

BOOK REVIEWS

FIDUCIARY OBLIGATIONS. By P.D. FINN. [Sydney: Law Book Co. Ltd. 1977. xxxvii+286+index. A\$24.50]

This first work fills a long felt gap in the conceptual bases and ramifications of fiduciary obligations which has hitherto received peremptory treatment in standard works on trusts, equity and agency. It seeks to bring to focus the first principles and rules relating to fiduciaries without necessarily delving into the legal incidents of particular relationships such as principal and agent or trustee and beneficiary.

The treatment of the subject is made under two broad headings:

- (1) The fiduciary's duty to act honestly in what he alone considers to be in the interests of his beneficiaries.
- (2) The duties of good faith.

Within these two broad headings are outlined the various expressions of rules within differing situations. The concrete expressions of the detailed rules relating to the exercise of fiduciary discretion and the insurer of property, duty of confidence and conflict rules provide a useful reference for law finding.

Examples of a fresh approach to long outstanding issues abound. Company lawyers have for long blithely accepted as dogma that directors while owing a fiduciary duty to the company, owe no such parallel duty to shareholders. The writer, quite correctly, questions this assumption engendered by *Percival v. Wright* [1902] 2 Ch. 421 and goes on to demonstrate how courts have in fact required directors to uphold the "interests of the company" by widely defining this term to include present and future shareholders. However, this reviewer would add that the explanation for the admitted anomaly perhaps lies in the facts of *Percival v. Wright* which involved insider trading where the effect of holding that a fiduciary duty exists would have obliged the director to make full disclosure of his material insider information before purchasing the shareholders' shares. In this context alone, the court refrained from holding the director, a fiduciary of the shareholders, which relationship would have necessitated bona fide. With this in view, the author's submission that it is still open to courts to impose a limited fiduciary duty on directors in the exercise of their powers in favour of shareholders, still has some merit.

The conflict of duty and interest rule in the context of directors' selling property acquired by them, to the company is one that has unclear ramifications. In postulating, with some case law support, a narrow rule that there should be shown that the fiduciary has assumed some specific duty or authority for his beneficiaries in relation to the transaction in which he benefits himself, the author attempts to introduce realistic and commercial sense to the rules. This however flies in the

face of *Industrial Development Consultants v. Cooley* [1972] 1 W.L.R. 443 and *Boardman v. Phipps* [1967] 2 A.C. 46 which he goes to great length to explain away while his re-analysis of *Cooley* shows consistency with the narrow approach, he is unable to surmount the majority judges in *Boardman* who enunciated the extremely wide proposition that a person who has not been asked to advise, but who might be asked to put his interest into conflict with a duty he has not undertaken. Nevertheless, the value of the exercise is not only to demonstrate the shortcomings to the existing rules but also to propound a possible rationale which hopefully will clarify judicial thinking in the area.

Finally, an example of the thoroughness of research is revealed in the context of directors setting up a partnership in competition with their company and soliciting corporate clients to their partnerships where the author exhumes *Aubanel & Alabaster v. Aubanel* (1949) 66 R.P.C. 343 where the court, while upholding the right of directors being involved in competing business, nevertheless, condemned any such activity which was designed to injure the company.