



## **National Business Law Scholars Conference**

June 8-9, 2017

The University of Utah  
S.J. Quinney College of Law  
383 South University Street  
Salt Lake City, UT 84112

### **THURSDAY, JUNE 8th**

- 8:00-8:30      Registration & Breakfast** (Level 6 – Lobby)
- 8:30-8:40      Opening Remarks** (Level 6 – Lobby)  
Jeff Schwartz (University of Utah S.J. Quinney College of Law)
- 8:40-9:55      Concurrent Panels**
- Panel A** (Room 6613)  
**Insider Trading Regulation**  
Moderator and Discussant: Eric C. Chaffee (The University of Toledo College of Law)
- Alexander Dill (Chicago-Kent College of Law), *The Mosaic Defense to Insider Trading Charges: An Argument for Rebalancing Regulatory Objectives*
  - Jonathan D. Glater (University of California - Irvine School of Law), *Insider Trading and the Paradigm of the Rigged Game*
  - Joan MacLeod Heminway (The University of Tennessee College of Law), *With Friends (and Family) Like This . . . : Tipping and Misappropriation in Personal Networks*
- Panel B** (Room 6619)  
**Intellectual Property and Business Law**  
Moderator and Discussant: Olufunmilayo B. Arewa (University of California Irvine School of Law)
- Gregory Day (Oklahoma State University Spears School of Business), *The International Competition of Patent Laws and Strategic Firm Behavior*
  - Kevin R. Douglas (George Mason University Antonin Scalia Law School), *Inside Information as Intellectual Property*
  - Ana Santos Rutschman (DePaul University College of Law), *The Changing Landscape of Intellectual Property Forum-Shopping: Implications of Venue Reform for Patent-Intensive Business Models*

**Panel C** (Room 6623)

**Banking Regulation**

Moderator and Discussant: Paolo Saguato (Antonin Scalia Law School, George Mason University)

- John Crawford (University of California Hastings College of the Law), *Neither Trigger-Happy Nor Trigger-Shy: When to Kill a (Dying) Bank*
- Eric Epstein (Dorsey & Whitney LLP), *The Bank Examination Privilege: When Litigants Demand Confidential Regulatory Reports*

**Panel D** (Room 6500)

**Business, Law, and Economics**

Moderator and Discussant: Cathy Hwang (University of Utah S.J. Quinney College of Law)

- Michael D. Guttentag (Loyola Law School, Los Angeles), *The Law and Economics of Surplus*
- Jay B Kesten (Florida State University College of Law), *The Law and Economics of the Going-Public Decision*
- Julia Y. Lee (Penn State University School of Law), *Money Norms*

9:55-10:05      **Break**

10:05-12:05      **Concurrent Panels**

**Panel A** (Room 6613)

**Securities Market Regulation**

Moderator and Discussant: Tom C.W. Lin (Temple University Beasley School of Law)

- George S. Georgiev (Emory University School of Law), *Optimizing Securities Disclosure for the Universal Investor*
- Benjamin P. Edwards (UNLV William S. Boyd School of Law), *The Person Prospectus: A Call for Effective Professional Disclosure*
- Scott Hirst (Harvard Law School), *Reducing the Cost of Corporate Regulations*
- Jeremy R. McClane (University of Connecticut School of Law), *The Proper Regulation of Incentives in Opaque Securities Markets*
- Victoria L. Schwartz (Pepperdine University School of Law), *The Incorporated Man: The Celebrity Stock Market*

**Panel B** (Room 6619)

**Exploring Corporate Governance**

Moderator and Discussant: Jay B Kesten (Florida State University College of Law)

- Matthew T. Bodie (Saint Louis University School of Law), *Holacracy and the Law*
- Yaron Nili (University of Wisconsin Law School), *Out of Sight Out of Mind: The Case for Improving Director Independence Disclosure*
- Greg Shill (Harvard Law School Program on Corporate Governance), *Director Compensation and the Independent Corporate Board*
- David H. Webber (Boston University Law School), *The Rise of the Working Class Shareholder*
- Andrew William Winden (Stanford Law School), *Controlling the Controller: Untying the Dual Class Knot*

**Panel C** (Room 6623)

**Business, Bankruptcy, and Financial Distress**

Moderator and Discussant: Ralph Mabey (University of Utah S.J. Quinney College of Law)

- Andrea J. Boyack (Washburn University School of Law), *Prevention or Cure: Comparing European and American Approaches to Consumer Financial Distress*
- Laura Napoli Coordes (Arizona State University Sandra Day O'Connor College of Law), *Neutrality and Expertise in Municipal Bankruptcy*
- Andrew B. Dawson (University of Miami School of Law), *Modularity in Cross-Border Insolvency*
- Jared A. Elias (University of California Hastings College of the Law), *An Empirical Study of Bankruptcy Claims Trading*
- Lindsey Simon (Kilpatrick Townsend & Stockton LLP), *Embracing the Third Wheel*

**12:05-12:50**      **Lunch** (Level 6 – Lobby & Terrace)

**12:50-1:55**      **Keynote Address — What are Corporations and What Should They Do?**

Lynn Stout (Cornell Law School)

(Level 6 – Moot Courtroom)

*Welcome Remarks* — Amy Wildermuth (University of Utah S.J. Quinney College of Law)

**2:00-4:00**      **Concurrent Panels**

**Panel A** (Room 6613)

**Hot Topics in Securities Regulation**

Moderator and Discussant: Eric C. Chaffee (The University of Toledo College of Law)

- Hilary J. Allen (Suffolk University Law School), *The SEC As Financial Stability Regulator*
- Jay Brown (University of Denver Sturm College of Law), *Rule 14a-8 and the Myth of Shareholder Confusion*
- Wendy Gerwick Couture (University of Idaho College of Law), *Omnicare's Disruption of Issuers' Disclosure Decisions*
- Scott Hirst (Harvard Law School), *Universal Proxies*
- Margaret V. Sachs (University of Georgia School of Law), *Private Securities Fraud Jurisprudence and the Supreme Court's Often-Hidden Fixation on Rule 10b-5*

**Panel B** (Room 6619)

**White Collar Crime and Corporate Criminal Liability**

Moderator and Discussant: W. Robert Thomas (Harvard Law School)

- Mihailis E. Diamantis (University of Iowa College of Law), *Clockwork Corporations: A Character Theory of Corporate Punishment*
- William O. Fisher (University of Richmond School of Law), *Thought Piece on Major Fines, Penalties, and Judgments*
- Reem Radhi (Durham Law School), *Modernising Corporate Crime: Restorative Justice for Corporate Criminal Liability and Sentencing*
- Peter R. Reilly (Texas A&M University School of Law), *Deferred Prosecution as Discretionary Injustice*
- Karen E. Woody (Indiana University Kelley School of Business), *"Declinations with Disgorgement" in FCPA Enforcement*

**Panel C** (Room 6623)

**Financial Regulation**

Moderator and Discussant: Andrew B. Dawson (University of Miami School of Law)

- Elizabeth F. Brown (University of Wisconsin – La Crosse), *Preliminary Analysis of the U.K.'s Modified Twin Peaks Structure*
- Israel Moshe Klein (Harvard Law School), *The Gap in the Perception of the GAAP*
- Frank Partnoy (University of San Diego School of Law), *What's (Still) Wrong with Credit Ratings*
- Paolo Saguato (Antonin Scalia Law School, George Mason University), *The Organization of Financial Market Infrastructures*

**Panel D** (Room 6500)

**Business Law and Social Activism**

Moderator and Discussant: Joan MacLeod Heminway (The University of Tennessee College of Law)

- Michael B. Dorff (Southwestern Law School), *Why Public Benefit Corporations?*
- Tom C.W. Lin (Temple University Beasley School of Law), *The New Corporate Social Activism*
- Elizabeth Pollman (Loyola Law School, Los Angeles), *Corporate Civil or Uncivil Disobedience*
- Emily Winston (New York University School of Law), *Benefit Corporations and the Separation of Benefit and Control*
- Charles M. Yablon (Benjamin N. Cardozo School of Law), *Mixed Motive Investments and Agency Costs*

4:00-4:15

**Break**

4:15-6:00

**Concurrent Panels**

**Panel A** (Room 6613)

**The Role of the Securities Regulator**

Moderator and Discussant: George S. Georgiev (Emory University School of Law)

- Yuliya Guseva (Rutgers Law School), *Extraterritoriality of Securities Law Redux: Public Enforcement After Morrison v. National Australia Bank*
- Hadar Y. Jabotinsky (The Hebrew University of Jerusalem), *Revolving Doors and Conflict-of-Interest Rules in the Financial Markets - We Got it Backwards*
- Adam C. Pritchard (University of Michigan Law School), *SEC Enforcement Attorneys: Should I Stay or Should I Go?*
- Chao Xi (The Chinese University of Hong Kong Faculty of Law), *Enforcement Actions in China 1998-2016 What Motivates the Securities Regulators? An Empirical Assessment of Securities*

**Panel B** (Room 6619)

**Business Litigation**

Moderator and Discussant: Carliss N. Chatman (Stetson University College of Law)

- Jens Dammann (The University of Texas School of Law), *Business Courts and Firm Performance*
- Jessica Erickson (University of Richmond School of Law), *The Market for Corporate Procedure*
- Vera Korzun (Fordham Law School), *Shareholder Claims for Reflective Loss: How International Investment Law Changes Corporate Law and Governance*
- Matthew C. Turk (Indiana University, Kelley School of Business), *Regulation by Settlement*

**Panel C** (Room 6623)

**Business Taxation**

Moderator and Discussant: Cathy Hwang (University of Utah S.J. Quinney College of Law)

- Eric C. Chaffee (The University of Toledo College of Law), *Collaboration Theory and Corporate Tax Avoidance*
- Geeyoung Min (Columbia Law School) & Young Ran (Christine) Kim (University of Utah S.J. Quinney College of Law), *Interrupted Continuity: Corporate Spin-off and Governance Disparity*
- Limor Riza (Carmel Academic Center, School of Law), *Should We Tax Former Senior Civil Servants More? Yes, We Should*
- Sloan G. Speck (University of Colorado Law School), *The Unchanging Terminology of International Tax Policy*

**Panel D** (Room 6500)

**Business Law for Social Change**

Moderator and Discussant: Jeff Schwartz (University of Utah S.J. Quinney College of Law)

- Anat Alon-Beck (Dickinson College; NYU Law School), *Using Sandra Day O'Connor's iCivics Model To Give Theoretical and Pragmatic Definition to Social Entrepreneurship*
- Michael B. Dorff (Southwestern Law School), *Assessing the Assessment: B Lab's Effort to Measure Companies' Benevolence*
- Stephen Park (University of Connecticut School of Business), *Investors as Regulators: Green Bonds and the Governance Challenges of the Sustainable Finance Revolution*
- Chang-hsien (Robert) Tsai (National Tsing Hua University College of Technology Management, Institute of Law for Science & Technology), *What Conflict Mineral Rules Tell Us about the Legal Transplantation of Corporate Social Responsibility Standards without the State: From the United Nations to the United States to Taiwan*

**6:00-7:15**

**Reception** (Level 6 – Lobby & Terrace)

## **FRIDAY, JUNE 9th**

**8:00-8:45**      **Breakfast** (Level 6 – Lobby)

**8:45-10:00**      **Concurrent Panels**

**Panel A** (Room 6613)

### **International and Comparative Securities Regulation**

Moderator and Discussant: William J. Magnuson (Texas A&M University School of Law)

- Virginia Harper Ho (University of Kansas School of Law), *Sustainability in Financial Reporting: The SEC's Sustainability Imperative*
- Poonam Puri (Osgoode Hall Law School), *Investor Protection At A Crossroads: An Empirical Study Of Canadian Securities Class Actions Between 2005-2015*
- Roger Silvers (University of Utah David Eccles School of Business), *The Effects of Cross-Border Information-Sharing on Enforcement and Earnings Attributes*

**Panel B** (Room 6619)

### **Entrepreneurship and Capital Formation**

Moderator and Discussant: Darren Rosenblum (Pace Law School)

- Brad Bernthal (Colorado Law School), *Completing Entrepreneurial Financial Markets*
- Marina Nehme (University of New South Wales, the Law Faculty), *Crowd Equity Funding, Regulation of Investors and Financial Literacy*
- Jeff Schwartz (University of Utah S.J. Quinney College of Law), *Should Mutual Funds Invest in Startups? A Case Study of Fidelity Magellan Fund's Investments in Unicorns (and other Startups) and the Regulatory Implications*

**Panel C** (Room 6623)

### **Corporate Personhood**

Moderator and Discussant: Harwell Wells (Temple University - James E. Beasley School of Law)

- Daniel J.H. Greenwood (Hofstra University Maurice A. Deane School of Law), *Do Business Corporations Have Second Amendment Rights: [Internal Affairs, Comity and] the Rise of NeoFeudalism*
- W. Robert Thomas (Harvard Law School), *Corporate Personhood and Conceptual Confusion*

**Panel D** (Room 6500)

### **State Corporate Law**

Moderator and Discussant: Mohsen Manesh (University of Oregon School of Law)

- Robert Anderson (Pepperdine University School of Law), *The Delaware Corporation and the Demographics of Corporate Law: An Empirical Study*
- Elysa Dishman (Brigham Young University J. Reuben Clark Law School), *Experimenting in State Enforcement Laboratories*
- Ofer Eldar (Duke University School of Law), *Can Law Corporate Law Increase Shareholder Value? Evidence from Nevada*

10:00-10:15      **Break**

10:15-12:00      **Concurrent Panels**

**Panel A** (Room 6613)

**Business, Technology, and Law**

Moderator and Discussant: Scott Hirst (Harvard Law School)

- Steven McNamara (University of Florida Levin College of Law), *Trading on the Computerized Stock Exchange: A Central Limit Order Book for the Digital Age*
- Carla L. Reyes (Stetson University College of Law), *A Theory of Corporate Crypto-Governance*
- Abbey R. Stemler (Indiana University Kelley School of Business), *The Myth of the Sharing Economy and Its Implications for Regulating Innovation*
- Rory Van Loo (Boston University School of Law), *Rise of the Digital Regulator*

**Panel B** (Room 6619)

**Mergers & Acquisitions**

Moderator and Discussant: Christina M. Sautter (Louisiana State University Paul M. Hebert Law Center)

- Brian Jeffrey Broughman (Indiana University Maurer School of Law), *The Impact of Appraisal Arbitrage on the Structure and Pricing of M&A Deals*
- Jill Fisch (University of Pennsylvania School of Law), *The Shifting Tides of Merger Litigation*
- Cathy Hwang (University of Utah S.J. Quinney College of Law), *Deal Momentum*
- Jeffrey Manns (George Washington University Law School), *Boiling Down Boilerplate Provisions in Merger and Acquisition Agreements*

**Panel C** (Room 6623)

**Understanding Corporate Governance**

Moderator and Discussant: Megan Wischmeier Shaner (University of Oklahoma College of Law)

- Jordan M. Barry (University of San Diego School of Law), *The Unresolved Short-Termism Debate—And What to Do About It*
- Lynne L. Dallas (University of San Diego School of Law), *Is There Hope for Change? The Evolution of Conceptions of “Good” Corporate Governance*
- William J. Magnuson (Texas A&M University School of Law), *The Public Cost of Private Equity*
- Darren Rosenblum (Pace Law School), *When Does Board Diversity Benefit Firms?*

12:00-12:30      **Lunch** (Level 6 – Lobby & Terrace)



12:30-1:55

**Author-Meets-Readers Session** (Level 6 – Moot Courtroom)

SELLING HOPE, SELLING RISK: CORPORATIONS, WALL STREET, AND THE DILEMMAS OF INVESTOR PROTECTION (New York: Oxford University Press 2016).

**Author:** Donald Langevoort (Georgetown Law School)

**Discussants:** Jill Fisch (University of Pennsylvania School of Law)  
Frank Partnoy (University of San Diego School of Law)  
Hillary Sale (Washington University School of Law)

2:00-2:50

**Concurrent Panels**

**Panel A** (Room 6613)

**Cybersecurity**

Moderator and Discussant: Carla L. Reyes (Stetson University College of Law)

- Kristin N. Johnson (Seton Hall University Law School), *Cyber Risks: Emerging Risk Management Concerns for Financial Institutions*
- Nizan Geslevich Packin (City University of New York), *Too-Big-To-Fail 2.0: Cybersecurity & Key Digital Service Providers*

**Panel B** (Room 6619)

**Securitization**

Moderator and Discussant: Elizabeth F. Brown (University of Wisconsin – La Crosse)

- Shlomit Azgad-Trome (Columbia Law School), *Paving the Road to Crisis? Financial Fragility in Infrastructure Securitization*
- Heather Hughes (American University, Washington College of Law), *Property and the True-Sale Doctrine*

**Panel C** (Room 6623)

**Antitrust**

Moderator and Discussant: Matthew Jennejohn (BYU Law School)

- Gregory Day (Oklahoma State University Spears School of Business), *Innovative Antitrust*
- Samuel N. Weinstein (U.C. Berkeley School of Law), *Financial Regulation in the (Receding) Shadow of Antitrust*

2:50-3:00

**Break**

3:00-4:15

**Concurrent Panels**

**Panel A** (Room 6613)

**Unincorporated Business Entities**

Moderator and Discussant: Andrew William Winden (Stanford Law School)

- Joseph K. Leahy (South Texas College of Law), *How Sophisticated Parties Fail to Contract Around Joint Venture Formation, What They Should Do Instead (and Why It's a Good Thing, Too!)*
- Jonathan G. Rohr (Benjamin N. Cardozo School of Law), *Freedom of Contract and the Publicly Traded Uncorporation*

**Panel B** (Room 6619)

**Business and Contract Law**

Moderator and Discussant: Laura Napoli Coordes (Arizona State University Sandra Day O'Connor College of Law)

- Matthew Jennejohn (BYU Law School), *The Architecture of Contract Innovation*
- Megan Wischmeier Shaner (University of Oklahoma College of Law), *Contractual Interpretation of Organizational Documents*
- Emily N. Strauss (Duke University School of Law), *Systemic Risk in Financial Contracting*

**Panel C** (Room 6623)

**Examining Fiduciary Duties**

Moderator and Discussant: Michael B. Dorff (Southwestern Law School)

- Marco Claudio Corradi (Faculty of Law, Lund University), *Bargaining over Corporate Opportunities: Disclosure, Negotiation and Residual Allocative Effects*
- Mohsen Manesh (University of Oregon School of Law), *Fiduciary Entities in Corporate Law*
- Harwell Wells (Temple University - James E. Beasley School of Law), *The Life (and Death?) of Corporate Waste*