out by Dr Conaglen is unclear to an extent, though one must say that any such ambiguity would in practical terms be one of degree. It is clear that many of the practically functional rules relating to fiduciaries in Scotland and England are extremely similar if not identical, with the (possibly diminishing) exception of remedial responses. In terms of the theoretical fit of Dr Conaglen's theory of fiduciary duties to Scottish law there is arguably more tension as a result of the absence of an intellectually distinct equity jurisdiction. Yet, that appears not to be necessarily fatal to a potential Scottish reception of Dr Conaglen's auxiliary theory of fiduciary relations – the fact that fiduciary rules in England arose within the Court of Chancery does not mean that Scots law, if it should be so inclined, could not recognise *sui generis* an ex lege collection of duties that would perform a similar auxiliary role in relation to the classical categories of legal duty. The fundamental nature of such ex lege duties, and indeed where they came from, would present a more ticklish question but not an insurmountable obstacle to following Dr Conaglen's analysis.

The text is not only concerned with situating fiduciary law within the broad vista of private law at a taxonomical level. One of the greatest strengths of the text is the way that analysis of the operation of rules in discrete and specific situations simultaneously sustains and is subsumed within the broader classificatory objective. Chapter 5 in particular is permeated by clarity of analysis in the way it teases out conceptual differences between prohibitions on making a profit, conflicts of interest and the fair dealing rule. Furthermore, chapter 6 reflects upon the manner in which a fiduciary's potentially multiple duties interact with each other, thus providing a useful account of potential difficulties that may arise in such situations.

As ever with monographs from Hart, the text is handsomely presented at a reasonable price, and a paperback edition is due to appear in August 2011 at an even more reasonable price. This monograph is a superb example of doctrinal private law writing, a fact recognised 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 they agree with Dr Conaglen's thesis or not (there are those who do not: Rebecca Lee, Lionel Smith, and Joshua Getzler for example) it is a *sine qua non* to which we must all respond.

Daniel J Carr
University of Dundee

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SET-OFF LAW AND PRACTICE: AN INTERNATIONAL HANDBOOK. Ed by William Johnston and Thomas Werlen

Oxford: Oxford University Press (*www.oup.co.uk*), 2nd edn, 2010. lxxi + 576 pp. ISBN 9780199579716. £165.

"Set-off", it is commonly said, is not a term of art in Scots law. The result has been a focus on particular types of set-off. Compensation, for instance, is covered in the commendably concise – contemporary law reformers, take heed – Compensation Act 1592 (APS, III, 573, c 61; RPS 1592/4/83). "A just and positive statute," Lord Cunninghame remarked of it, "most creditable to the wisdom and sound views of the ancient Scottish legislature" (*Donaldson v Donaldson* (1852) 14 D 849 at 855). But the focus on compensation is to some extent unfortunate, not least because compensation is relatively unusual. Although it may be fair to say that compensation is a doctrine of the substantive law, compensation under the 1592

Act has to be pled and sustained in court. It is thus a doctrine for litigators and, in practical terms, expensive.

Other types of set-off, in contrast, are much more important. The Scots law of insolvency set-off ("balancing of accounts in bankruptcy") is one area of daily practical importance which has been rather neglected by modern scholarship, although it has been the subject of a very useful recent decision by Lord Hodge: *Integrated Building Services Engineering Consultants Ltd v Pihl UK Ltd* [2010] CSOH 80, which confirms that it does apply on administration. One direct consequence of the lack of development of balancing of accounts in bankruptcy was that a recent gallant attempt to persuade the Royal Court of Guernsey that it should develop its law of insolvency set-off on the basis of the Scots law of balancing of accounts, failed: *Flightlease Holdings (Guernsey) Ltd v Flightlease (Ireland) Ltd* [2009] GLR 38 (a case involving two insolvent Swiss Air subsidiaries whose outstanding liabilities amounted to almost US$690m).

The book under review collects together national reports which each concisely describe the nature of the different types of set-off in that jurisdiction. Alas, there is no national report for Scotland (unlike in the companion volume, also edited by William Johnston, *Security over Receivables: An International Handbook* (2008); the Scottish chapter in the latter work is contributed by Mr Bruce Stephen of Brodies LLP). The Scots law of contractual set-off has been all but ignored in modern literature. But if Lord Rodger's judgment in *Inveresk plc v Tullis Russell Papermakers Ltd* [2010] UKSC 19 has given renewed impetus to this area of the law in general, this book may provide a helpful summary in English of the developments in other jurisdictions.

There is one area on which the book is particularly strong: consideration of the "cash-pooling" agreement whereby a corporate group seeks to ensure that different debits and credits in group banking arrangements are treated as efficiently as possible. It is generally accepted that it is possible to contract-*out* of, say, compensation. But is it possible to contract-*in*? And, if so, is it possible to provide contractually for set-off on a wider basis than that available under the 1592 Act? Can such agreements, irrespective of the substantive rights they seek to confer, be concluded by all companies in a corporate group, thus creating what the US courts have referred to as "mutuality by contract"? And how will such agreements fair on insolvency?

The present volume contains very useful tables (at lxii-lxxi) which allow the reader to determine at a glance whether, for any particular jurisdiction covered in the book, set-off is statutory; mandatory within insolvency; whether there are claw-backs of pre-insolvency set-offs; whether set-off agreements encompassing all the debts owed by corporate affiliates are possible outside insolvency; and whether such affiliate set-off agreements are effective within insolvency. It may be imagined, therefore, that this book would be of particular use to practitioners: whether to those dealing with cross-border insolvency set-off issues, or to those drafting composite corporate guarantees and set-off agreements. To such practitioners this user-friendly volume, on a subject often considered arcane, is warmly commended. To those with academic concerns, there is much to be gained from the practical focus on the types of agreements to which practitioners regularly have to bring their knowledge of set-off (such as the "cash-pooling" agreement), but which are not, in the Scottish sources at least, much considered. This volume thus brings with it too a challenge: to develop our own law to justify – if any justification were needed – inclusion in the next edition.

Ross Gilbert Anderson
University of Glasgow