11. The nature of trusteeship

Without assuming prior legal knowledge, books in the Directions series introduce and guide readers through key points of law and legal debate. Questions, diagrams and exercises help readers to engage fully with each subject and check their understanding as they progress. Trusteeship requires the proper discharge of a number of fundamental duties, such as the duty of undivided loyalty (the fiduciary duty), the duty of care for the trust fund (the duty of care) and the duty to exercise a sound discretion. The trustee must act in the interests of the beneficiaries rather than his own interest. More specifically, the trustee must serve the beneficiaries within their larger obligation to serve the trust in accordance with the terms of the trust instrument and the general law. This chapter examines the general nature of trusteeship. It considers how a trustee meets their fiduciary obligations to the trust, the standard of care which trustees must exercise in service of the trust, the discretionary nature of a trustee’s decision-making powers and the requirement that trustees must act unanimously. The chapter also discusses the self-dealing rule and fair-
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dealing rule, the Trustee Act 2000 and factors influencing the courts’ willingness to review trustee decisions.

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