

**The Role of Fiduciary Law in the 21st Century**  
*A Conference Inspired by the Work of Professor Tamar Frankel*  
October 29, 2010  
BU Law, Barristers Hall  
765 Commonwealth Ave, Boston, MA 02215

**Welcome and Introduction** by **Dean Maureen A. O'Rourke**, BU School of Law  
9:15 – 9:30 a.m.

**I. The nature of fiduciary law and its relationship to other legal doctrines and categories**  
9:30 – 10:45 a.m.

There are many ways to define fiduciary relationships and explain the rules that apply to them. These definitions and explanations can then address the question of whether fiduciary law should be considered a subcategory of contract, tort or property law, or should be viewed as a distinct category. To what extent do the concepts, duties, doctrines, and remedies of other fields play a useful role in fiduciary law, and to what extent is fiduciary law sui generis? Moreover, to what extent do fiduciary responsibilities in particular fields (such as corporate law, securities law, family law, art law, and health law) depend on the distinctive features of that field?

**Rafael Chodos**, Author and attorney  
**Deborah DeMott**, Duke University School of Law  
**Alan Feld**, BU School of Law  
**Kevin Outterson**, BU School of Law  
**Larry Ribstein**, University of Illinois College of Law

**II. An interdisciplinary view of fiduciary law**  
11:00 a.m. – 12:15 p.m.

Fiduciary relationships can be illuminated by viewing them through the lens of different disciplines, including economics, psychology, history, and philosophy. These different perspectives might suggest different conclusions about the proper scope and content of fiduciary law rules and remedies, and about the best justification for those rules, but also might converge on some areas of consensus.

**Joshua Getzler**, University of Oxford Faculty of Law  
**Richard Holton**, MIT Department of Philosophy  
**Donald Langevoort**, Georgetown University Law Center  
**David Seipp**, BU School of Law  
**Robert Sitkoff**, Harvard Law School

**Lunch**  
12:30 – 2:00 p.m.

Remarks by Tamar Frankel

**III. Current issues in fiduciary law**  
2:00 – 3:15 p.m.

The issues for discussion will include:

- The determination of executive compensation. This topic presents a number of controversial problems, including the scope of fiduciary duties of corporate executives and of those with power to control their compensation. First, in light of the fiduciary duties of corporate directors, what type and degree of control of executive compensation should we expect directors to exercise? Second, did executives of the Wall Street firms and mortgage companies involved in the recent subprime and predatory lending debacles breach their fiduciary duties?

- The legal treatment of fiduciary principles in connection with the prohibition of insider trading under the federal securities laws.
- The difficulty of applying traditional fiduciary duties in the face of modern capital structures, including creditors' role in corporate governance.
- The fiduciary duties of broker-dealers.

**Arthur Laby**, Rutgers School of Law, Camden

**Donna Nagy**, Maurer School of Law, Indiana University

**Frederick Tung**, BU School of Law

**Cheryl Wade**, St. John's University School of Law

**David Walker**, BU School of Law

#### **IV. Public servants and private fiduciaries**

3:30 – 4:30 p.m.

Both governmental officials and private fiduciaries are entrusted with power and property for the purpose of enabling them to perform their functions and provide services to others. Political and constitutional theorists recognize the need to establish legal rules and institutions to prevent abuse of entrusted public power. Are their insights relevant to the proper scope of private fiduciary law? For example, should CEO's have term limits, consistent with some public offices? Conversely, does fiduciary law offer useful guidance for the control of public power and for democratic legitimacy? For example, are fiduciary law norms incorporated into the Constitutions as constraints on government? Do such norms help explain the political status of children in a democracy? Do they adequately explain how the law defines biological and adoptive parenthood?

**Margaret Brinig**, Notre Dame Law School

**Gary Lawson**, BU School of Law

**Ethan Leib**, UC Hastings College of the Law and **David Ponet**, UNICEF

**Charles Whitehead**, Cornell Law School

#### **V. Roundtable discussion**

4:45 – 6:00 p.m.

In this roundtable, we hope to create a fruitful and enlightening conversation among prominent private attorneys, government regulators and academics who work in the field of fiduciary law or related fields, concerning the topics of the conference and other emerging issues.

**Wendy Gordon**, BU School of Law

**Laurence Kotlikoff**, BU Department of Economics

**Andrew Pitts**, Cravath, Swaine & Moore

**Peter Rosenblum**, Foley, Hoag

**James Post**, BU School of Management

**Kenneth W. Simons**, BU School of Law

**Erik Sirri**, Babson College Finance Division