
SYMPOSIUM

**THE ROLE OF FIDUCIARY LAW AND
TRUST IN THE TWENTY-FIRST
CENTURY: A CONFERENCE INSPIRED
BY THE WORK OF TAMAR FRANKEL**

EDITORS' FOREWORD

Boston University School of Law held a Conference on fiduciary law and trust on October 29, 2010. The Conference was held in honor of Tamar Frankel, an internationally renowned expert in the areas of financial system regulation, fiduciary law, and corporate governance. Professor Frankel has been a member of the Boston University School of Law faculty since 1968, and is the author of over sixty books, book chapters, and articles. Most recently, she is the author of *Fiduciary Law* (Oxford University Press 2011).

In order to prosper in an ever more complex and connected world, members of society must depend on each other, often trusting others with power over their property, interests, and rights. However, this trust may be abused. Fiduciary law has several purposes: to encourage people to rely on experts and other fiduciaries, to facilitate fair and efficient terms of those relationships, and to prevent (and provide remedies for) abuse of the power entrusted to the fiduciary. The issues surrounding the trust we place in others have an ancient heritage, and fiduciary relationships range widely in scope – from the Code of Hammurabi to today's Employee Retirement Income Security Act, from partnership rules in the Middle Ages to contemporary rules governing corporate and bank management.

This Conference highlighted the nature and scope of fiduciary law, and its relationship to other legal doctrines. It looked at fiduciary law through the lenses of other disciplines such as economics, history, psychology, and philosophy, and it investigated current debates surrounding fiduciary law, including the recognition of fiduciary duties in the determination of executive compensation, the prohibition of insider trading under federal securities law, and fiduciary duties in the relatively unregulated world of securities and mortgage broker-dealers. Prominent scholars in law, economics, philosophy, and history, as well as leading practitioners, gave live presentations. The presentations were organized into the following panels:

Panel I: The Nature of Fiduciary Law and Its Relationship to Other Legal Doctrines and Categories

This panel investigated the multiple ways to define fiduciary law. It also looked at fiduciary law's relation to other fields and concepts. Is fiduciary law a subcategory of contract, tort, or property? Is it a distinct category of its own? To what extent do the concepts, duties, doctrines, and remedies in other fields play a useful role in understanding fiduciary law? Rafael Chodos, Deborah DeMott, Alan Feld, Kevin Outterson, and Larry Ribstein presented.

Panel II: An Interdisciplinary View of Fiduciary Law

This panel investigated fiduciary law from the standpoint of different disciplines, including economics, psychology, history, and philosophy. Specifically, it brought to bear different perspectives on the proper scope and content of fiduciary laws, rules, and remedies, and the best justification for these norms. Joshua Getzler, Richard Holton, Donald Langevoort, David Seipp, and Robert Sitkoff presented.

Panel III: Current Issues in Fiduciary Law

This panel directly addressed current issues involving fiduciary relationships. Topics included the determination of executive compensation, the legal treatment of fiduciary principles in connection with the prohibition of insider trading under federal securities laws, the challenges of applying fiduciary principles in the context of modern capitalist structures, and the fiduciary duties of broker-dealers. Arthur Laby, Donna Nagy, Frederick Tung, Cheryl Wade, and David Walker presented.

Panel IV: Public Servants and Private Fiduciaries

This panel explored the relationship between the trust given to public officials over property and rights and the trust provided private fiduciaries. Do the constitutional and political principles that govern public servants offer insights into the proper scope of private fiduciary law? Conversely, what guidance does fiduciary law offer concerning control of public officials and democratic legitimacy? Margaret Brinig, Gary Lawson, Ethan Leib, David Ponet, and Charles Whitehead presented.

Panel V: Roundtable

The final panel provided an opportunity for prominent private practitioners and professors to discuss a variety of topics relating to this Conference, or other issues emerging in the field. Wendy Gordon, Laurence Kotlikoff, Andrew Pitts, James Post, and Peter Rosenblum presented.

The Boston University Law Review is honored to publish the many outstanding contributions to this Conference. We would like to thank all the contributors, including our own Boston University professors who participated in the Conference. Above all, we thank Tamar Frankel for her contribution to this important area of law. Thank you to Professor Kenneth Simons, who organized the Conference. Thank you as well to Dean Maureen O'Rourke for her continuing support of the *Law Review* and the annual symposium, and Professor James Fleming, the *Law Review* faculty advisor, for his strong guidance. Finally, this special symposium issue would not be possible without the hard work of our dedicated *Law Review* editorial board and staff.

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