

3. RIGHTS AND DUTIES

3.1 Fiduciary Obligations

Articles

Feros E. “Joint Venture Issues“ [1998] *Australian Mining and Petroleum Law Association Yearbook* 384

The second part of Feros’ paper focuses on the indicia of fiduciary relationships among non-partnership joint ventures, setting out the legal principles behind the traditional tests which the High Court (*United Dominions Corp Ltd v Brian Pty Ltd*; *Hospital Products Ltd v United States Surgical Corporation*) has used to establish the existence of fiduciary obligations, namely:

- (i) commercial context;
- (ii) mutual trust and confidence;
- (iii) undertaking; (see also *Pacific Coal Pty Ltd v Idemitsu (Qld) Pty Ltd*); and
- (iv) vulnerability or dependency.

Feros argues that although there have been no recent “developments” that might alter these principles, the latest cases show how the established legal principles can be applied to the various factual matrices of joint venture relationships. The case of *News Ltd v Australian Rugby Football League Ltd* reaffirms that fiduciary duties are subject to the contractual relationships between the parties and emphasises the importance of acting in the interest of the other venturer. In *Hunter Resources v Eagle Mining Corp NL*, Justice Murray acknowledged (obiter) that because the fiduciary relationship here was said to arise out of the term of the express joint venture agreement between the parties, its context would be governed very substantially by the terms of that agreement in relation to the reporting obligation imposed on the defendant.

In concluding, Feros points out that a fiduciary relationship can arise from either the joint venture contract or the parties’ relationship itself, and so the particular facts of a situation will determine whether a non-partnership joint venture imports fiduciary obligations. In Australia, the emphasis is on whether the participants are required to act for, or on behalf of the others, rather than a requirement of vulnerability. So far as the contract is concerned, the court will take particular note of the rights, powers, duties and discretions created by the contract and the actions lawfully open to a party which may affect the interests of the other. Even where a non-partnership joint venture

expressly negatives agency, specifies venturer's interests as several, or particularises circumstances where participants can pursue their own self interest, the characteristics such as mutual reliance and common endeavour that are associated with a joint venture point towards a fiduciary relationship. Feros argues that for these reasons, parties should give early consideration at the drafting stage, to potential fiduciary obligations that may be owed, and to make specific any exclusion or limits to those obligations. As the courts do not recognise any general duty of good faith, Feros suggests that joint venture agreements should not include general good faith provisions, but instead provide specifically for the aspects with which the parties are concerned about good faith, and rely on the application of fiduciary law to protect it. Feros includes a draft "just and faithful" clause in the Appendix.

Cases:

United Dominions Corp Ltd v Brian Pty Ltd (1985) 157 CLR 1

Hospital Products Ltd v. United States Surgical Corporation (1984) 156 CLR 41

Pacific Coal Pty Ltd v Idemitsu (Qld) Pty Ltd Unreported, Supreme Court of Queensland, 21 February 1992

News Ltd v Australian Rugby Football League Ltd (1996) 139 ALR 193

Hunter Resources v Eagle Mining Corp NL Unreported, Supreme Court of Western Australia. 12 May 1995

Biala Pty Ltd v Mallina Holdings Ltd (1993) 11 ACSR 785

Auag Resources Ltd v Waihi Mines Ltd [1994] 3 NZLR 571

Dempster v Mallina Holding Ltd (1994) 13 WAR 124

Black A.J. "Joint Ventures, Partnership and Fiduciary Duties" (1986) 15 *Melbourne University Law Review* 708

Black provides a thorough examination of the Court of Appeal and High Court judgments in *United Dominions Corp Ltd v Brian Pty Ltd* ("UDC") noting the different approaches by the United States' courts and Australian courts in approaching the distinction between partnerships and joint ventures. He points out that it was the Court of Appeal's approach to first establish the existence of a legal relationship by analogy between partnerships and joint ventures, heavily influenced by the US courts, that led the Court of Appeal in *UDC* to determine whether duties owed between the joint venturers were fiduciary. This contrasts with the approach of the High Court in the same case, where the majority defined the fiduciary obligations as a consequence of the parties undertaking in the circumstances of the particular transaction. He argues that the reasoning which led to the High Court classifying the joint venture as a partnership would not have direct application to joint ventures of a different form (from that in *UDC*) particularly resource joint ventures that involve splitting of product.

In light of the High Court's approach, Black considers that where the circumstances of the transaction do not exhibit the indicia of a partnership, it may be more difficult to determine the extent of any fiduciary duty owed in the particular joint venture. He discusses the equitable justifications underlying the holding of a fiduciary to his undertaking and the countervailing consideration of non-interference in commercial contracts, arguing that the majority of the High Court appear to support a social policy favouring commercial enterprise. The author also

considers the court's view of the scope and nature of fiduciary duties owed in commercial contracts, in particular, the characterisation and impact of the Court of Appeal's finding regarding a duty of disclosure.

Cases:

United Dominions Corp Ltd v Brian Pty Ltd (1985) 157 CLR 1

McCafferty B.P. "Some Practical Problems of Joint Venture Agreements: Decision-Making and Management" (1980) 3 *Australian Mining and Petroleum Law Journal* 25

In the second part of his paper, McCafferty considers whether the relationship between the manager/operator and other joint venture participants is that of independent contractor or principal-agent, and argues that despite having wide powers of performance, an operator is properly classified as an agent. Although some fiduciary responsibilities of an agent may be excluded in commercial circumstances, a joint venture agreement appears to be premised on a fiduciary relationship, such that any attempt to restrict fiduciary obligations, if it can be achieved at all, must be explicitly detailed. McCafferty discusses the obligation of the manager/operator in relation to supply of information and concludes:

- the scope of the joint venture should be defined in very specific terms
- an operator should be generous in making available the fullest information regarding all aspects of the venture to participants
- the terms of the agreement should contain complete discharge from a withdrawing participant and consent for the operator to make use of information for his own benefit after a participant has withdrawn
- the agreement should specifically set out the manner in which after acquired lands or titles may or may not be acquired.

He goes on to consider the situation of operators in relation to use of their own equipment and personnel to undertake work for a related entity; obligations not to compete with joint venture participants; and the operator's capacity to sanction other participants in default. McCafferty concludes with the following suggestions:

- obligations of the operator/participant which give rise to a fiduciary duty should be identified in the joint venture agreement; and
- the operator/participant should err on the side of caution by giving full disclosure and getting prior ratification before undertaking activities which may be subject to fiduciary obligations.

Finn P.D. "Good Faith, Unconscionability and Fiduciary Duties" (1990) *Energy Law '90 Changing Energy Market— The Legal Consequences* 103, Graham & Trotman and International Bar Association, 1990, *Ninth Advanced Seminar on Petroleum, Mineral and Energy Resources Law Proceedings*, April 1990, The Netherlands, Section on Energy and Natural Resources Law, International Bar Association

A pre-eminent expose on the principles of fiduciary law, notions of unconscionability and of good faith under Australian law, and on the development, interaction and application of these principles to the relationships and contractual circumstances of resource joint ventures. Finn begins with a

warning that these principles will be asserted and applied differently in different national jurisdictions, and it is imperative to look to the standards of conduct expected by the particular legal forum. Finn directs his discussion to the ‘typical’ Australian unincorporated resources joint venture with the following characteristics: co-ownership as tenant-in-common; common participation in control and common contribution to costs; several entitlement to product; disavowal of agency; and day-to-day management by an operator (who may be participant), and advises that the terms, setting and purpose of the joint venture contract itself, will have an important determining effect on the extent to which a court will impose equitable obligations designed to protect participants, over the terms of the contract. Finn’s paper discusses what is comprehended by ‘unconscionable conduct,’ ‘good faith’ and ‘fiduciary relationship’ in an Australian context.

Part one of his paper, examines the difference between unconscionable dealing and the more general application of unconscionability as a standard of conduct in contract situations to inform the doctrines of forfeiture and penalties, and equitable estoppel. Finn describes the joint venture situations in which these principles may be applied, and the likely outcome of the application of unconscionability to these situations. The notion of good faith, to the extent it exists under Australian law, is considered. Finn observes that unconscionability tends to be concerned with advantage taking in contract formation, in contrast to good faith, which is more concerned with a party’s conduct in contract performance and enforcement. He argues that principles of good faith may play an increasing role in Australian law, and may be particularly relevant to resource joint ventures, firstly, as they are predicated on cooperation, and secondly, because fiduciary duties have limited applicability to resources joint ventures.

Finn then considers in detail, the three situations in which a fiduciary duty can arise in a joint venture context: (i) through possession, ownership or control (by venturers or operators) of **property** (including money), such that there will be a fiduciary obligation imposed in respect of that property; (ii) through the joint venture **contract**, either by the manner on which the contract defines roles and delineates relationships, or by virtue of the contract itself; and (iii) through the actual **relationships** of the parties, which Finn argues, will depend on whether the relationship is based on such “trust and confidence” *inter se* as would justify a fiduciary finding. He observes that the fiduciary idea is at variance with notions informing unconscionable conduct and good faith—the essential element is loyalty: an expectation that participants (as in a partnership or agency situation) act in their joint interest to the exclusion of their own several self-interest, this being relatively atypical of ordinary contractual relationships between commercial parties.

Finn notes that protection against misuse and misappropriation of confidential information is becoming more comprehensive, and highlights the differences between “breach of confidentiality” and “breach of fiduciary duty” (with respect to confidential information) and notes the differences between a remedy for breach of fiduciary duty and a remedy for unconscionable conduct. In circumstances where joint ventures are by their nature concerned with information exchange or acquisition, this area of law assumes greater importance, particularly in the process of negotiations. Finn argues however, that in the context of resources joint ventures, the combination

of an arms length relationship by substantial participants would see the courts reluctant to interfere, unless it is necessary to effect the terms agree between themselves.

Part two of Finn's paper examines in extensive detail, the legal sensitivity of resources joint ventures to the possible role "good faith" and "unconscionability" in regulating the conduct of participants, in the context of:

- (i) negotiation and contract formation;
- (ii) information acquisition;
- (iii) monetary advances and receipts;
- (iv) decision or action taken under the contract that adversely affects the interests of a participant; and action taken outside of the venture, but which may affect the interests of a participant.

Finn concludes that the question of standards of conduct cannot be answered by simple application of a legal rule—what is permissible or unacceptable will reflect the policies, preoccupation and imperatives of the particular environment in which the question is asked.

Gallimore J.N. "Comment on Fiduciary Obligations of Operators and Co-Venturers in Natural Resources Joint Ventures" [1984] *Australian Mining and Petroleum Law Association Yearbook* 177

Gallimore sets out the issues to consider when drafting a resources joint venture agreement with regard to the fiduciary implications arising. He addresses in particular, the joint venture situation where there is an "interested" party, including where a party is involved in a "downstream" activity or where a venturer is appointed as operator. Gallimore then details the practical considerations when drafting clauses to protect from disclosure, information and expertise generated by and contributed to a joint venture. He considers the use of knowledge gained from the joint venture, particularly knowledge of special techniques. He urges drafters to deal with different types of knowledge separately, but notes that apart from flagrant breaches of covenant as to specific knowledge, general provisions preventing use of knowledge by a venturer for its own purpose (in the absence of breach of confidentiality) are difficult to enforce.

Practical considerations regarding the scope of the joint venture are discussed. Gallimore points out the problems when drafting provisions in setting the boundaries within which the joint venture is to operate and beyond which the parties are free to pursue their own interest. Also highlighted is the need for drafters to adequately accommodate remedies into the joint venture agreement. Gallimore gives practical advice on a range of remedial issues a drafter needs to consider.

Ongley S. "Joint Ventures and Fiduciary Obligations" (1992) 22 *Victoria University Wellington Law Review* 265

Ongley first discusses the nature of the fiduciary obligation as distinct from the "good faith" standard of conduct in contractual dealings. She deals with the methods of exacting the standard of conduct required of a fiduciary, stressing the rationale for fiduciary proscriptions and the significance of the personal and proprietary remedies for breaching the fiduciary standard. Ongley

then discusses the problems arising where fiduciary obligations are imposed on parties who are negotiating towards or who have concluded a contract.

When the policy considerations for the imposition of fiduciary standard on particular relationships are considered together with the rationale underlying contractual obligations, it may be argued that courts' propensity to test a relationship according to "arms length" or "commercial" criteria are misleading. Ongley argues the better test is to consider whether the parties stand in some special equitable relationship, and proposes that in the context of a joint venture, the appropriate test is one of mutual trust and confidence. A joint venture does not fall into any pre-established category, and no generalisation can be made as to what standard of conduct is expected between joint venturers. Imposition of fiduciary obligations will vary according to the circumstances and the (objectively viewed) degree of trust and confidence placed in the alleged fiduciary.

Corcoran S. and Tucker J.C. "Joint Venturers as Fiduciaries" (1989) *Corporate and Business Law Journal* 34

Corcoran and Tucker begin with a general discussion on the nature of a fiduciary relationship, briefly noting the situations in which fiduciary duties are "established". They then examine other types of situations where courts have found a fiduciary relationship to exist, and consider the criteria used to establish such a duty. Sealy's four criteria ((i) holding property; (ii) undertaking a job to be done; (iii) obligations not to profit; and (iv) undue influence) are considered. The authors propose that a fifth criteria, "business practice", has developed in Australia and Canada. On this basis, fiduciary obligations may arise before the terms of the joint venture agreement are finalised. Contractual terms will not, per se, create a fiduciary relationship, but will be relevant to whether and to what extent, a court will deem a fiduciary duty to exist. Any terms containing obligations of mutual good faith may help create a fiduciary obligation, however the extent of this obligation may be limited by specific contractual terms.

References:

Sealy L.S. "Fiduciary Relationships" [1962] *Cambridge LJ* 69

Cases:

United Dominions Corp Ltd v Brian Pty Ltd (1985) 157 CLR 1

Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41

Mount Isa Mines Ltd . Seltrust Mining Corp. Pty Ltd Unreported, Supreme Court of Western Australia, 27 September 1985

International Corona Resources Ltd v Lac Minerals Ltd (1988) 44 DLR (4th) 592, Ontario Court of Appeal

Ladbury R.A. "Mining Joint Ventures" (1984) 12 *Australian Business Law Review* 312

Application of fiduciary obligations to the typical mining and petroleum joint venture are considered in detail, Ladbury arguing that the findings of the Court of Appeal in *Brian Pty Ltd v United Dominions Corporation Ltd* may have a different application in the context of mining and

petroleum joint ventures, and the court's emphasis on United States legal principles make the relevance of the judgment questionable in an Australian context. Ladbury argues strongly, that the correct approach should be to ask whether in all the facts of the case, a party's role or functions attract fiduciary responsibilities. He then focuses on fiduciary obligations between the operator and joint venturers and between joint venturers inter se, and considers ways in which the extent of a duty may be limited through the provisions of the joint venture.

Cases:

Brian Pty Ltd v United Dominions Corporation Ltd [1983] 1 NSWLR 490

Bean G.M.D. "The Operator as a Manager: A New Fiduciary Duty" [1993] *Journal of Business Law* 24

In this paper, Bean argues that in its role as manager of the joint venture operations, an operator may owe a managerial fiduciary duty to the other co-venturers. Where the managerial tasks involve discretion, the fiduciary-operator may owe a duty to act honestly in the best interests of the joint venture in the exercise of any managerial powers. Whether the operations are for the purpose of producing profit or product, the mutual trust and confidence reposed in the fiduciary-manager to maximise returns to the venturers, gives rise to a managerial fiduciary relationship on which a duty may be based. Bean argues that while courts may not be in a position to evaluate the substance of business decisions, it may nevertheless overturn the fiduciary's decision where the exercise of the power is not in accordance with its property purpose.

Cases:

Elton John v James [1991] FSR 397

USSC v Hospital Products International Pty Ltd [1983] 2 NSWLR 157

Dal Pont G.E. "Conflicts of Interest: The Interplay between Fiduciary and Confidentiality Law" [2002] *Australian Mining and Petroleum Law Association Yearbook* 583

Dal Pont considers in comprehensive detail, the similarities and differences between the duties attaching to the confidentiality of information and fiduciary duties. As conflicts of interest arising in the context of fiduciary transponibility frequently involve the misuse of information communicated for the limited purpose of the relationship, there is considerable room for overlapping of the two doctrines. He points out that although the doctrines are different, the extent of the similarity and common heritage seems to suggest the two doctrines need not remain so distinct, and that this commonality might also be reflected remedially. The author argues however, that the parameters exhibited and remedies for each are different, and that the doctrines should therefore remain separate. He advocates ways in which the law may develop to this end in a more principled fashion.

Cases:

LAC Minerals Ltd v International Corona Resources Ltd (1989) 61 DLR (4th) 14

Kelly v Cooper [1993] AC 205

Prince Jefri Bolkiah v KPMG (a firm) [1999] 2 WLR 215

Spincode Pty Ltd v Look Software Pty Ltd [2001] VSCA 248

Attorney-General v Balke [2000] 3 WLR 625

For articles discussing recent developments with regard to imposition of **principles of good faith**, see:

Finn P.D. “Fiduciary Obligations of Operators and Co-Venturers in Natural Resources Joint Ventures” [1984] *Australian Mining and Petroleum Law Association Yearbook* 160

Rickett C.E.F. “Some Reflections on Open-Textured Commercial Contracting” [2001] *Australian Mining and Petroleum Law Association Yearbook* 374

Ladbury R. “Implied Duty of Good Faith: A Comment” [2002] *Australian Mining and Petroleum Law Association Yearbook* 22

Books

Rogers N. and Nisbet G. “Joint Ventures and Equity - Fiduciary Aspects” in W.D. Duncan (ed), *Joint Venture Law in Australia*, The Federation Press, Sydney, 1994, Chapter 3

Authors examine the nature and content of fiduciary obligations and the duty to act in good faith, and how the remedies for breaches vary across a continuum of standards. There is considerable discussion of the defining characteristics of a partnership, and how previous writers have argued for and against the application of the label “partnership” (and its attendant fiduciary obligations) to the typical mining and petroleum joint venture. Authors deliver a well-referenced account of the types of situations, which may attract fiduciary obligations, and the scope of any fiduciary relationships, which may arise in a joint venture or partnership situation. They proceed to engage in a thorough discussion of the rationale and circumstances in which fiduciary relationships are imposed in a commercial context. The article concludes with a summary of the types of obligations that may be owed between joint venture participants and management, and participants and lenders, and the remedies likely to ensue.

Cases:

United Dominions Corp Ltd v Brian Pty Ltd (1985) 157 CLR 1

Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41

Pacific Coal Pty Ltd v Idemitsu (Qld) Pty Ltd Unreported, Supreme Court of Queensland, 21 February 1992

Noranda Australia Ltd v Lachlan Resources NL (1988) 14 NSWLR 1

Bean G.M.D *Fiduciary Obligations and Joint Ventures*, Clarendon Press, Oxford, 1995

A detailed analysis of the application of fiduciary obligation and duties in the specific context of a Joint Operating Agreement (“JOA”) as a species of joint venture. Bean takes English cases and statute as the primary source of evaluation, but Australian, New Zealand and Canadian sources are considered where those jurisdictions vary in their treatment of the topic.

Bean begins with a comprehensive discussion of the interaction of fiduciary law with both contract law and equity, and how the terms of a JOA agreement in the commercial context of oil and gas exploration will affect the subject matter to which fiduciary principles may be applied or implied. Where courts seek to define the relationship as essentially collaborative or antagonistic in order to determine what duties may be owed, difficulties are encountered where JOAs exhibit elements of both. Bean looks at the methods courts use to determine the existence of fiduciary obligations either by analogy with defined relationships like partnership and agency, or by the development of tests that consider the nature of the relationship, namely the ‘undertaking test’ and the ‘power and discretion test.’ Bean considers both methods to be problematic, and advocates for a third test of ‘mutual trust and confidence’, which takes into account the level of trust reposed by way of skill, knowledge and integrity, and the degree of free choice (‘delectus personae’) permitted.

Extensive discussion over twelve chapters, covers all aspects of fiduciary law, including different approaches to *inter se* relationships between venturers; full consideration of the interests, powers and responsibilities of the operator and operating committee; and complete coverage of the application of both prescriptive and proscriptive fiduciary duties.

Cases

Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41

LAC Minerals Ltd v. International Corona Resources Ltd (1989) 61 DLR (4th) 14

Boardman v Phipps [1967] 2 AC 46

Finn P.D. “Fiduciary Obligations of Operators and Co-Venturers in Natural Resources Joint Ventures” [1984] *Australian Mining and Petroleum Law Association Yearbook* 160

This commentary was written prior to the High Court decision in *United Dominions Corp Ltd v Brian Pty Ltd*. However, it describes with authority, the appropriate standards of conduct for those bound by fiduciary obligations, namely: duty of confidence, conflict of duty and interest rule, the purchasing rule, and misuse of trust property.

Cases

Brian Pty Ltd v United Dominions Corp. Ltd [1983] 1 NSWLR 490

Jackson J.G. “Fiduciary Relationships in Australian Joint Ventures” (1986) 14 *Australian Business Law Review* 107

Jackson gives an overview of the fiduciary obligations owed in a partnership relationship, before considering the extent to which Australia has imported such an obligation into joint venture relationships. He examines in detail the judgment in *Brian Pty Ltd v United Dominions Corp. Ltd* and argues that the ready acceptance of US and Canadian principles by the New South Wales Court of Appeal, in finding a fiduciary obligation existed between joint venturers in that case, may have unfortunate consequences for joint venturers in Australia. Jackson looks at other Canadian cases that have considered the extent to which joint ventures are analogous to a partnership. In his view, application of the US position to all joint venture relationships, without consideration of particular types and circumstances of each joint venture, undermines the assumptions and intentions underlying Australian mining joint ventures in particular.

Cases

Brian Pty Ltd v United Dominions Corp. Ltd [1983] 1 NSWLR 490

Gardner A. “Aspects of Joint Ventures—Fiduciary obligations of parties negotiating for a joint venture” Paper presented at *Second Annual Australian Mining and Petroleum Law Association (WA Branch) State Conference, Scarborough, Perth, 22 October 1988.*

Gardner draws together the various propositions of the principal legal authors and case law, to provide a very useful and clear paper regarding fiduciary obligations in the context of negotiating mining or petroleum joint ventures. He argues that the existence or not, of fiduciary obligations will depend on the underlying character of the particular relationship, rather than on the existence of an identifiable legal category of relationship, and that this test of underlying character will be the same for both an established joint venture or where parties are negotiating a joint venture. His paper discusses (i) why fiduciary obligations and remedies for their breach are important to joint venture parties; (ii) how fiduciary obligations can arise in respect of joint venturers and parties negotiating a joint venture; (iii) what types of fiduciary obligations negotiating parties should consider (conflict of duty and interest, and duty of confidence) and the scope and legal principles applicable; (iv) measures that can be taken by parties negotiating for a joint venture and industry associations to clarify industry practice; and (v) problems with the *Mining Act* 1978 (WA) in terms of the procedures and remedies available where there has been a breach of fiduciary obligations.

Legislation:

Mining Act 1978 (WA)

Cases:

LAC Minerals Ltd v International Corona Resources Ltd (1988) 44 DLR (4th) 592

Cases:

***United Dominions Corp Ltd v Brian Pty Ltd* (1985) 157 CLR 1**

Morgan S. “Till insolvency us do part - partnerships and joint ventures” (1986) 60 *Law Institute Journal* 223

Morgan discusses the judgement of *United Dominions Corp Ltd . Brian Pty Ltd* and concludes that the decision raises the possibility that fiduciary obligations may arise where a relationship can be characterised by mutual trust and confidence. Such a relationship may exist between parties to a joint venture, or those transacting with a view to entering a joint venture in the future.

“Joint Venturers in fiduciary relationship” [1985] 15 Leg Rep 6

Reports on the decision in *United Dominions Corp Ltd v Brian Pty Ltd*.

International Corona Resources Ltd v LAC Minerals Ltd* (1986) 25 DLR 504

Pearson L.M. “Recent Cases—Their Practical Significance” [1987] *Australian Mining and Petroleum Law Association Yearbook* 444

LAC Minerals Ltd v. International Corona Resources Ltd* (1988) 44 DLR (4th) 592

Sharwood M. “International Coronal Resources Ltd – Plaintiff (Respondent) v LAC Minerals Limited – Defendant (Appellant)” (1988) (7)1 *Australian Mining and Petroleum Law Association Bulletin* 25

* Note further appeal to Supreme Court of Canada reported as *LAC Minerals Ltd v International Corona Resources Ltd* [1989] 2 SCR 574

Other references:

Sealy L.S. “Fiduciary Relationships” [1962] *Cambridge LJ* 69

Sealy L.S. “Some Principles of Fiduciary Obligations” [1963] *Cambridge LJ* 119

Austin R.P. “Commerce and Equity - Fiduciary Duty and Constructive Trust” (1986) 6 *Oxford Journal of Legal Studies* 444

Finn P.D. “The Fiduciary Principle” in T.G. Youdan (ed) *Equity, Fiduciaries and Trusts* (Carswell, Toronto, 1989)

Finn P.D. “Contract and the fiduciary principle” (1989) 12 *University of New South Wales Law Journal* 76