankers, brokers or solicitors with whom money is deposited, unless that Trustee is guilty of wilful default.



### **The duty to treat all beneficiaries fairly.**

As well as their duties to adhere to the terms of the trust instrument, it is well-established that trustees are also under a duty to be impartial in the exercise of their functions. The general principle is that —trustees are bound to hold an even hand among their beneficiaries and not to favour one as against another.[32]

### **The duty to keep accounts and provide information to the beneficiaries.**

Trustees are under a duty to keep —clear and accurate accounts of the trust property and a beneficiary is entitled to inspect these accounts. Furthermore trustees are under a duty to provide beneficiaries with certain information. [33]

### **Conclusion;**

It is clear that a Trustee does indeed owe elaborate duties to the beneficiaries of a Trust, It is thus evident from the range of duties outlined that the office of trustee is an onerous one. Not only may trustees be deemed liable for breach of the duties contained in the trust instrument, they may also be found liable for breach of fiduciary duty. It is also evident that the fundamental principles which underlie all the fiduciary duties of the Trustee as enunciated by the Courts over centuries of precedent, are those of absolute Loyalty, honesty, good faith, which must govern all acts of the Trustee for the benefit of the beneficiaries. The Law Reform Commission considered the fiduciary duties of Trustees and recommended that;" the legislation setting out the powers and duties of trustees should include an

express statement that a trustee, as a fiduciary, must perform the trust honestly and in good faith for the benefit of the beneficiaries." [34] END.