

Juliet Pendleton Kostritsky
Everett D. and Eugenia S. McCurdy Professor of Contract Law
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Employment

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Faculty Profile

<https://case.edu/law/our-school/faculty-directory/juliet-p-kostritsky>

Bepress

https://works.bepress.com/juliet_kostritsky/

SSRN

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=158830

John Homer Kapp Professor of Law 1999 - 2009; Full Professor 1990 -1999;
Associate Professor 1987-1990; Assistant Professor 1984-1987

Awards

Research Awards

2017 Distinguished Research Award by Case Western School of Law

Fall 2008 Flora Stone Mather Award for Research at CWRU

Works in Progress: Biopharmaceutical Collaboration Agreements: Informal Governance vs. High Powered Incentives

Publications

Book Chapters

Statutes and the Common Law of Contracts: A Shared Methodology *in* CONTRACT LAW AND THE LEGISLATURE published by *Hart Publishers in England* (2020)

“Contract Interpretation: Judicial Rule Not Party Choice” is a book chapter in a book published by Cambridge University Press. COMMERCIAL CONTRACT LAW: A TRANSATLANTIC PERSPECTIVE (eds., Larry de Matteo, Qi Zhou, Severine Santier and Keith Rowley 2013)

Articles

The Hidden Cost of Contracting for ESG: A New Perspective on Private Ordering 74 CWRU L. Rev. (forthcoming 2023).

A Paradigm Shift in Comparative Institutional Governance: The Role of Contract in Business Relationships and Cost/Benefit Analysis forthcoming 2021 WIS. L. REV. 385 symposium issue on the Intellectual Traditions of the Wisconsin Law Review

WHY CHOOSE LTAS? AN EMPIRICAL STUDY OF OHIO MANUFACTURERS' CONTRACTUAL CHOICES THROUGH A BARGAINING LENS 9 American University Business Law Review 337 (2020) (co-authored with Jessica Ice) (accepted for presentation at the 2020 conference of the Society for Institutional and Organization Economics (SIOE) at the Massachusetts Institute of Technology)

A Bargaining Dynamic Transaction Cost Approach to Understanding Framework Contracts 68 American University Law Review 1621 (2019)

One Size Does not Fit All Preferred Stock: A Contextual Approach to Fiduciary Duties Owed to Preferred Stockholders From Venture Capital to Public Preferred to the Family Business 70 RUTGERS LAW REVIEW 43 (2017)

Kyle Chen, Harold Haller, Juliet P. Kostritsky & Wojbor A. Woyczynski “Empirical Study Redux on Choice of Law and Forum in M&A: The Data and Its Limits” 16 Michigan State Journal of Business & Securities Law 1 (2016)

Efficient Contextualism (co-authored with Peter M. Gerhart) 76 PITTSBURGH LAW REVIEW 509 (2015)

Why Context Matters What Lawyers Say About Choice of Law in Merger Agreements 13 DEPAUL BUSINESS AND COMMERCIAL LAW JOURNAL 211 (2015)

“The Law and Economics of Norms” 48 TEXAS J. OF INTERNATIONAL LAW 465 (2013). *See* Talks/Conferences *infra*.

Contract as Promise and Contract Interpretation (solicited for the Suffolk Law School Symposium dedicated to Charles Fried entitled: "Contract as Promise After Thirty Years: The Future of Contract Theory" 45 SUFFOLK LAW REVIEW 873 (2012)

Interpretive Risk and Contract Interpretation: A Suggested Approach for Maximizing Value 2 ELON LAW REVIEW 109 (2011)

Uncertainty, Reliance, Preliminary Negotiations and the Hold Up Problem (accepted for presentation by the American Law & Economics Association and presented at ALEA's annual meeting May 16-17, 2008) 91 SMU Law Review 1377 (2008)

The Price of Wisdom is Above Rubies, A Tribute to Ronald J. Coffey, Case Western Reserve University School of Law, 1966-2007 (on his retirement) 58 CASE WES. L. REV. (2007)

Plain Meaning vs. Broad Interpretation: How the Risk of Opportunism Defeats a Unitary Default Rule for Interpretation accepted by the American Law & Economics Association for presentation as a paper at Harvard Law School, May 6, 2007; 96 KENTUCKY LAW JOURNAL 43 (2007)

Judicial Incorporation of Trade Usages: A Functional Solution to the Opportunism Problem, 39 CONN. L. REV. 451 (December, 2006)

Introduction to Incomplete Contracts: Judicial Responses, Transactional Planning, and Litigation Strategies, Symposium in 56 CASE WES. L. REV. 135 (2005)

Taxonomy for Justifying Legal Intervention In An Imperfect World: What To Do When Parties Have Not Achieved Bargains Or Have Drafted Incomplete Contracts, 2004 WIS. L. REV. 323 (part of Symposium on *Freedom From Contract*) See *infra* Talks/Papers

The Rise and Fall of Promissory Estoppel or Is Promissory Estoppel Really as Unsuccessful as Scholars Say It Is: A New Look at the Data, 37 WAKE FOREST LAW REVIEW 531 (2002)

When Should Contract Law Supply a Liability Rule or Term?: Framing a Principle of Unification for Contracts, 32 ARIZONA STATE L. J. 1283 (2000)

"Why Infer"? What the New Institutional Economics Has to Say About Law-Supplied Default Rules, 73 TULANE L. REV. 497 (1998) (solicited to appear as an abstract in the Contracts and Commercial Law Section of the Social Science Research Network (SSRN) (editor Richard Craswell))

Reshaping the Precontractual Liability Debate: Beyond Short-Run Economics, 58 U. PITT. L. REV. 325 (1997)

Looking for Default Rule Legitimacy in All the Wrong Places: A Critique of the Authority of Contract Model and the Coordination Principle Proposed by Professor Burton, 3 SOUTHERN CAL. INTERDISC. L.J. 189 (1994)

Bargaining with Uncertainty, Moral Hazard and Sunk Costs: A Default Rule for Precontractual Negotiations, 44 HASTINGS L. J. 621 (1993)

Stepping Out of the Morass of Duress Cases: A Suggested Policy Guide, 53 ALB. L. REV. 581 (1989).

Efficient Deterrence and Illegal Contracts: A Study in Modern Contract Theory, 74 IOWA L. REV. 115 (1988)

A New Theory of Assent-Based Liability Emerging Under the Guise of Promissory Estoppel: An Explanation and Defense, 33 WAYNE L. REV. 895 (1987)

Note, *Antitrust Law – Municipal Immunity – Application of the State Action Doctrine to Municipalities - City of Lafayette v. Louisiana Power & Light Co.*, 1979 WIS. L. REV. 570-604

Comment, *Rationalizing Liability for Nondisclosure Under 10b-5: Equal Access to Information and United States v. Chiarella*, 1980 WIS. L. REV. 162-193

Teaching Awards

2003 awarded the Distinguished Teacher of the Year by the Case Western Reserve University Law Alumni Board

Voted favorite professor of the year by the first year classes of: 2001, 2002, 2004, and 2007, 2012-2013, 2015, 2016, 2019 and 2020

Teacher of the year by the 3L graduating classes of 2015 and 2018-2019

Teaching

Teaching areas include: Contracts, Business Law Colloquium, Sales, Payment Systems, Advanced Contracts, and Property

Advanced Contracts (Seminar), I use my own set of teaching material covering Contract Theory, Transaction Costs, Alternatives to Contract (self-enforcing contracts, trade group rules; non legal sanctions (Avner Grief; Lisa Bernstein), The Law and Economics of Norms and Custom, Default Rules, Employment Contracts, Financing Mechanisms and Verification, Relational and Neoclassical Contract Theories, Formalism, Adjustments in Long Term Contracts, and Economic Theories of Precontractual Liability and Contract Interpretation

Law and Business

The weekly colloquium brought together students, mid-level attorneys, and successful senior business leaders with an academic focus designed to help colloquium participants understand law and business issues including: role of the business lawyer in raising capital, M&A, corporate governance, professionalism, the role of the Board of Directors, including women on the Board, business organizations, ethics in business transactions (FCPA, etc.), negotiation, reading a balance sheet/income statement, valuing a business etc. Recruited 40 panelists from leading law

firms, business school (Case Western School of Management/Weatherhead) and the business community.

Course plan: to develop a course combining Contract theory with the study of actual contracts in the area of employment contracts (Executive Compensation), pharmaceutical contracts with smaller r & d firms for research, NBC/Paramount Contract, hotel management contract, automotive supply contracts and theater contracts. The course will focus on theory including information asymmetries, moral hazard, information costs, transaction costs, decision theory, and strategic behavior.

Visiting Professorship

Visiting Professor of Law at Northwestern University School of Law, in Chicago, Illinois (Fall 1992)

Taught first year Contracts and seminar on Advanced Contracts with Professor Richard E. Speidel

Talks/Papers Conferences

The Hidden Cost of ESG delivered at the 11/4/2022 Leet Symposium

Invited participant at the Contract in Crisis Law and Contemporary Problems symposium July 20-21, 2021. Commentator on Matthew Jennejohn's essay "The Transactional Dynamics of Market Fragility"

Participated in a panel on The Enduring Impact of the Wisconsin School of Contracts to held 10/22-23, 2020 to honor the 100th anniversary of the University of Wisconsin Law Review

York England conference. On January 11, 2019, Professor Kostritsky delivered a paper at a conference held at York University in the United Kingdom. Her chapter entitled: "Statutes and the Common Law of Contracts: A Shared Methodology" appears in a book recently published by Hart entitled: Contract Law and the Legislature (eds. TT Arvind and Jenny Steele 2020).

American University conference on the Supply Chain. On January 25, 2019, Professor Kostritsky presented a paper at American University School of Law conference on the supply chain entitled: "A Bargaining Dynamic Transaction Cost Approach to Understanding Framework Contracts."

Why Choose LTAs American University Business Law Review (co-authored with Jessica Ice) accepted for presentation for a panel at the 2020 conference of the Society for Institutional and Organization Economics at the Massachusetts Institute of Technology (chaired by Bob Gibbons). (note: cancelled due to covid 19) <https://papers.sioe.org/online2020>

Presented

Presented “Context Matters--What Lawyers Say About Choice of Law Decisions in Merger Agreements” at the annual meeting of the American Law and Economics Association (May 2014)

Presented The Law and Economics of Custom at the University of Texas (April 14, 2012) at a conference entitled “Is there a Role for Custom in Modern European Law?”

Presented “Contract Interpretation and Risk Reduction” in the United Kingdom at Sheffield at a conference sponsored by the Society of Legal Scholars Symposium entitled: “Current Issues in Commercial Contracts: Transatlantic Perspectives” held September 9-10, 2011 Book chapter (see above).

“Contract Interpretation and Contract as Promise” solicited publication for conference (held March 25, 2011) at Suffolk University's Law School and Department of Philosophy, entitled "Contract as Promise After Thirty Years: The Future of Contract Theory"; other participants include Charles Fried, Randy Barnett, Lisa Bernstein, Jean Braucher, Dick Craswell, Barbara Fried, Gregory Klass, Jody Kraus, Jeffrey Lipshaw, Nathan Oman, T.M. Scanlon, Richard Posner, Curtis Bridgeman, Alan Schwartz, Rachel Arnow-Richman, Robert E. Scott

Florida State University (November 4, 2010) presented “*A Consequentialist Approach to Interpretation and Interpretive Risk: Rethinking Judicial Intervention From Contracts to the Chrysler Bankruptcy*”

Invited to participate and to present a paper at the European Law and Economics Association (ELEA) Meeting in Rome, Italy in September, 2009 entitled: “The Means/Ends Dilemma in Contract Interpretation: A Response to Professors Kraus and Scott: How the Intractability of Express Language Affects Interpretive Authority and Legal Interventions in Contracts”

American Law and Economics Association Annual Meeting, May 16, 17, 2008: Uncertainty, Reliance, Preliminary Negotiations and the Hold Up Problem paper selected by ALEA for presented ALEA annual meeting held at Columbia Law School

May 5-6, 2007, Kostritsky presented “Plain Meaning vs. Broad Interpretation: How the Risk of Opportunism Defeats a Unitary Default Rule for Interpretation” at the ALEA annual meeting at Harvard Law School

June 2, 2007: Presented *Plain Meaning vs. Broad Interpretation: How the Risk of Opportunism Defeats a Unitary Default Rule for Interpretation* to Alumni Association of Case Western Reserve University School of Law (Class of 1957)

Invited to participate in conference on The Law and Economics of Contracts held at Columbia University April 7-8, 2006. The conference is a joint initiative supported by Columbia’s Law School (through the Center for Law and Economic Studies), Business School, School of International and Public Affairs, and Economics Department

Selected topic and speakers for AALS panel held January 8, 2005. Topic: “Incomplete Contracts: the Implications for Contract Law.” Moderator: Juliet P. Kostritsky; Speakers included: Richard Craswell (Stanford), Avery Katz (Columbia), Robert E. Scott (U.Va./Columbia) and George Triantis (U.Va)

Invited to participate in a symposium sponsored by the John M. Olin Center for Law and Economics at the University of Wisconsin Law School, The Contracts Enrichment Fund at the University of Wisconsin and the Wisconsin Law Review on Freedom from Contract held February 6-8, 2004. Other participants presenting a paper included: Ian Ayres (Yale), Omri Ben-Shahar (Michigan), Lisa Bernstein (U. Chicago), Mel Eisenberg (Berkeley), Clay Gillette (NYU), Roy Kreitner (Tel Aviv University), Stewart Macaulay (Wisconsin), Todd Rakoff (Harvard), Bob Scott (with Paul Stephan) (U. Virginia) and James J. White (Michigan). Symposium was held February 6-8, 2004 in Madison, Wisconsin

Presented *Taxonomy* article to CWRU Law School (April 26, 2004)

Presented *Beyond Formalism* at CWRU School of Law (September, 2002)

Presented *When Should Contract Law Supply a Liability Rule or Term* to Student Colloquium on Contracts and Commercial Law at the University of Virginia Law School (invited by Robert E. Scott and Clayton Gillette) (February 23, 2000)

Participant at the AALS Sponsored Workshop on Contracts (June 1999). My talk focused on *Is There Unity to the Contract's Course?*

Participant in Symposium on Default Rules and Contractual Consent sponsored by Southern California Interdisciplinary Law Journal (Spring 1993). Other presenters at the Southern California Symposium included: Dick Craswell (Stanford), Ian Ayres (Yale), Lisa Bernstein (U. Chicago), Randy Barnett (Boston U.), Jay Feinman (Rutgers), Clayton Gillette (U. Va.), and Jason Johnston (U. Penn)

Presented a draft of the *Hastings* article at the Workshop Series of Northwestern University School of Law (Spring 1992)

Service Activities

American Law and Economics Association: appointed to co-chair Contracts and Commercial Law Section for May, 2017 meeting (to select papers for presentation)

Faculty Workshop Series on Legal Theory (Spring, 2007 and 2007-2011), 2016-2018

The Case Western Reserve University School of Law Legal Theory workshop series is entitled: *Legal Theory: Justificational Analysis in Law*. Appointed by deans to develop the series.

President's advisory Committee 2020-21 (to review tenure and promotion recommendations)

Appointed by Provost Ben Vinson to engage in a review of the co-deans' contract of renewal at the Case Western School of Law.

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Professional Activities

- ALEA (American law and Economics Association)
SIOE (member)
- American Law Institute (appointed 2000)
- National Conference of Bar Examiners: member of the Contracts Drafting Committee of the National Conference of Bar Examiners (10 year term)
- **Chair** AALS Contracts Committee (term 2004-2005); also Chair of AALS Contracts Section Nominations Committee; Past Chair (2005-2006)

Prior Employment

Milbank, Tweed, Hadley & McCloy (Associate, Corporate/Banking Department 1980-1984),
1 Chase Manhattan Plaza, New York, N.Y.

Education

UNIVERSITY OF WISCONSIN LAW SCHOOL

- J.D. 1980 *cum laude*
- Received an Outstanding Academic Achievement Award
- Wisconsin Law Review Articles Editor and second year member (both Note and Comment published)

HARVARD COLLEGE

- A.B. *cum laude* 1976

PHILLIPS EXETER ACADEMY

- Graduated 1972 with High Honors -- Cum Laude Society, Negley Prize in American History, Religion and French prizes.

Reference

Professor Robert W. Gordon
Stanford School of Law
rwgordon@stanford.edu

Emeritus Professor William C. Whitford
University of Wisconsin School of Law

whitford@mailplus.wisc.edu

Professor Mitu Gulati
Duke University School of Law
mgulati@law.virginia.edu

Emeritus Professor Ronald J. Coffey
Case School of Law
ronald.coffey@case.edu

Professor David P. Porter (retired practitioner in residence)
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Professor Matthew Jennejohn
Brigham Young University
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