

---

# Chapter 1

---

---

## Agency or Fiduciary Based Causes of Action

### 1-1 AGENT BREACHING FIDUCIARY DUTY TO PRINCIPAL

Establishing a breach of the fiduciary duty owed by an agent to a principal is largely dependent upon the circumstances. Generally, it is necessary to first establish that an agent-principal relationship exists. See *Scott v. Purcell*, 490 Pa. 109, 415 A.2d 56 (1980) (citing Restatement (Second) of Agency § 1, Comment b (1958)). Subsequently, to allege a breach, a party must show that the agent:

- 1) acted adversely towards the principal's interests;
- 2) acted in bad faith;
- 3) acted in any manner inconsistent with his agency to the principal in any part of the transaction; or
- 4) failed to disclose any interest which would naturally influence his conduct in dealing with the principal.

See Restatement (Second) of Agency §§ 379 through 396. See also *Basile v. H & R Block, Inc.*, 563 Pa. 359, 761 A.2d 1115 (2000).

#### Notes

The burden of establishing agency rests upon the party asserting it. See *Girard Trust Bank v. Sweeny*, 426 Pa. 324, 231 A.2d 407 (1967). However, parties are not required to furnish direct evidence if it can be reasonably inferred from the circumstances of the case. See *Yezbak v. Croce*, 370 Pa. 263, 267-68, 88 A.2d 80, 82 (1952).

### Statute of Limitations

Under Pennsylvania law, a claim for breach of fiduciary duty is governed by a two-year limitations period. *See* 42 Pa.C.S.A. § 5524(7).

## 1-2 AGENT'S LIABILITY TO THIRD PARTIES

An omission is actionable as fraud only where there is:

- 1) without disclosing the fact of agency; or
- 2) without disclosing the identity of the principal.

*Vernon D. Cox & Co., Inc. v. Giles*, 267 Pa. Super. 411, 406 A.2d 1107 (1979). *See also* Restatement (Second) of Agency §§ 4, 321, 322.

### Notes

Courts may hold an agent personally liable if the agent acted without the authority of the principal. *See Revere Press, Inc. v. Blumberg*, 431 Pa. 370, 246 A.2d 407 (1968). *See also Jennings v. Pittsburgh Mercantile Co.*, 414 Pa. 641, 202 A.2d 51 (1964); *Reading Co. v. Sobelman*, 144 Pa. Super. 270, 19 A.2d 754 (1941).

## 1-3 BAILMENTS

"A bailment is a delivery of [goods/chattels] for the accomplishment of some purpose upon a contract, express or implied, that after the purpose has been fulfilled, it shall be redelivered to the person who delivered it." *Buckley v. Exodus Transit & Storage Corp.*, 744 A.2d 298 (Pa. Super. Ct. 1999).

A cause of action for breach of bailment agreement arises if:

- 1) the bailor can establish that goods were delivered to the bailee;
- 2) a demand for return of the bailed goods has been made; and
- 3) the bailee has failed to return the goods.

*Buckley v. Exodus Transit & Storage Corp.*, 744 A.2d 298 (Pa. Super. Ct. 1999).

**Notes**

If a bailment exists, the bailee must adhere to the standard of care appropriate to the circumstances and may be liable for losses attributed to gross negligence. *Ferrick Excavating & Grading Co. v. Senger Trucking Co.*, 506 Pa. 181, 484 A.2d 744 (1984).

**Statute of Limitations**

The applicable statute of limitations for cases arising pursuant to bailment contracts is four years. *See* 42 Pa.C.S.A. § 5525.

**1-4 BREACH OF FIDUCIARY DUTY**

To establish a breach of fiduciary duty, a plaintiff must prove:

- 1) that a fiduciary relationship exists;
- 2) that the fiduciary has committed misconduct;  
and
- 3) that the misconduct caused them to suffer damages.

*See Axcan Scandipharm, Inc. v. Reed Smith, LLP*, No. 03827, 2007 Phila. Ct. Com. Pl. LEXIS 78 (C.P. Phila. Mar. 26, 2007).

The misconduct complained of varies depending on the circumstances of the matter, but typically includes:

- 1) situations of self-dealing or personal interest conflicts; and/or
- 2) the fiduciary injuring or acting contrary to the interests of the person to whom a duty of loyalty is owed.

*See Seaboard Indus., Inc. v. Joachim*, 45 Pa. D. & C.2d 780 (C.P. Phila. 1968); *see also Weissman v. A. Weissman, Inc.*, 374 Pa. 470, 97 A.2d 870 (1953).

**Notes**

“A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.” Restatement (Second) of Torts § 874, Comment a (1979). The question of whether or not a confidential relationship exists between the parties is intensely fact-specific. *Wisniski v. Brown &*

## 1-5 Charitable Organization Liable for Wrongdoing

---

*Brown Ins. Co.*, 2006 Pa. Super. 216, 906 A.2d 571 (2006). It is also critical to ascertain whether the relationship between the persons “goes beyond mere reliance on superior skill, and into a relationship characterized by ‘overmastering influence’ on one side or ‘weakness, dependence, or trust, justifiably reposed’ on the other side.” See *eToll, Inc. v. Elias/Savion Adver. Inc.*, 2002 Pa. Super. 347, 811 A.2d 10 (2002).

The duty of a fiduciary may also be breached by an intentional failure to disclose a material fact. *Smith v. Renault*, 387 Pa. Super. 299, 564 A.2d 188 (1989).

### Statute of Limitations

The statute of limitation for breach of fiduciary duty is two years. See 42 Pa.C.S.A. § 5524(7).

## 1-5 CHARITABLE ORGANIZATION LIABLE FOR WRONGDOING

In Pennsylvania, the charitable organizations are subject to tort liability. The doctrine of immunity of charitable institutions from liability in tort no longer exists in the Commonwealth of Pennsylvania.

See Restatement (Second) of Torts § 895E; see also *Hoffman v. Misericordia Hosp. of Phila.*, 439 Pa. 501, 267 A.2d 867 (1970).

## 1-6 CO-SURETIES CONTRIBUTING ON DEBT DEFAULT

“A guarantor has a cause of action against a co-guarantor if the guarantor has paid more than his or her proportionate share of a common liability and is in equity and good conscience entitled to a contribution from his co-guarantors.”

See *Caspescha v. Plum*, 1982 Pa. Dist. & Cnty. Dec. LEXIS 268 (C.P. Berks Nov. 23, 1982).

## 1-7 ESCROW AGENT IMPROPERLY DISBURSING FUNDS

An escrow agent will be liable for conversion when:

- 1) there is an escrow agreement; and

- 2) there is delivery of the property/funds in a manner inconsistent with the terms of the agreement.

*See Samango v. Pileggi*, 363 Pa. Super. 423, 526 A.2d 417 (1987).

### Notes

“The intention of the parties is paramount, and the court must adopt an interpretation which under all the circumstances ascribes the most reasonable, probable and natural intentions of the parties, considering the objects to be accomplished.” *See Village Beer & Beverage Co. v. Vernon D. Cox, Inc.*, 327 Pa. Super. 99, 475 A.2d 117 (1984).

### Statute of Limitations

The applicable statute of limitations for contract cases in Pennsylvania is four years. *See* 42 Pa.C.S.A. § 5525.

