Is the Trustee-Beneficiary Relationship Necessarily Fiduciary?

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The textbook answer to the above question is affirmative. In Jacobs’ Law of Trusts it is said that this has never been doubted. The purpose of this paper is to put forward such doubt. I will argue that trust law and general fiduciary law have diverged to the point that a person may be a trustee without being a fiduciary. The divergence appears in the respective importance of the obligation of self-denial as given effect by the no-profit and no-conflict rules. In fiduciary law the obligation of self-denial is of such importance that the process obligations governing fiduciaries’ decisions are often overlooked. In contrast, in trust law, fiduciary obligations of self-denial are given much less emphasis and it is obligations of honesty and good faith that are given as the ‘irreducible core’ of the trust relationship.

It will be argued that in Australia and Canada, and with less certainty in England, an essential element of the modern fiduciary concept is that the fiduciary must be subject to an obligation of self-denial to some extent. For this there is strong support from the High Court of Australia, the Supreme Court of Canada and from academics. A consequence of this concept is that an arrangement expressly allowing self-interest must deny a fiduciary relationship to the extent of the self-interest.

Trust law will be tested against the general fiduciary concept. Although in traditional trusts self-denial is inherent, in at least two areas of recent development it is obsolete. It will be argued that in Quistclose trusts and discretionary powers where a trustee is also a discretionary object, trustees are authorised to benefit their own several interests and, therefore, can be under no obligation of self-denial. In conclusion, because these contemporary arrangements are accepted as trust relationships, trustees need not be fiduciaries.