

Contract Law in Action: COVID and the Casebook

Hosted by Temple University Beasley School of Law
and the University of Wisconsin Law School

Friday, April 21, 2023

9:00 AM – 5:00 PM EST



Contract Law in Action: COVID and the Casebook

The COVID-19 pandemic taught us a great deal about the role and teaching of Contracts. Many feared widespread breach and litigation; others worried about how to teach the law of promising (and breach) through a flat screen. Some of us worried about both.

With memories still fresh, we wanted to gather those who participated in those discussions, and to welcome newcomers, to assess what we thought in the moment, and where we think COVID's lingering effects will take Contracts scholarship and teaching.

On the educational side, we have learned that we can do many (but not all) things virtually or remotely. The pandemic appears, for example, to have accelerated a trend toward the disaggregation of educational content in general. Now, we use (consciously or not) videos, podcasts, YouTube clips and other online content to supply or supplement content for Contracts class. Indeed, there are now free and freemium materials from which one could teach an entire Contracts course. And, given increased focus on racial injustice as it manifests in various legal and social systems, many who teach Contracts seek to reckon more deliberately with the legacy of structural racism and inequality.

On the theory/doctrine/practice side, it appears that many of our worst systemic fears about COVID were not realized. While there was (and remains) plenty of litigation, the vast majority of problems appear to have been resolved consensually, whether through standstills or workouts or the like. Yet, some of those resolutions were better than others. Many front-line workers (here and abroad) may have been left with the very short end of the stick, for example.

For those of you who may have participated in the Contract and COVID (K-COVID) workshops hosted by Temple (or contributed to the resulting symposium issue of *Law and Contemporary Problems, Contract in Crisis*), this will be an opportunity to discuss developments since then. We also welcome and encourage new or aspiring Contracts teachers (and those who may be new to these issues) to join us.

This will be a continuation of the Kidwell Lecture, which has historically been held every year or so at Wisconsin, named in honor of Professor John Kidwell. Speakers including Lisa Bernstein, Cathy Hwang and (most recently) Rachel Rebouché have presented Contracts scholarship in the "law in action" tradition (or critiquing it).

Event Schedule

○ **Light breakfast and check-in: 9:00 AM – 10:00 AM**

○ **Introductory remarks: 10:00 – 10:15 AM**

○ **Panel 1: 10:15 AM - 11:45 AM**

The Future of Contract Law: Substance, Form & Format

○ **Lunch: 12:00 PM – 1:15 PM**

○ **Panel 2: 1:30 PM - 3:15 PM**

K-COVID2: Predictions about the Recent Past

○ **Panel 3: 3:30 PM - 4:45 PM**

Contracts: Law in Action

○ **Concluding remarks: 4:45 – 5:00 PM**

○ **Reception: 5:00 PM – 6:00 PM**

**** All times are Eastern**

Available author papers for each panel are listed on the [event landing page](#) to read and download

Panel 1 - The Future of Contract Law: Substance, Form & Format



Wendy Epstein - Moderator

Wendy Netter Epstein is Professor of Law and Associate Dean of Research and Faculty Professional Development at the DePaul University College of Law. Her teaching and research focus on contracts, commercial law, and health care law

and policy. Her scholarship explores the financing and delivery of health care and matters of health equity, often with a focus on applying behavioral economic principles to entrenched problems. She also draws on her personal experience representing health industry clients in commercial matters as a partner at a large law firm. Her work has most recently appeared in the *Journal of Empirical Legal Studies*; *Southern California Law Review*; *Minnesota Law Review*; *Emory Law Journal*; *Washington Law Review*; and *Yale Journal of Health Policy, Law, and Ethics*. She is also a frequent contributor to media, blogs, and op-eds, recently having published in The L.A. Times, The Hill, the Chicago Tribune, the Conversation, and U.S. News. Professor Epstein has received both the Faculty Scholarship and Faculty Teaching Awards.

In addition to teaching at DePaul, Professor Epstein has been a visiting professor at the University of Chicago, University of Arizona, and Loyola University Chicago, and was previously a partner in commercial litigation at Kirkland & Ellis LLP.



Dave Hoffman

Professor Dave Hoffman is a widely cited scholar who focuses his research and teaching on contract law. His work is typically interdisciplinary, built through collaboration with co-authors from a variety of fields.

One recent set of papers examined the technical and legal aspects of transactions occurring on and through blockchains. Other work, using qualitative and experimental methods, focuses on how individuals experience contracting online, and what extra-legal goals firms might seek to accomplish using the "terms and conditions." He has also engaged in the national conversation sparked by the #metoo movement, publishing a paper with a Penn Law student that argues that nondisclosure clauses in employment contracts violate public policy – a contractual doctrine his work continues to explore. His current projects include the building and analysis of a dataset consisting of hundreds of thousands of Philadelphia residential leases and evictions. Before joining the legal academy, Hoffman was a litigation associate at Cravath, Swaine & Moore LLP in New York City and a law clerk for Judge Norma L. Shapiro of the Eastern District of Pennsylvania. He earned his J.D. from Harvard Law School and a B.A. in archeology and history from Yale University.

He joined the Penn Law faculty in 2017 after spending the first 12 years of his career at Temple Law School. At Penn, Hoffman was honored with the Harvey Levin teaching award in 2018, and he previously won Temple's George P. Williams Memorial Award for the Outstanding Professor of the Year (2013).



Thomas Joo

Thomas Joo is a Martin Luther King Jr. Professor of Law at the UC Davis School of Law, where he has been a faculty member since 1996. He teaches and writes in the areas of Contracts, Corporate Governance, Antitrust, White Collar Crime, and Critical Race Theory. Tom is a former Chair and Executive Committee member of the AALS Section on Contracts and an elected member of the American Law Institute. He is the editor of *Corporate Governance: Law, Theory and Policy* (Carolina Academic Press 2002 & 2d ed. 2010) and co-editor of a forthcoming casebook: *Post, Ota, Zalesne, & Joo, Contracting Law* (Carolina Academic Press, 6th ed. 2023).



Dylan C. Penningroth

Dylan C. Penningroth specializes in African American history and in U.S. socio-legal history. His first book, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill:

University of North Carolina Press, 2003), won the Avery Craven Prize from the Organization of American Historians. His articles have appeared in the *University of Pennsylvania Law Review* and a variety of peer-reviewed history journals. Penningroth has held fellowships from the National Endowment for the Humanities, the National Science Foundation, the Stanford Humanities Center, and the MacArthur Foundation. Before joining Berkeley Law in 2015, Dylan Penningroth was on the faculty of the History Department at the University of Virginia (1999-2002), at Northwestern University (2002-2015), and a Research Professor at the American Bar Foundation (2007-2015).

Penningroth is currently working on a book entitled *Before the Movement: The Hidden History of Civil Rights*. Combining legal and social history and drawing from a large sample of trial court records, the study explores how ordinary Black people used and thought about law in their everyday lives, and how Black legal activity and Black legal thought helped shape American law from the 1830s to the 1970s. It will be published by Liveright in Fall 2023.



Gordon Smith

D. Gordon Smith is Dean and Ira A. Fulton Chair of the BYU Law School. As a scholar, Dean Smith is a leading figure in the field of law and entrepreneurship and has done foundational work on fiduciary theory.

Serving as the head of BYU Law since 2016, Dean Smith has established the Refugee and Immigration Initiative, the Academies Program, the Legal Technology Initiative, the Inspiring Leadership Initiative, the Washington Law Seminar, the Global Law Seminar, and the Global Business Law Program.

Dean Smith earned a J.D. from the University of Chicago Law School and a B.S. in Accounting from Brigham Young University. Before entering academe, Dean 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.



Marissa Jackson Sow

Marissa Jackson Sow is an Assistant Professor of Law at the University of Richmond School of Law, where she teaches Contracts, Constitutional Law, Race and the Law, and Law and Philosophy.

Sow is a graduate of Northwestern University, Columbia Law School, and the London School of Economics and Political Science. Her scholarship, which focuses on intersections and gaps between law and power, empire, racial formations, legal personhood, and human rights, has been published or is forthcoming in the *California Law Review*, the *Michigan Law Review Online*, the *NYU Law Review Online*, the *UCLA Law Review Discourse*, the *Washington and Lee Law Review*, the *University of California Irvine Law Review*, and the *American Journal of International Law*, as well as other journals. She is passionate about the fine and performing arts, Peloton, interior design, travel, and, of course, her husband, their 4 kids, and their cat, Ginger Sow.



Rip Verkerke

J.H. (Rip) Verkerke is the T. Munford Boyd Professor of Law and director of the Program for Employment and Labor Law Studies at the University of Virginia School of Law. He earned an M.Phil. in economics and a J.D. from Yale

University. He joined the UVA Law School faculty in 1991 after clerking for Judge Ralph K. Winter, Jr. of the U.S. Court of Appeals for the Second Circuit. Verkerke teaches contracts, several employment law courses and a seminar on conservation planning and law.

A pioneer in the use of technology to support legal education, Verkerke was selected as an inaugural member of the University Academy of Teaching and won an All-University Teaching Award in 2007. In 2012, he received a Hybrid Challenge Grant for Technology-Enhanced Teaching to transform his first-year contracts class using the flipped classroom model of instruction. He previously chaired the University Committee on Information Technology.

Verkerke's published research focuses on employment discrimination law, employment contracts, vicarious liability, the economics of discrimination, and contract theory. He has also published an empirical study of law school teaching practices and how those methods affect student experiences and outcomes. Verkerke is the author of an open-source contract law casebook published by the CALI eLangdell Press.

Panel 2 - The Future of Contract Law: Substance, Form & Format



Jonathan Lipson - Moderator

Jonathan Lipson holds the Harold E. Kohn Chair and is a Professor of Law at Temple University Beasley School of Law. He teaches Contracts, Bankruptcy, Corporations, Commercial Law, Lawyering for Entrepreneurship, International

Business Transactions, and a variety of other business law courses. In addition to Temple, he has taught at the law schools of the University of Wisconsin (where he held the Foley & Lardner Chair), the University of Pennsylvania, and the University of Baltimore. Professor Lipson is a member of the American Law Institute, a Regent of the American College of Commercial Finance Lawyers, and has held various leadership positions in the Business Law Section of the American Bar Association.

His research focuses on corporate governance, reorganization, and contracting practices. He has published in some of the nation's top law reviews, including those of the UCLA, Boston University, Notre Dame, and Southern California law schools. His work has been cited by the United States Supreme Court and U.S. Courts of Appeals, as well as leading business courts such as the Delaware Supreme Court, the Delaware Chancery Court and the Bankruptcy Court for the Southern District of New York. He is a coauthor (with Macaulay et al.) of *Contracts Law in Action*, a leading casebook taking a "realist" approach to contract law.

An occasional empiricist, Professor Lipson has published two articles on the use of "examiners" in chapter 11 bankruptcies, the second of which won the Editors' Prize as the best paper published in the *American Bankruptcy Law Journal* in 2016. His study of employment at the Trump Casinos in connection with their bankruptcies received widespread attention, and was noted in Hillary Clinton's presidential campaign. He was counsel of record to amici law professors in *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017) (supporting successful petitioners) and in *Off. Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (supporting successful appellants). He was pro bono counsel to a survivor of the opioid overdose crisis in *In re Purdue Pharma*, where he successfully obtained the appointment of a bankruptcy examiner over fierce resistance, which is detailed in Beth Macy's book, *Raising Lazarus: Hope, Justice, and the Future of America's Overdose Crisis* (2022).



Edward Cheng

Ed Cheng's research focuses on evidence (especially expert evidence), law and statistics, and damages. Professor Cheng is a co-author of *Modern Scientific Evidence*, a five-volume treatise, and is the host of *Excited Utterance*,

a long-running podcast focusing on scholarship in evidence and proof. His articles have been published in the *Journal of Legal Studies*, *Yale Law Journal* and *Stanford Law Review*, among other prestigious law journals. He holds a J.D. from Harvard Law School and a Ph.D. in statistics from Columbia University. Cheng teaches Evidence, Torts and a seminar on Scientific Evidence.

He is a nine-time winner of the Hall-Hartman Outstanding Professor Award for excellence in teaching, and was selected by the graduating classes of 2013, 2017 and 2022 to be their commencement speaker. Cheng has also taught as a visiting professor at Harvard Law School and the Hebrew University of Jerusalem.



Sarah Dadush

Sarah Dadush is a Professor of Law at Rutgers Law School where she writes and teaches in the areas of contract law, business and human rights, and consumer law.

Her scholarship explores hard and soft law mechanisms for improving the social and environmental performance of multinational corporations. Professor Dadush is the founding director of the law school's Business and Human Rights Law Program and the Responsible Contracting Project, the mission of which is to improve human rights in supply chains through innovative contracting practices. She is a leading member of the American Bar Association (ABA) Business Law Section Working Group to Draft Human Rights Protections in International Supply Contracts and its European counterpart, the European Model Contract Clauses for Responsible and Sustainable Supply Chains Working Group. She currently serves as Co-Chair of the Legislative Developments sub-committee of the NYC Bar Association's Business & Human Rights Committee and Co-Chair of the Responsible Investor Model Clauses sub-committee of the ABA's Corporate Social Responsibility Committee. In addition, she is a member of the Advisory Board of Cornell University's Global Labor Institute. Before joining the Rutgers faculty in 2013, Professor Dadush was Legal Counsel for the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations based in Rome. Prior to that, she was a Fellow at NYU Law School's Institute for International Law and Justice and an associate attorney at the global law firm, Allen & Overy. She received her J.D. and LL.M. in International and Comparative Law from Duke University School of Law in 2004.



Pamela Foohey

Pamela Foohey is a Professor of Law at the Benjamin N. Cardozo School of Law at Yeshiva University, where she teaches bankruptcy, consumer credit, contracts, corporations, and secured transactions.

Her research focuses on bankruptcy, commercial law, and consumer law. Her work primarily involves empirical studies of bankruptcy and related parts of the legal system, combining quantitative and interview-based research. She is a co-investigator on the Consumer Bankruptcy Project, a long-term research project studying persons who file for bankruptcy. The results of this research have been featured in top media outlets, including The New York Times, Financial Times, and The Washington Post. Professor Foohey's work in business bankruptcy focuses on non-profit entities, with a particular emphasis on how churches and other religious organizations use bankruptcy.

Her most recent article, *Silencing Litigation Through Bankruptcy* (co-authored with Christopher K. Odinet), is forthcoming in *Virginia Law Review*. She is also a contributor to the blog Credit Slips, a discussion on credit, finance, and bankruptcy.

Professor Foohey holds leadership roles in the Association of American Law Schools and the Law & Society Association. Prior to joining Cardozo School of Law in 2021, Professor Foohey served as a professor of law at the Indiana University Maurer School of Law and as a visiting assistant professor at the University of Illinois College of Law, clerked for the Honorable Thomas L. Ambro of the Third Circuit Court of Appeals, worked as an associate in the Bankruptcy and Financial Restructuring Group of Dorsey & Whitney LLP in Minneapolis, and clerked for the Honorable Peter J. Walsh of the Bankruptcy Court for the District of Delaware. She received her J.D. from Harvard Law School and her bachelor's degree from New York University, Stern School of Business Undergraduate College.



Robert Hillman

Robert Hillman, Edwin H. Woodruff Professor of Law at Cornell Law School, has written extensively on contracts and contract theory, the Uniform Commercial Code, and related jurisprudence.

Among other books, he is the author of *The Richness of Contract Law* (1997) and a coauthor of the Sixth Edition of *White, Summers, and Hillman, Uniform Commercial Code* (2012 through 2014). A 1972 graduate of Cornell Law School, Professor Hillman clerked for the Hon. Edward C. McLean and the Hon. Robert J. Ward, both U.S. District Judges for the Southern District of New York. After private practice with Debevoise & Plimpton in New York City, he began his teaching career at the University of Iowa College of Law. Hillman joined the Cornell Law School Faculty in 1982, and, in addition to teaching and authoring or co-authoring several major contracts and commercial law works, he served as Associate Dean from 1990-1997. An arbitrator, consultant on commercial litigation, and the Reporter for the American Law Institute's Principles of the Law of Software Contracts, Professor Hillman's law school subjects include contracts, commercial law, the law of e-commerce, and the nature, functions, and limits of law, the latter for Cornell University's Government Department.



Kish Parella

Kish Parella is the Class of 1960 Professor of Ethics and Law at Washington and Lee University School of Law where she teaches contracts, torts, international business transactions, and corporate social responsibility, among other courses.

She is a leading expert on business and human rights and has advised government officials, corporate executives and UN working groups on various issues of business and human rights. She serves on the Board of Directors for Corporate Accountability Lab, a non-profit organization dedicated to using legal strategies to hold corporations accountable for human rights abuses. She also serves on the Board of Directors for the Global Business & Human Rights Scholars Association and is a member of the Editorial Board for the Business & Human Rights Journal.

She is also an International Research Fellow at the Oxford University Centre for Corporate Reputation, Said Business School, Oxford University. Prior to entering the legal academy, Professor Parella practiced international litigation and arbitration at Cleary Gottlieb Steen & Hamilton LLP.



Andrew Schwartz

Professor Andrew A. Schwartz of the University of Colorado focuses on corporate, securities, and contract law, and is an internationally recognized expert on investment crowdfunding. In 2017, he served as a Fulbright Scholar

at the University of Auckland, where he has regularly returned as a visiting professor.

Professor Schwartz is a graduate of Brown University and Columbia Law School, where he earned top honors, served on the Columbia Law Review, and worked as a research assistant for Professor E. Allan Farnsworth. After law school, he clerked on the Southern District of New York and the Ninth Circuit, and also practiced corporate law at Wachtell, Lipton, Rosen & Katz.

He is the author of one book, *Investment Crowdfunding*, published by Oxford University Press in 2023, as well as more than forty scholarly publications in venues including the *UCLA Law Review*, the *Yale Journal on Regulation*, and the *New Zealand Law Review*. His research is frequently cited and relied upon by courts and commentators across the country and around the world, including numerous citations by the Delaware Court of Chancery, the nation's leading venue for corporate law.

Panel 3 - Contracts: Law in Action



Rachel Rebouché - Moderator

Rachel Rebouché is the Dean of Temple University Beasley School of Law and the James E. Beasley Professor of Law. Prior to her appointment as Dean, she was the Associate Dean for Research, a position she held from 2017 to 2021.

She is also a Faculty Fellow at Temple's Center for Public Health Law Research. Dean Rebouché is a leading scholar in reproductive health law and family law. She is an author of *Governance Feminism: An Introduction* and an editor of *Governance Feminism: Notes from the Field*. She is also the editor of *Feminist Judgments: Family Law Opinions Rewritten*, published by Cambridge University Press, and an author of the sixth edition of the casebook, *Family Law*. In addition, she will join the fifth edition of the casebook, *Contracts: Law in Action* and recently co-edited a collection of essays for *Law & Contemporary Problems* on the pandemic's effects on contract law.

Dean Rebouché has served as a co-investigator on two grant-funded research projects related to reproductive health, one housed at the Emory University Rollins School of Public Health and another funded by the World Health Organization. Her recent research also includes articles in law reviews and in peer-reviewed journals on abortion law, relational contracts, gestational surrogacy, prenatal genetic testing and genetic counseling, collaborative divorce, parental involvement laws, and international reproductive rights.

Dean Rebouché received a J.D. from Harvard Law School, an LL.M. from Queen's University, Belfast, and a B.A. from Trinity University. Prior to law school, she worked as a researcher for the Northern Ireland Human Rights Commission and the Human Rights Centre at Queen's University, Belfast. After law school, Dean Rebouché clerked for Justice Kate O'Regan on the Constitutional Court of South Africa and practiced law in Washington, D.C., where she served as an associate director of adolescent health programs at the National Partnership for Women & Families (formerly, the Women's Legal Defense Fund) and as a Women's Law and Public Policy Fellow at the National Women's Law Center.



Genevieve Bergeron

Genevieve Bergeron is a third-year law student at Temple Law School who took Contracts with Professor Lipson in the Fall of 2020 using *Contracts: Law in Action*. She is a Note/Comment Editor for *Temple Law Review* Vol. 95, a

a Teaching Assistant for Legal Research and Writing and for Introduction to Transactional Skills, and a member of Temple's National Trial Team. After graduation she will practice litigation at Ballard Spahr LLP in Philadelphia.



Jonathan Lipson

Reference full bio above



Mitra Sharafi

Mitra Sharafi is a legal historian and Evjue-Bascom Professor at the University of Wisconsin Law School. She has taught Contracts I at UW using *Contracts: Law in Action* since 2007. She is finishing a book manuscript on falsity and

forensic science in colonial South Asia. Her next big project will be a study of non-European law students at London's Inns of Court (1860s-1960s).



Lizzie Tremblay

Lizzie is a third-year law student at Temple Law School. She has used *Contracts: Law in Action* as a first-year law student and as a Teaching Assistant to Professor Jonathan Lipson in Fall 2021 and Fall 2022.

Lizzie is a Research Editor for *Temple Law Review* Vol. 95, a Teaching Assistant for Commercial Transactions, and a Certified Legal Intern at Temple Legal Aid's Family Law Clinic. After graduating in May 2023, she will join a transactional practice group at Dechert LLP in Philadelphia.