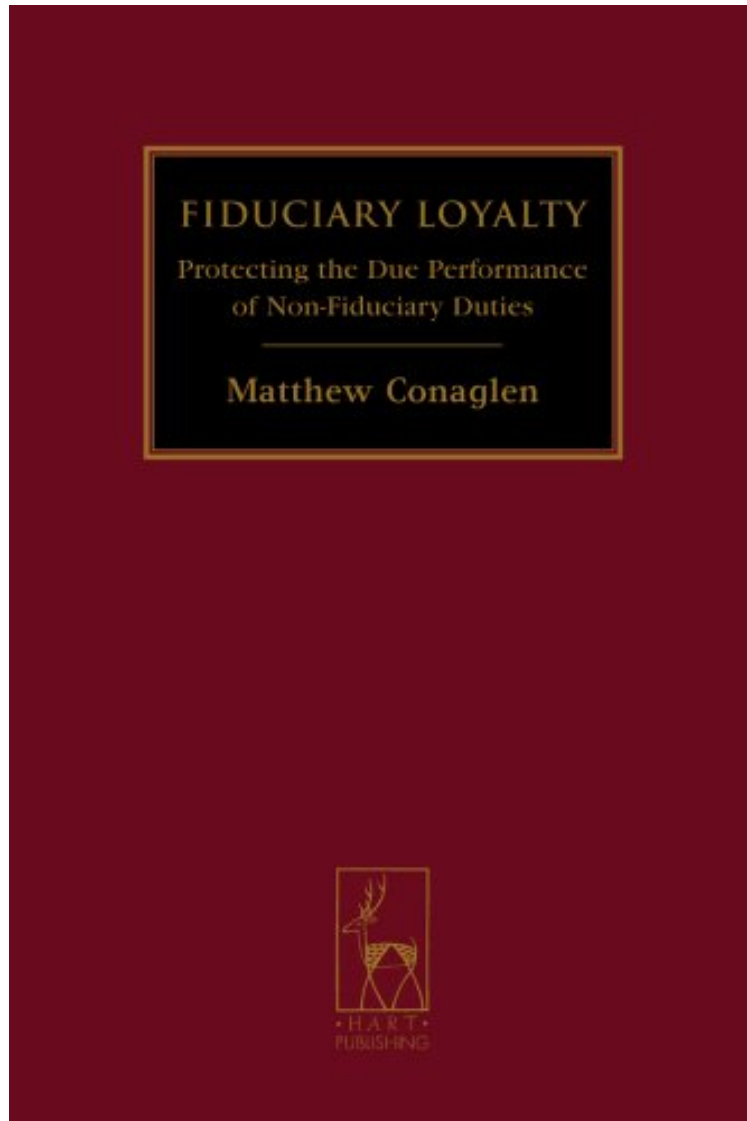


(Library ebook) Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties

# Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties

*Matthew Conaglen*

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**Matthew Conaglen : Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties** before purchasing it in order to gage whether or not it would be worth my time, and all praised Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties:

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Now available in paperback, *Fiduciary Loyalty* presents a comprehensive analysis of the nature and function of fiduciary duties. The concept of loyalty, which lies at the heart of fiduciary doctrine, is a form of protection which is designed to enhance the likelihood of due performance of non-fiduciary duties by seeking to avoid influences or temptations that may distract the fiduciary from providing such proper performance. In developing this position, the book takes the novel approach of putting to one side the difficult question of when fiduciary duties arise, in order to focus attention instead on what fiduciary duties do when they are owed. The issue of when fiduciary duties arise can then be returned to - and considered more profitably - once a clear view has emerged of the function that such duties perform. This analysis has both practical and theoretical implications for understanding fiduciary doctrine. For example, it provides a sound conceptual footing for understanding the relationship between fiduciary and non-fiduciary duties, highlighting the practical importance of analyzing both forms of duties carefully when considering fiduciary claims. Further, it explains a number of tenets within fiduciary doctrine, such as the proscriptive nature of fiduciary duties and the need to obtain the principal's fully informed consent in order to avoid fiduciary liability. Understanding the relationship between fiduciary and non-fiduciary duties also provides a solid foundation for addressing issues concerning compensatory remedies for their breach and potential defenses, such as contributory fault. The distinctive purpose that fiduciary duties serve also provides a firm theoretical basis for maintaining their separation from other forms of civil obligation, such as those that arise under the law of contracts and of torts. *Fiduciary Loyalty* was the winner of the 2nd SLS Peter Birks Prize for Outstanding Legal Scholarship 2010.

This carefully argued monograph takes a novel and conceptually subtle approach to explaining the significance of fiduciary loyalty. It represents a sophisticated attempt to explain how more detailed rules can be synthesized in an approach that focuses on fiduciary law's underlying normative imperative of loyalty, both in terms of its content and its systemic significance. This monograph is a superb example of doctrinal private law writing, a fact recognized by the award of the SLS Peter Birks Second Prize for Outstanding Legal Scholarship 2010. IT will be of interest to academics and some practitioners seeking a deeper understanding of the formative forces of fiduciary law, and it would be a strong addition to a reading list for advanced students. For academics with an interest in fiduciary law, whether we agree with Dr Conaglen's thesis or not . it is a sine qua non to which we must all respond. (Daniel J Carr *The Edinburgh Law Volume 15*)...the apparent product of mature reflection and is a clearly and cogently expressed refutation of the writings of Langbein and other such theorists...This is the first work in many years which covers this important and difficult field. It is bound to be established as a first port of call for all branches of the legal profession when grappling with fiduciary law. (Justice W.M.C Gummow 84 *Australian Law Journal* 27)This in an outstanding book that represents the culmination of ten years of research and reflection. It is a work of exceptional scholarship that provides much insight and clarity into the theoretical and practical operation of fiduciary doctrine and, in particular, the fiduciary obligation of loyalty. Dr Conaglen provides a comprehensive and coherent analysis of the nature and function of the fiduciary duties... [a] most interesting and illuminating book. (David Hayton *Trusts and Estates Law and Tax Journal Issue 117*)[A] finely balanced examination of the fiduciary doctrine from both a conceptual and a practical perspective. (Anthony Lo Surdo *Australian Banking and Finance Law Bulletin*)About the AuthorMatthew Conaglen is a Reader in Equity and Trusts at the University of Cambridge and a Fellow of Trinity Hall. He is an Academic Member of the Chancery Bar Association and has practised as a barrister and solicitor in New Zealand. His PhD at Cambridge, on the nature and function of fiduciary duties, was awarded the Yorke Prize and he has published extensively in that area and in others.