

Chapter 2

Fiduciary Obligations Between Parties to Unincorporated Joint Ventures

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[2.1] Introduction

This chapter considers when and to what extent a fiduciary obligation may arise between the parties to an unincorporated joint venture relationship and the consequences of such an obligation being found to exist.

[2.1.1] Fiduciary relationships and joint venturers

In *Chan v Zacharia*¹ Deane J commented that ‘fiduciary relationships may take a wide variety of forms and may give rise to a wide variety of obligations’.² Although many attempts have been made to define the term fiduciary, it is generally recognised that no satisfactory definition has been formulated.³ Finn has noted that it is better to describe the term fiduciary than to define it, the aim being to identify the essence of the relationship.⁴ A fiduciary can be described as a person who undertakes to act in the interests of another person to the exclusion of his or her own interest.⁵ The categories of fiduciary relationship are not closed. The approach of the courts is to identify the circumstances which indicate the existence of a

1 (1984) 154 CLR 178.

2 *Chan v Zacharia* (1984) 154 CLR 178 at 195 (Deane J). See also *Re Coomber; Coomber v Coomber* [1911] 1 Ch 723 at 728-729 (Fletcher Moulton CJ) and P Finn, *Fiduciary Obligations* (Law Book Co, 1977) at 4, 78.

3 See *Hospital Products v United States Surgical Corporation* (1984) 156 CLR 41 at 67 (Gibbs CJ).

4 P Finn, ‘The Fiduciary Principle’ in T Youdan (ed), *Equity, Fiduciaries and Trusts* (Law Book Co, 1989) at 54.

5 *Hospital Products v United States Surgical Corporation* (1984) 156 CLR 41 at 96-97 (Mason J); *Pilmer v Duke Group Ltd (in liquidation)* (2001) 207 CLR 165 at 197 (McHugh, Gummow, Hayne and Callinan JJ); Finn (1989), op cit, at 54; A Scott, ‘The Fiduciary Principle’ (1949) 37 *Calif LR* 539 at 540; see also Finn (1977), op cit, at 201; M Cope, *Constructive Trusts* (Law Book Co, 1992) at 87.

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