



The Peter Cane Prize for Legal Reasoning by an Aspiring Lawyer, 2024

The Legal Reasoning Prize for 2024 is about fiduciary law. Generally speaking, a fiduciary is a person who undertakes to act in a representative capacity for another. Examples of fiduciary relationships include the relationship between solicitors and clients; directors and companies; co-partners; employees and employers; and agents and the persons for whom they expressly or impliedly agree to act. The essence of fiduciary obligation is a duty of undivided loyalty.

Section 1 of this document contains a hypothetical case. Section 2 contains the applicable law. Section 3 contains the question.

1. Hypothetical case

Aparna (34yrs) and Beth (35yrs) have been close friends since high school and are both avid collectors. Their current obsession is vintage Pokémon cards from the 1990's. Aparna is especially passionate. For the last three years, she has been a member of an exclusive club for Pokémon fans. The club's aim is to facilitate sales of rare Pokémon cards and membership is by invitation only. Beth is not a member of the club. (Aparna thinks of the club as her 'little secret' and she enjoys impressing Beth with rare cards.)

Every year, the club's President organises an exclusive members event. In mid-2023, the President sends an email to all members, including Aparna, inviting them to an exclusive event in London at a secret location. Every member will be eligible to purchase an exclusive set of cards for £500.

Unfortunately, Aparna cannot attend due to work commitments. Distraught, Aparna calls Beth and finally tells her about the club. They have the following conversation by phone:

Aparna: Please can you go to the sale for me? It's tomorrow – normally I get more notice! How about I give you my exclusive membership number for the day? The club won't do any other identification checks. The number is all you'll need to purchase the exclusive cards for me. I'll give you £500 to buy the cards. Also, I'll send you £100 to cover your transport and food. You can keep what you don't spend.

Beth: ...I'll go. I wish I'd been a member myself.

Aparna: I assume that's a yes so I'll transfer the money now. If you'd like, I can also send you a membership invitation from the club's online portal – that way you'll be invited to the next event.

Beth: Better late than never, I guess.

Aparna: Also – I'll keep my phone with me, just in case anything else happens. There's rumours the President will resign soon. I'd be keen to step into his place.

Beth goes down to London the next day. While at the event, the President makes two announcements. First, he is resigning and is looking for someone to replace him. His replacement will be entitled to a one-off signing bonus of £20,000. Secondly, as a thank you to current members, the President's has decided to give all members a 50% discount: he will sell today's exclusive set for £250.

Beth is delighted. She recites Aparna's membership number, and purchases the cards for Aparna for £250. Beth decides to keep the remaining £250, reasoning that letting her keep this money is the least Aparna can do. (After all, hadn't Aparna been a terrible friend in concealing the club for so long? And didn't Aparna say Beth could 'keep what [she] [didn't] spend?')



Beth then gets chatting to the President, telling him about her love of Pokémon. He is impressed. They leave the event and spend the next few hours discussing the role. At the end of the evening, he offers her the presidency. Beth quickly signs the relevant paperwork. The President transfers her £20,000.

The next day, Beth delivers the exclusive cards to Aparna. Aparna is thrilled: ‘*You are the BEST! I’m so sorry for not telling you about the club. I hope you bought yourself something nice with that excess cash*’.

One year later, in 2024, Beth (as President) sends an email to all members about the next members event. Aparna is shocked to see Beth has become President. She quickly calls other members, and pieces together what happened. Aparna and Beth have the following conversation:

Aparna: How could you do this to me? What kind of friend steals £250? I trusted you with my money and my membership number! You knew I wanted to be President – why didn’t you call when you heard about the opportunity? We had a deal.

Beth: What are you talking about? All I agreed was that I would go to the event – and I did. You got exactly what you wanted: exclusive cards worth £500. If you hadn’t just found out about the discount, you’d still be grateful. What did I do wrong? Think of it as commission for my trouble. You said I could keep what I didn’t spend.

Aparna: That’s obviously not what I meant. Besides, you should have called me. You knew I wanted the presidency. But for me, you would not have even known about the event, the presidency position, or the £20,000 signing bonus. You were only there for me. You weren’t a free agent; I only called you because you were my closest friend and I knew you’d understand how important Pokémon is to me. I thought you’d have my best interests at heart, otherwise I’d have never trusted my membership number to you. You can keep the presidency, but that signing bonus is mine. You should pay me the £250, plus the £20,000 signing bonus.

Beth: Don’t be ridiculous. You’re getting nothing. I’ve spent the £250 on a (very) nice dinner, and the £20,000 is currently earning great interest in an investment account. In any event, the opportunity of becoming president was completely outside the scope of whatever you asked me to do. I got the money through charm and my love of Pokémon. I wasn’t even offered the presidency while at the event. You’re just bitter. Move on.

2. Applicable law

Aparna and Beth are unable to resolve their differences. They want to know what rights they may have. For presents purposes, we will assume that their dispute will be resolved under the *Fiduciary Act 2023*.¹ This Act contains the following provisions:

Section 1: Objects of Act

- (1) **(Objects)** The object of this Act is to declare fiduciary law and thereby ensure that persons tasked to represent others loyally perform their representative functions.
- (2) **(Saving)** Subject to this Act, fiduciary law remains in force.

Section 2: Establishing a claim under this Act

- (1) **(Elements)** A person (‘the claimant’) establishes a claim under this section if:
 - (a) **(duty)** another person (‘the defendant’) stands in a fiduciary relationship to the claimant;

¹ This legislation is fictitious.



(b) (**scope**) the fiduciary relationship extends to the defendant's acts or omissions of which the claimant complains; and

(d) (**breach**) the defendant has breached one or more of the defendant's fiduciary obligations.

(2) (**Duty**) For the purpose of this Act:

(a) The defendant will be in a '*fiduciary relationship*' with the claimant if, or insofar as:

(i) (**undertaking**) the defendant expressly or impliedly undertook to perform a function for, or expressly or impliedly assumed a responsibility to, the claimant; and

(ii) (**expectation of loyalty**) on the basis of that undertaking or responsibility, a reasonable person in the claimant's position would have been entitled to expect that the defendant would act in the claimant's interest to the exclusion of the defendant's personal interest.

(b) When applying sub-section 2(a), the following factors may be taken into account:

(i) (**prior relationship**) the length of time during which the parties have known one another, and the nature of that relationship;

(ii) (**intention**) the objectively-ascertained intentions of the parties, including whether the defendant intended to be in a legal relationship with the claimant, or otherwise assume the obligations specified in sub-section (3) of this section;

(iii) (**subject-matter, scope, and purpose**) the subject-matter, scope, and purpose of the alleged undertaking or responsibility, including the extent to which the parties explicitly defined their expectations or responsibilities

(iv) (**claimant's vulnerability and defendant's power or discretion to alter claimant's position**) whether the defendant's undertaking or responsibility concerned the exercise of a right, power, or discretion that could materially affect the interests of the claimant in a legal or practical sense, either positively or negatively;

(v) (**confidence**) whether the claimant reposed trust or confidence in the defendant; and

(vi) (**arms-length dealing**) whether the parties stood in an arms-length relationship, such that the parties ought to be regarded as capable of looking after, and preferring, their own individual interests; and

(vii) (**agreement**) the terms of any express or inferred agreement between the parties, including whether their agreement expressly or impliedly excluded a fiduciary relationship.



- (2) **(Scope)** In determining the precise scope of a fiduciary relationship, and what acts or omissions are within or outside of that relationship, a court may consider all the circumstances of the case, including the factors listed in sub-section (1) of this section
- (3) **(Breach)** A defendant who stands in a fiduciary relationship to the claimant owes a duty of undivided loyalty to the claimant. A defendant breaches this duty of undivided loyalty if:
- (a) **(no conflict rule)** Unless the claimant provides informed consent, fiduciaries must not place themselves in a position where there is a real or significant possibility of conflict between:
- (i) their undertaking or responsibility to the claimant; and
- (ii) their own personal interests, including economic interests.
- (b) **(no profit)** Unless the claimant provides informed consent, fiduciaries must not make any profit, gain, or benefit by use or by reason of their fiduciary undertaking or responsibility, any information obtained therefrom, or while in breach of section (3)(a).
- (4) **(Defence)** Even if a claimant establishes a claim under section 1, a defendant is excused if the defendant establishes that:
- (a) **(full and frank disclosure)** the defendant made full and frank disclosure to the claimant regarding the facts that would otherwise amount to a breach of fiduciary duty within the meaning of sub-section 2; and
- (b) **(consent)** the claimant expressly or impliedly consented to the conflict or profit.

Section 3: Remedies

- (1) **(Discretionary power to grant relief)** If a claim is established under this Act:
- (a) a court may, in its discretion, make such orders as it thinks just and appropriate in the circumstances, including an order under sub-section (2); and
- (b) such orders may be granted subject to such conditions as the court thinks are just and appropriate in the circumstances.
- (2) **(Orders)** A court may order, among other things, that:
- (a) **(account of profits)** the defendant pay a monetary sum to the claimant assessed by reference to the value of the profit or other benefit obtained by the defendant; or
- (b) **(constructive trust)** the defendant holds the specific profit or other benefit on trust for the claimant, and is under a duty to transfer that specific profit or benefit directly to the claimant.

3. Question

Explain what the *Fiduciary Act 2023* ('the Act') means for Aparna, considering the following questions in particular.

1. In light of section 2 of the Act, how likely is it that Aparna will have a claim against Beth? In your response, be sure to consider the separate issues of duty, scope, and breach.



2. Assume Aparna establishes a claim against Beth. In light of section 3 of the Act, *briefly* note what orders a court is likely to make in this case.
3. Do you agree with the likely outcomes in questions (1) and (2)? Critically discuss the advantages and disadvantages of our legal system having a set of principles like those contained in the Act.

When answering questions (1)-(3), provide reasons for your answers and be sure to evaluate the strengths and weaknesses of the arguments that Beth or Aparna might make.

The foregoing questions can be answered from the material provided and the application of sufficient thought, but research is welcomed. For example, a vast collection of reports of cases decided by the UK courts is available at www.bailii.org.