even thought of asking. It is often taken for granted that one's wishes will simply be carried through or that if a solicitor is employed, a testamentary document shall be watertight. This chapter helps to remedy these misconceptions (undoubtedly to the dismay of many readers) and also provides valuable advice on how to avoid such problems. The practical manner in which a testamentary document is analysed, interpreted, and, potentially, rectified is discussed admirably.

As a final example, the last chapter seems apt. Written by one of the practitioner contributors, Emma Chamberlain, its title is forthright and to the point: 'Estate Planning for Businesses'. Far less academic in its approach (and rightfully so), this chapter is an excellent guide on the basic principles surrounding estates and their administration from a more corporate viewpoint. Delving into such issues as taxation and subsequent liability, it is a worthwhile addition to a work focused largely upon academic contemplation and argument. While a potentially dry subject for many, it is an admirable addition to *Current Issues in Succession Law* if only for its practical application, brevity, and accessibility.

While it would be ideal to look at every chapter, it is simply not possible to do so here and justice could certainly not be done to the contributors if it was attempted. Hopefully the limited examination presented above will whet any potential reader's appetite for a greater helping of the law of succession. It is, at the very least, a work worthy of digestion by any student of the law or prospective creator of a testamentary disposition. Even outside the confines of property law, its practical scope and universal application (everyone dies, after all, and will have some wishes as to the disposition of their property) makes it a worthy read. Put simply, this is one not to be missed.

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Fiduciary Obligations: 40th Anniversary Republication with Additional Essays
Paul Finn (Foreword by Sir Anthony Mason)
Publisher: The Federation Press (Dec 2016) – original publication 1977 by The Law Book Company Limited
Pages: 380 (plus index and tables)
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Finn's Law: An Australian Justice
Tim Bonyhady (Editor): contributions by Ross Cranston, Sarah Worthington, Pauline Ridge, James Allsop, Stephen Gageler, Joshua Getzler, John M Williams and Michael Barker.
Publisher: The Federation Press (Nov 2016)
Pages: 236 (plus index and tables)
ISBN: 9781760020804
Price: A$125.00 (hardback)

Fiduciary Obligations

Paul Finn and The Federation Press are to be praised in republishing his leading work, with the additional of two further essays. No lawyer worth his salt with a trust or pension practice should be without a copy of 'Finn'. A bright new black copy (a change from the original green).

Originally published in 1977, Paul Finn's *Fiduciary Obligations* has a justified status as a classic text, with myriad citations by the courts both in the UK, Australia, Ireland and elsewhere in the common law world. Unfortunately, Finn's book has been out of print for a number of years and it is almost impossible to get hold of a copy. Your reviewer's standing order search on the second-hand book sites has not revealed a copy for sale over many years!

It also appears that Finn's book had a habit of disappearing from libraries. Pro-

fessor Sarah Worthington comments in the second book, *Finn's Law*, that the library copy at both her Australian university and at Cambridge University tended to disappear. I can confirm that the Freshfields copy has also vanished – some years ago. Sadly the book was also not available in the Law Society library. I think Lincoln's Inn library has a copy, but it is not accessible unless you are a barrister.

So why is a law book that is now over 40 years old worth reprinting and purchasing now?

Broadly it is because fiduciary law is such a tricky area and because the book is the best and clearest guide through many of the thickets. It is deservedly called a 'classic' (to use the description used by Millett LJ in *Mothew* [1998] Ch 1). Keith Mason has rightly compared its 'groundbreaking' approach to that of Goff & Jones in their (slightly earlier) book *Law of Restitution*. That is not to say that it deals with all issues or that the law has not moved on since 1977. But it remains tricky to understand the position of fiduciaries without considering the starting point that is Finn's book.

Trustees (and company directors) are clearly fiduciaries. They owe duties in equity. Some (perhaps all) of these duties are classified as fiduciary duties. Professor Finn cited, in a later 1989 article, 'The Fiduciary Principle' – printed as Chapter 25 of this new book, the words of Southin J in *Giradet v Crease & Co* (1987) 11 BCLR (2d) 361:

> 'The word ''fiduciary'' is flung around now as if it applied to all breaches of duty by solicitors, directors of companies and so forth.'

Clearly some of these duties are 'fiduciary' (whatever that means) and others may not be. In practice, the terminology is confusing and difficult to penetrate. That means that anyone seeking to get to the bottom of the duties and obligations of trustees, directors and indeed other fiduciaries (or indeed try to work out who is a fiduciary) needs to start with Paul Finn's book, and this is the case even though the law has (inevitably) moved on in the last 40 years.

Having graduated from the University of Queensland and then taken a Master's degree at London University, Paul Finn went on to obtain a PhD from Cambridge. He wrote the original of *Fiduciary Obligations* based on his PhD thesis at Cambridge. It was published in Australia in 1977. Clearly we would have all been much better off over the years had Paul Finn been able to update and review the book and issue further editions. It is our loss that he has not done so. He explains why this is so in the introductory comment:

> 'no further edition was published notwithstanding the importuning of Australian and English publishers, the generous offers made by scholars in both countries to assist in the compilation of another edition, and my own appreciation that, for a long time now, a copy of it has been virtually unprocurable. … My explanation, such as it is, for taking the course of denial I did was that I had moved on.'

Paul Finn's career did move on. He became a professor at the Australian National University in Canberra and then in 1995 a Judge of the Federal Court in Australia. He retired as a judge in 2012 and is now an honorary professor at Melbourne University. All of this means that his title has changed over the years: Mr Finn, Dr Finn, Professor Finn, Justice Finn and now back to Professor Finn? This review will stick with 'Paul Finn'.

Paul Finn also commented, in the 2014 article 'Fiduciary Reflections' included in this reprint, that:

> 'We have thought and written about fiduciaries on an artificially small, fragmented and distorted canvas. This explains why the book I published in 1977 was not the book I should now have written and perhaps why I have not written a second edition.'

But if Paul Finn's thinking did move on, so did his writing. Two of the key articles that he later produced are included in the reprint as new chapters:

- one (as Chapter 25) on 'The Fiduciary Principle' from 1989, his chapter in the multi-author book *Equity, Fiduciaries and Trusts*; and
- the second (as Chapter 26) called 'Fiduciary Reflections' published in 2014 in the Australian Law Journal.

Fiduciary law remains difficult. The terminology is tricky – not all duties owed by fiduciaries are apparently fiduciary duties (a famous comment from the original book, cited by Millett LJ in the *Mothew* case). But this itself gives rise to confusion (in my view a change to calling some duties a 'full' fiduciary duty would be helpful, where distinguishing is needed). In practice the fiduciary duty terminology is used in many different ways (see the discussion by Lord Walker in the article in this issue of TLI). This is discussed by Professor Worthington in her chapter in the second book, *Finn's Law*.

The book by Matthew Conaglen, *Fiduciary Loyalty: protecting the due performance of non-fiduciary duties*, is a worthy successor to Paul Finn's 1977 book. But really all pension, trust and company lawyers need both of these books. Statutory codification of some relevant duties (whether fiduciary or not) in Australia (Trustee Acts and Corporations Acts) and the UK (Companies Act 2006) may have raised their own issues, but they do not replace the need to understand the relevant common law duties.

The reprint of *Fiduciary Obligations* usefully includes references to the original pages numbers in the 1977 book – so enabling those citing Finn's work who are lucky enough to have (and have retained) a copy of the original to clarify which page is being discussed in both versions (or you could use the paragraph numbers).

In 'The Fiduciary Principle' (1987), Paul Finn has analysed obligations at three levels (as points on a spectrum): unconscionability; good faith; and fiduciary. This hierarchy of levels of duty is interesting. He considered that there is further scope for a good faith duty. Intriguingly, he commented that good faith issues tended to arise at common law only in an insurance context but notes its application in other contexts of late. He did not mention the UK employment law or pensions law context where the implied duty of mutual trust and confidence has been called a good faith duty (see *Imperial Tobacco*) and seems to bear many similarities to contractual good faith obligations (but still raises its own issues – see the massive *IBM* pensions litigation currently in progress [2014] EWHC 980 (Ch) and [2015] EWHC 389 (Ch) and due before the Court of Appeal in May 2017).

The issues raised by Paul Finn in his later writing, including 'Fiduciary Reflections', include a re-emphasis of the application of fiduciary duties to the public law sphere. Both areas involve the exercise of powers and discretions by persons in effect not on their own behalf but on behalf of other people or for another purpose and so the parallels are clear. The analogy has been depreciated as unhelpful in the UK in some private law cases (eg, *Pitt v Holt*) only to reappear in others (*Braganza v BP Shipping*).

Finn's Law

The second book, *Finn's Law*, is an edited collection of papers which were delivered in 2016 at a conference in Canberra which celebrated the legal career of Paul Finn.

This is a highly useful addition to the reprint of the expanded *Fiduciary Obligations*. It contains eight full chapters, each by a distinguished academic or judicial author. One, by Cranston J, looks at the legal life of Paul Finn (his career as an academic and as a judge) and the other seven look at individual legal topics.

The key chapter for my purposes (as a pensions lawyer) is that by Sarah Worthington, 'Fiduciaries, following Finn', which analyses and looks at the status of fiduciary law following Paul Finn's 1977 book and in the light of his later articles and also other articles and cases. As another former judge, Keith Mason, commented at the book launch this chapter enables 'academics and serious practitioners to survey the reactive academic and judicial scholarship in the intervening years.'

Professor Worthington starts with looking at why Paul Finn's 1977 book was so special by, for the first time, analysing fiduciary doctrines across the range. She points out that Paul Finn's 1977 analysis involved eight parts dealing with the exercise of powers and eight dealing with what are called duties of 'good faith'. She also draws attention to the 'most cited' line in the 1977 book:

> 'It is not because a person is a ''fiduciary'' or a ''confidant'' that a rule applies to him. It is because a particular rule applies to him that he is a fiduciary or a confidant *for its purposes*'.

Professor Worthington notes that the 'emphasis is in the original' and 'yet these italicised words are typically the very words omitted'. This is an important observation, and in my view one that points to the importance of the purpose test for fiduciaries (and perhaps away from a 'best interests duty'?). It is noticeable that Millett LJ did include the italicised words when referring to Paul Finn's book in *Mothew* [1998] Ch 1 at 18C.

Professor Worthington then discusses Paul Finn's later approach, in the 1989 essay 'The Fiduciary Principle', to defining when someone will be treated as a fiduciary (or at least owe some fiduciary obligations). She cites Paul Finn as putting forward a test based on a reasonable expectation that the person will act in another's interest to the exclusion of the person's own interest for a purpose (or for some or all of the purposes) of their relationship. She points out that this is not just an expectation of benefits to be delivered. Professor Worthington then looks at the 'surprising finale' of the 2014 article, 'Fiduciary Reflections' where Paul Finn looks towards an expanded category of fiduciaries: Professor Worthington considers this to be a retrograde step.

Professor Worthington finishes with a section looking at the 'continuing battlegrounds', including: language and definition in the fiduciary terrain (an enlightening discussion about the use of the term 'fiduciary'); the divide between fiduciary and good faith duties; self dealing and fair dealing; fiduciary powers; and the 'proscriptive duty' idea, finishing with a look at contracting out of fiduciary obligations; and the public law agenda.

The chapter by Pauline Ridge on 'Participatory Liability and the Hallmarks of an ''Australian Equity'' ' is also of interest to trust lawyers, looking at the development of the potential for participatory liability in Australia, following the High Court decision in *Farah Constructions* and comparing this with the developments in England and Wales and elsewhere following the decision in *Royal Brunei Airlines*. Associate Professor Ridge includes a discussion of the important decision of the Full Federal Court (including Finn J, but said to be authored by him) in *Grimaldi v Cameleon Mining*. She discusses whether this is a pointer to an 'Australian equity' with two hallmarks: a focus on the 'basal principle' instead of rigid doctrinal formulae; and the use of judicial discretion and

flexibility – potentially differing from other common law equity systems (although Associate Professor Ridge does note the flexibility and judicial discretion in the UK in Lord Walker's judgment in *Pitt v Holt*).

Grimaldi was cited by the UK Supreme Court in the 2014 *FHR European Ventures* decision holding that a bribe gave rise to a constructive trust and overturning *Lister v Stubbs*. Lord Neuberger cited the comments by Finn J in *Grimaldi* that ' "Australian law" in this connection "matches that of New Zealand … Singapore, United States jurisdictions … and Canada" '. Lord Neuberger went on to hold:

> 'As overseas countries secede from the jurisdiction of the Privy Council, it is inevitable that inconsistencies in the common law will develop between different jurisdictions. However, it seems to us highly desirable for all those jurisdictions to learn from each other, and at least to lean in favour of harmonising the development of the common law round the world.'

I have focused in this review on the two chapters most relevant for a pensions or trusts lawyer, but the other chapters in *Finn's Law* are also interesting and an insight into the work of a leading common law lawyer: Introduction by Tim Bonyhady; A Legal Life by Ross Cranston; Conscience, Fair-dealing and Commerce – Parliaments and the Courts by James Allsop; The Equitable Duty of Loyalty in Public Office by Stephen Gageler; Personality and Capacity: Lessons from Legal History by Joshua Getzler; To What End?: Public Law and Public Power by John M Williams; and To Akiba and Beyond: Old Hopes and New Dreams for Native Title by Michael Barker.

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