

**1961:Vai v. Bank of America (1961) 56 Cal.2d 329, 15 Cal.Rptr. 71**

Relevant to:
[1:14] Spouses Owe Fiduciary Duty Towards Each Other
[3:34] Duty of Disclosure (later)
[4:1] Termination of Underlying Relationship (earlier)
[5:12] Compound Breach
[1:23] Distinction between confidential and fiduciary relationships
[1:22] Unequal Access to Information and Control

Appeal from judgment after bench trial

Wife had sued her husband for "separate maintenance". Her lawyer sought discovery regarding the community property. Husband asked wife to forbear from pursuing discovery into those matters because he was infirm; he assured her and her lawyer that he would voluntarily provide them with all relevant information regarding the community property. Wife and her lawyer accepted this arrangement and ended up making a settlement agreement in which she received something less than \$200,000. It later turned out that the husband had lied to her regarding the community property: the net worth was really close to \$1.3 million, and her share was half of that. She then brought this suit against the husband's estate to set aside the settlement on the grounds of actual and constructive fraud, the latter arising from husband's breach of his fiduciary duty towards her.

The trial court ruled that husband was not a fiduciary and that the parties, both of whom were represented by counsel, dealt at arm's length. Therefore there was no *constructive* fraud; and since the trial court found no *actual* fraud, it gave a judgment for defendant.

The Supreme Court reversed. It found, first, that the husband, because of his management and control over the community property, occupied the position of trustee for his wife in respect to her one-half interests in the community assets and therefore had fiduciary duties towards her. It held that the trust reposed in the husband did not terminate as to assets remaining in his hands when the spouses separated: so long as his control powers continued, so did his fiduciary duties.

The Court distinguished a fiduciary relationship from a confidential relationship: "A confidential relation exists between two persons when one has gained the confidence of the other and purports to act or advise with the other's interests in mind. A confidential relation may exist although there is no fiduciary relation; it is particularly likely to exist where there is a family relationship or one of friendship or such a relation of confidence as that which arises between a physician and patient or priest and penitent." [56 Cal.2d at 337-338, quoting Restatement of Trusts 2d, Sec. 2,

Comment b.]

The Court discusses the fact that a confidential relationship may or may not coexist with a fiduciary one and analogizes from the partnership situation in which, by statute and well-established case law, it is clear that the partners' fiduciary duties persist throughout the winding up process even after dissolution. It accordingly concluded that John Vai's fiduciary obligations towards plaintiff, his wife, Tranquilla, continued even after separation and institution of a suit.

Justice Traynor wrote a dissent in which Justice Schauer concurred: he would have upheld the judgment of the trial court, because he distinguished the duty of a husband to a wife from that of a trustee towards the beneficiary of an express trust. He found the duty analogous to that of a partner winding up a partnership—no more nor less. He would have found that spouses negotiating a property settlement agreement deal at arm's length. The express trustee has no interest in the res: the husband does. Discussing *Jorgensen v. Jorgensen*, *supra*, Traynor would have upheld the judgment because the fiduciary duty was not breached and because the trial court could have found that even with the disclosures, the wife would have entered into the same settlement.

See present-day Family Code Sec. 1100.