

Encomium for Professor Frankel

I intend to share musings on fiduciary matters from time-to-time on our blog. Not regarding deep and complex matters such as the current DOL proposal or the SEC's forthcoming uniform fiduciary standard. My fiduciary questions are more fundamental, and sometimes lead me to despair of formulating sensible views of such proposals. I suspect I am not alone in struggling to develop a framework for understanding fiduciary regulation, so I'm sharing my struggles. I would not know where to start, however, but for the pioneering work of [Professor Tamar Frankel](#). She has been publishing on fiduciary law longer than I've been a lawyer. (Her article "[Fiduciary Law](#)" was published in 1983; I was admitted to the bar in 1984. I presume the article was based on the extensive research underlying her treatise on The Regulation of Money Managers, first published in 1980.) So far as I can tell, she was the first scholar to consider in depth the fiduciary duties of asset managers. While I have not attempted to plumb the history of the subject, I have never encountered any earlier works. It also appears that she toiled alone in the field for some time. At least, when I first began to counsel asset managers in 1990, I could not find any other resources to aid in researching fiduciary questions. More attention has been paid to asset managers as fiduciaries during the past dozen years, in the wake of the market timing scandals and renewed interest in private litigation alleging excessive fees and conflicts of interest. So I, at least, owe a great debt to Professor Frankel's work. I will compound my debt by using her book *Fiduciary Law* (published by Oxford Press in 2010) as a foil for my posts. I write better when I have a foil and (to belabor the metaphor) prefer to fence with someone having more experience and skill than I do. So I will be focusing on her views which I find most challenging, in hopes of advancing my understanding of the contours of fiduciary relationships.

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