

Fiduciary Law and Entrepreneurial Action

BY

Professor Gordon Smith

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Chairperson: Assistant Professor Christian Hofmann

12 FEBRUARY 2015, THURSDAY

12.30PM - 2.00PM

LEE SHERIDAN CONFERENCE ROOM, LEVEL 1, EU TONG SEN BUILDING

FACULTY OF LAW, NUS (BUKIT TIMAH CAMPUS)

ABSTRACT

In defining the boundaries of fiduciary discretion, courts tailor the general obligation of loyalty to myriad specific contexts, often consulting industry customs and social norms for guidance. Fiduciary law is often compared to tort law, in which the reliance on customs and norms has been said to chill innovation. The logic underlying this argument in the tort context is compelling: if the actions of a purported tortfeasor are measured against existing practices, novel actions increase the risk of liability, thus dampening enthusiasm for innovation. We acknowledge that tort law's reliance on custom and norms may discourage innovation in industrial procedures, product development, or medical care, but we contend that fiduciary law's reliance on customs and norms encourages formation of relationships that lead to entrepreneurial action by enforcing the reasonable expectations of those parties.

ABOUT THE SPEAKER



Professor Smith has written extensively about connections between law and entrepreneurship. His most recent article, *Law & Entrepreneurial Opportunities*, 98 *Cornell Law Review* 1533 (2013), argues that a legal system can facilitate the creation of entrepreneurial opportunities by emboldening entrepreneurs to act. Professor Smith co-founded the Law & Entrepreneurship Association, a scholarly society that encourages the study of law and entrepreneurship. A Delaware corporate lawyer, Professor Smith has written extensively on fiduciary law, including two foundational pieces -- *The Shareholder Primacy Norm*, 23 *J. Corp. L.* 277 (1998) and *The Critical Resource Theory of Fiduciary Duty*, 55 *Vand. L. Rev.* 1399 (2002) -- that have become standard citations in the field. His most recent work, *Fiduciary Discretion*, 75 *Ohio State L. J.* 609 (2014), continues his effort to build an overarching theory of fiduciary law. Professor Smith also is editing *The Research Handbook on Fiduciary Law* (Edward Elgar). In 2004 he co-founded *The Conglomerate Blog*. He has served as Chair of the Section on Business Associations in the American Association of Law Schools (AALS), and he participated in the creation of the Section on Transactional Law and Skills, for which he currently serves as Secretary. In 2012 he co-founded the *Transactional Law Workshop*, a monthly virtual gathering of transactional law scholars. And in 2013, he co-founded the *Business Ethics Book Club*, a virtual book club of law professors, who meet once a semester to discuss a recent work on business ethics. Before entering academe, Professor Smith clerked for Judge W. Eugene Davis in the United States Court of Appeals for the Fifth Circuit and was an associate in the Delaware office of the international law firm Skadden, Arps, Slate, Meagher & Flom.

REGISTRATION

There is no registration fee for this seminar but seats are limited.

Light sandwich lunch will be provided at the seminar.

Closing Date: 4 February 2015, Wednesday

For enquiries, please contact Ms Meryl Kong at clb@nus.edu.sg

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