All lawyers know that company directors owe duties to their company. Those duties mean in general that they cannot make a secret profit out of their office and that they must disclose any conflict of duty and interest and that they must act bona fide and for the benefit of the company as a whole. Professional directors as well as fraudsters know that there are usually ways and means of outflanking these rules. They also know that it is often difficult to establish what is meant by “benefit of the company as a whole”.

Many years ago, Lord Nottingham refused to define fraud, saying that, as fraud was infinitely various, if he did so, it would merely lead to arguments as to what fell exactly within the definition. The same problem occurs with breach of duties of care and fidelity by company directors.

This compact book of 208 pages tries to reconcile the authorities on the subject, particularly those which have attempted some definitions. The author notes that there appears to be a sharp divide between principles of general equity as to fiduciary duties and corporate law cases on the subject. However, theoretically, directors are fiduciaries in the ordinary sense of the word.

The book spends considerable time on whether the High Court’s restriction of fiduciary duties to proscribing conduct is to be taken literally or whether there are some aspects of fiduciary duties which are prescriptive. It also devotes a chapter as to whether the prevailing view that a breach of a duty of care is a breach of a fiduciary duty is correct.

The discussion is interesting. However, the footnotes refer predominately to other writings of the author or articles written by academic lawyers. This is useful for a researcher desperate to find an argument on which there is some support, but tends further to obscure the wood for the trees.

Despite the book’s general title, it does not cover all directors’ duties. For instance there is no consideration of the key duty not to trade whilst insolvent.

The book appears to be directed to the academic lawyer, though it would also be useful to a barrister or solicitor acting for an alleged fraudster.

The book shows that there are considerable theoretical problems in clearly stating the law in a way that would cover all cases of corporate fraud. This has to be so. Luckily, as soon as judges and juries are sworn in, they attain a sense to smell fraud a mile a way!

*Acting Justice Peter W Young AO*