



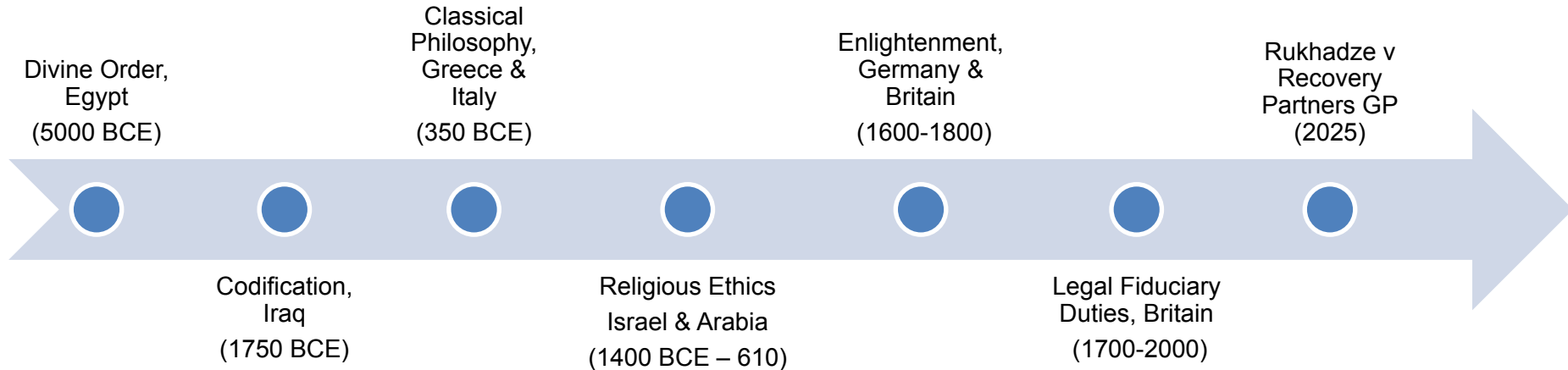
# **From Tahuti to Rukhadze – An evolution of ethics to fiduciary duties**

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# Overview

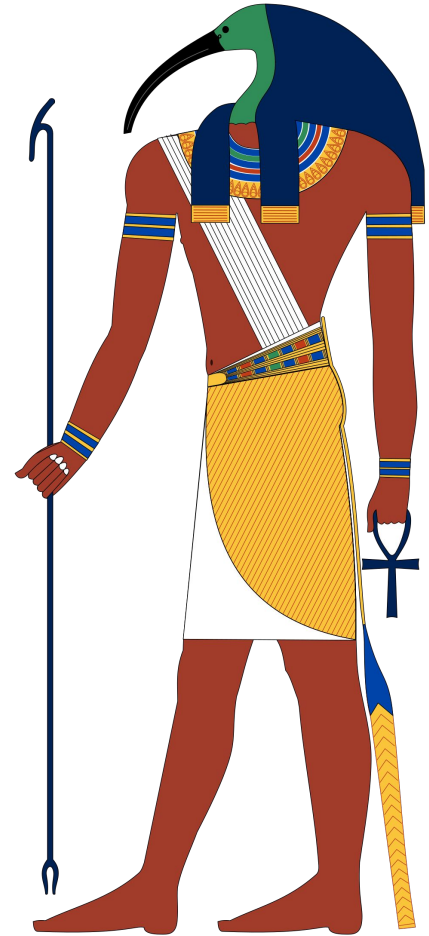
“Two things fill the mind with ever new and increasing admiration and awe ...  
the starry heavens above me and the moral law within me.”

- Immanuel Kant – Critique of Practical Reason (1788)



## Divine Order – Tahuti, Egypt (5000 BCE)

- **Egyptian god of wisdom, writing and justice** and guardian of Ma'at (balance, truth, order)
- **Ethics seen as divine cosmic alignment** rather than personal / subjective
- **Fulfilling one's duty not optional or relative** but essential for preserving harmony in the universe / divine order
- **Laid foundation for sacredness of duty** and objective moral codes



# Codification of Hammurabi, Babylon (1750 BCE)



- 282 divinely inspired societal laws inscribed on public stone pillar for all to see
- Highly focused on justice as accountability:
  - 196. *If a man put out the eye of another man, his eye shall be put out*
  - 282. *If a slave says to his master 'you are not my master' his master shall cut off his ear*
- Hierarchical - generally only fines for nobility
- Justice became codified and predictable – early foundation of legal ethics

# Classical Philosophy, Athens (400-300 BCE)

## ○ Socrates:

- Highest duty is pursuit of knowledge via questioning (dialectic)
- Better to do what is right than obey the law / authority

## ○ Plato:

- Holistic approach encompassing intellectual pursuit, moral character, social responsibility & obedience to law

## ○ Aristotle:

- Virtue is found in the middle ground (the golden mean)
- Duty arises from social role and pursuit of excellence in order to achieve eudaimonia (flourishing)



# Classical Philosophy, Rome (300-100 BCE)

## ○ Stoicism:

- *“The responsibility is all yours; no one can stop you being honest or straightforward”*  
(Marcus Aurelius, Meditations)
- Ethics rooted in rational nature, self control and moral duty
- Focus on character, not outcomes – what matters is how we act, not what happens and actions should align with nature and virtue
- Strongly influenced later Christian, Enlightenment and fiduciary concepts



# Religious Ethics – Abrahamic (1400 BCE – 610 CE)



## ○ **Judeo-Christian ethics:**

- Duties grounded in divine commandments / laws (“*thou shalt not steal*”, “*thou shalt not bear false witness*”)
- Emphasis on stewardship, honesty and accountability before God and man – humans seen as stewards of God’s creation, bound by covenants of trust



## ○ **Islam:**

- Amanah (trust) and Wakalah (agency) are central concepts
- Sacred duty to act justly when entrusted with another’s welfare



# Enlightenment (1600s -1800s)

## ○ Deontological Ethics (Kant)

- Morality is a matter of rational duty
- Categorical imperative – act only according to that maxim you would want to be a universal law

## ○ Utilitarianism (Bentham, Mill)

- Ethics / virtue is about maximising well-being – greatest good for greatest number
- Morality is outcome driven – strong influence on legal regulation / social policy

## ○ Moral Sentiment (Hume & Smith)

- Duty arises from human empathy and social contract





# Legal Fiduciary Duties (1700s-1900s)

- English equity courts began enforcing duties of trustees, guardians and agents in 1700s
- Law developed to prevent abuse of power in relationships of dependence
- Fiduciary duties defined as:
  - No profit from position – Keech v Sandford (1726)
  - No conflict of interest – Bray v Ford (1896)
  - Care – overarching duty to act prudently and diligently
- High moral and legal standards:
  - Strict liability no matter good faith / if trust benefits – Boardman v Phipps (1967)



# Bristol & West Building Society v Mothew (1998)

- **Court of Appeal drew key distinction:**
  - Negligence is failing to act with care
  - Breach of fiduciary duty is a breach of loyalty
- **Fiduciaries must be more than careful – they must be utterly loyal and candid:**
  - *“A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal”*. Lord Millet



# Rukhadze v Recovery Partners GP (2025)

- **Directors secretly exploited business opportunity** that rightfully belonged to company and profited
- **Directors argued 'no profit' rule should be modified** to consider 'but for' causation test
- **SC upheld strict standards expected of fiduciaries**, rejected modification of 'no profit' rule and ordered Directors to pay profits to Company even though no bad faith or detriment to company
- **Equitable allowance?** Directors allowed to keep 25% in recognition of their work and skill



# Rukhadze v Recovery Partners GP (2025)

*“The appellants argued that this [no profit] rule was counter-intuitive and **old-fashioned, resulted in unpredictability and (on occasion) excessive harshness** ... introducing a ‘but for’ element to the test for liability would cure these defects”*

*“On examination, these arguments did not add up to anything approaching a compelling justification for changing the law ... The essential **purpose of the profit rule is to deter fiduciaries from giving in to the human temptation to depart from their obligation of single-minded loyalty to their principal (for their own benefit). The obligation to account is a duty imposed by equity as an inherent aspect of being a fiduciary.**”*



# Summary

*“With great power comes great responsibility”*

Spiderman, 1967

- **Fiduciary duties are modern legal embodiment of ancient ethical commitments** to truth, loyalty and care
- **Fiduciary roles reflect millennia long tradition of trust and accountability** and Courts continue to uphold strict application of duties without modification
- **Fiduciary ethics follow the Stoic & Deontological doctrines** - duties are virtuous and necessary in of themselves, consequences are inconsequential
- **Room for change / leniency?** Equitable allowances = departure from strict accountability but principles remain unchanged / future modification of rules unlikely