In Inferno, the first book of Dante Alighieri’s Divine Comedy, the 14th century Italian poet seeks to traverse the circles of Hell. Terrified of entering that shadowy realm unprotected, he accepts as his guide, Virgil, one of the classical world’s wisest and most respected figures.

For many in the financial services industry, enquiry into their legal obligations is a similar descent into the tortuous, labyrinthine corridors of Hell. The number of statutory, regulatory, tortious and equitable rules is mind-numbing to the uninitiated. And it is not just the number of rules that perplexes; the interaction of the rules adds further complexity. It is an environment in which a trusted guide is most welcome, if not downright essential.

Professor Hanrahan’s book, Funds management in Australia: officers’ duties and liabilities aspires to be that guide. If it fails to provide a clear, unambiguous path for participants in the financial services industry to follow, that is only because no such path exists.

The book has a straightforward, logical structure. Part I provides preliminary, but by no means trivial, background material on the activity of funds management (chapter 1), principles of general law (chapter 2), financial services regulation (chapter 3) and product and prudential regulation (chapter 4). Part II deals directly with the duties, obligations and liabilities of officers of funds management companies. First, it defines the subjects of the regulation – the directors, officers and responsible persons (chapter 5). It then maps the pattern of officers’ accountability, identifying seven types of contravention (chapter 6). Chapters 7 through 9 deal with the officer’s duty of care and effort, the duty to act properly, and the conflicts and profits rules. Chapter 10 deals with disclosure, and chapters 11 and 12 examine an officer’s liability for the company’s wrongdoing or its debts. The final two chapters in Part III deal with the public (chapter 13) and then the private (chapter 14) enforcement mechanisms available when officers fail to meet their obligations.

The value of Professor Hanrahan’s book is not only that it catalogues the long list of rules which officers of funds management companies must currently respect, but also that it attempts to map some of the areas where the rules interact. This is a hugely important exercise, made all the more important because it is difficult and the jurisprudence in Australia is thin. For example, chapters 7 through 9 depict the interplay between the general law obligations on officers of funds management
book review

Practitioners and academics alike will find this type of analysis valuable. It highlights the importance of looking beyond the immediate rule to be applied. The recent Citigroup case\(^2\) is a timely reminder that the net result of overlapping strands of regulation on a particular situation can be decisive. In that case the court needed to pay close attention to the interplay between contractual (and potentially fiduciary) obligations on the one hand, and legislative and regulatory rules on the other. The AXA case,\(^1\) heard by the Administrative Appeals Tribunal in 2006, was another where the relationship between the statutory rules and the general law was important.

This book may prove heavy going for non-lawyers. However, selective reading by those 'uninhibited by a familiarity with the complexities of the common law'\(^4\) may prove valuable. In particular, it could provide much-needed precision to understanding among non-lawyers of the true meaning and import of legal terms-of-art like 'fiduciary' and 'best interests'. It should also help officers clarify the nature of their duties and, crucially, identify to whom those duties are owed.

In the end, Virgil proves a trustworthy guide for Dante through the nine circles of Hell and the seven terraces of Purgatory. However, Virgil's paganism precludes him from accompanying Dante to the highest plane. Dante ascends the spheres of Paradise led by Beatrice, a somewhat mysterious, diaphanous figure thought by some scholars to represent an internal state of grace rather than an actual person. Readers of *Funds management in Australia: officers' duties and liabilities* face a similar challenge. Professor Hanrahan's valuable book can only take readers so far. An awareness of the tapestry of legal obligations is vital, and this book provides that admirably. However, the decision of what to do – how to reconcile the commercial, ethical and legal requirements in a given circumstance – is one that only the individual officer can take.

Notes

2 ASIC v Citigroup Global Markets Australian Pty Ltd (No.4) [2007] FCA 963.
3 Re VBN [2006] AATA 710.
4 Sangaravel v Middle Eastern Airways (1975) 5 ALR 147, per Mason J at 163.