

MELVIN ARON EISENBERG

Date and Place of Birth

December 3, 1934; New York, New York.

Degrees

A.B. summa cum laude, Columbia College (1956); LL.B. summa cum laude (Faye Diploma), Harvard Law School (1959); LL.D. (hon.) University of Milan (1998); LL.D. (hon.) University of Cologne (2004).

Professional History

2013-: Jesse H. Choper Professor of Law, emeritus, University of California at Berkeley.

1983-2012: Koret Professor of Law, University of California at Berkeley.

1966-: Professor of Law, University of California at Berkeley.

1998-2009: Visiting Professor of Law, Columbia Law School, Fall semesters.

1992: Visiting Professor of Securities Regulation, University of Tokyo.

1969-70: Visiting Professor of Law, Harvard Law School.

1966: Assistant Corporation Counsel, City of New York.

1966: Member, Tripartite Committee on Collective Bargaining with New York City Municipal Employees.

1966: Member, Mayor's Task Force on New York City Transportation Reorganization.

1966: Counsel, Mayor's Task Force on Reorganization of New York City Government.

1964: Assistant Counsel, President's Commission on the Assassination of President Kennedy (Warren Commission).

1959-1963, 1964-65: Associate, Kaye, Scholer, Fierman, Hays & Handler, New York City.

Publications

Books

Modern Contract Law (West Academic, 2023)

Legal Reasoning (Cambridge University Press, 2022)

Foundational Principles of Contract Law (Oxford University Press, 2018)

Basic Contract Law (with Lon Fuller and Mark Gergen) (West Publishers, 10th ed. 2018)

The Nature of the Common Law (Harvard University Press 1988)

The Structure of the Corporation (Little, Brown 1976)

Projects

Chief Reporter, American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (1992)

Adviser, American Law Institute, Restatement (Third) of Agency (1997-2005).

Adviser, American Law Institute, Restatement (Third) of Restitution (1998–2012).

Adviser, American Law Institute, Restatement of Consumer Contract Law (2012-2023).

Edited Compilations

Corporations and Other Business Organizations—Statutes, Rules, Materials, and Forms (with James D. Cox) (Foundation Press, revised annually).

Contract Law: Selected Source Materials (with Steven Burton) (West Publishing Co., revised annually; standard and expanded editions).

Articles and Book Chapters

The Proposed Restatement of Consumer Contracts, if Adopted, Would Drive a Dagger Through Consumers' Rights, 36 *Yale J. on Reg.: Notice & Comment* (March 20, 2019), available at: <<http://yalejreg.com/nc/the-proposed-restatement-of-consumer-contracts-if-adopted-would-drive-a-dagger-through-consumers-rights-by-melvin-eisenberg/>>.

Behavioral Economics and Contract Law, in *The Oxford Handbook of Behavioral Economics and Law* (Eyal Zamir & Doron Teichman eds. 2014)

The Expectation Measure and its Discontents, 2013 *Michigan State Law Review* (with Shawn Bayern)

Conflicting Formulas for Measuring Expectation Damages, 45 *Arizona State Law Journal* 369 (2013)

Impossibility, Impracticability, and Frustration—Professor Goldberg Constructs an Imaginary Article, Attributes it to Me, and Then Criticizes It, 2 *Journal of Legal Analysis* 383 (2010)

The Role of Fault in Contract Law: Unconscionability, Unexpected Circumstances, Interpretation, Mistake, and Nonperformance, 107 *Michigan Law Review* 1413 (2009)

The Principles of Legal Reasoning in the Common Law, in *Common Law Theory* (Douglas E. Edlin ed.) (Cambridge University Press 2007)

The Disgorgement Interest in Contract Law, 105 *Michigan Law Review* 559 (2006)

The Duty of Good Faith in Corporate Law, 31 *Del. Corp. Law* 1 (2006)

Actual and Virtual Specific Performance, the Theory of Efficient Breach, and the Indifference Principle in Contract Law, 93 *California Law Review* 975 (2005)

The Architecture of American Corporate Law: Facilitation and Regulation, 2 *Berkeley Business Law Journal* 167 (2005)

The Revocation of Offers, 2004 *Wisconsin Law Review* 271 (2004)

Disclosure in Contract Law, 91 *California Law Review* 1645 (2003)

Mistake in Contract Law, 91 *California Law Review* 1573 (2003)

Expectation Damages and the Theory of Overreliance (with B. McDonnell), 54 *Hastings Law Journal* 1335 (2003)

The Duty to Rescue in Contract Law, 71 *Fordham Law Review* 647 (2002)

The Concept of National Law and the Rule of Recognition, 29 *Florida State University Law Review* 1229 (2002) (Mason Ladd Lecture)

Fairness, Character, and Efficiency in Firms (with R. Cooter), 149 *University of Pennsylvania Law Review* 1717 (2001)

The Third-Party Beneficiary Principle, in *Privity: Private Justice or Public Regulation* (P. Kincaid ed. Ashgate Press, 2001)

The Theory of Contracts, in *The Theory of Contract Law: New Essays* (Peter Benson ed. Cambridge University Press, 2001)

The Emergence of Dynamic Contract Law, 88 *California Law Review* 1743 (2000) and 2 *Theoretical Inquiries in Law* 1 (2001)

Why There is No Law of Relational Contracts, 94 *Northwestern University Law Review* 805 (2000)

Business Enterprise and Its Public Control, 17 *Common Law, Common Values, Common Rights: Essays on Our Common Heritage* by Distinguished British and American Authors. (American Bar Association 2000)

The Unification of Law, in *Making European Law—Essays on the “Common Core” Project* (M. Bussani & U. Mattei eds. 2000)

Corporate Law and Social Norms, 99 *Columbia Law Review* 1253 (1999)

The Conception That the Corporation Is a Nexus of Contracts, and the Dual Nature of the Firm, 24 *Journal of Corporation Law* 819 (1999)

The Prospects for Global Convergence of Corporate Governance, 5 *Cadernos de Mercado de Valores Mobiliarios* 107 (1999)

Probability and Chance in Contract Law, 45 *UCLA Law Review* 1005 (1998)

Cognition and Contract, in *The New Palgrave Dictionary of Economics and the Law* (1998)

Contracts and Relationships, in *The New Palgrave Dictionary of Economics and the Law* (1998)

Corporate Conduct that Does Not Maximize Shareholder Gain: Legal Conduct, Ethical Conduct, the Penumbra Effect, Reciprocity, the Prisoner's Dilemma, Sheep's Clothing, Social Conduct, and Disclosure, 28 *Stetson Law Review* 1 (1998)

The World of Contract and the World of Gift, 85 *California Law Review* 821 (1997)

Why is American Contract Law so Uniform? National Law in the United States, in *Europäisches Vertragsrecht* 23 (Hans-Leo Weyers ed. 1997)

Corporate Governance: The Board of Directors and Internal Control, 19 *Cardozo Law Review* 237 (1997)

The Director's Duty of Care in Negotiated Dispositions, 51 *University of Miami Law Review* 579 (1997)

The Governance of Corporate Groups, 2 *Rivista delle Società, I Gruppi di Società* 1187 (1996)

The Duty to Negotiate in Good Faith in American Law, in *Misleading or Deceptive Conduct—Issues and Trends* (C. Lockhart ed. 1996)

Strict Textualism, 29 *Loyola of Los Angeles Law Review* 13 (1995) (Fritz B. Burns Lecture)

Relational Contracts, in *Good Faith and Fault in Contract Law* (J. Beatson & D. Friedmann eds. Oxford 1995)

The Limits of Cognition and the Limits of Contract, 47 *Stanford Law Review* 211 (1995)

Expression Rules in Contract Law and Problems of Offer and Acceptance, 82 *California Law Review* 1127 (1994)

An Overview of Law and Economics, 1993 *Keio Law Review* 21 (1993)

The Divergence of Standards of Conduct and Standards of Review in Corporate Law, 62 *Fordham Law Review* 437 (1993) (Robert E. Levine Distinguished Lecture)

An Overview of the Principles of Corporate Governance, 48 *The Business Lawyer* 1271 (1993)

Corporate Groups, in *The Law Relating to Corporate Groups* (M. Gillooly ed. 1993)

Third-Party Beneficiaries, 92 *Columbia Law Review* 1358 (1992)

The Principle of *Hadley v. Baxendale*, 80 *California Law Review* 563 (1992)

Contractarianism without Contracts: A Response to Professor McChesney, 90 *Columbia Law Review* 1321 (1990)

The Duty of Care of Corporate Directors and Officers, 51 *University of Pittsburgh Law Review* 945 (1990) (Mellon Lecture)

Bad Arguments in Corporate Law, 78 *Georgetown Law Journal* 1551 (1990)

The Structure of Corporation Law, 89 *Columbia Law Review* 1461 (1989)

Self-interested Transactions in Corporate Law, 4 *Journal of Corporation Law* 997 (1988) (Inaugural lecture at the University of Iowa)

Comment: Golden Parachutes and the Myth of the Web, in *Knights, Raiders and Targets* (J. Coffee Jr., L. Lowenstein & S. Rose-Ackerman eds. 1988)

Text Anxiety, 59 *Southern California Law Review* 305 (1986)

Damages for Breach of Contract (with R. Cooter), 73 *California Law Review* 1432 (1985)

An Introduction to The American Law Institute's Corporate Governance Project, 52 *George Washington Law Review* 495 (1984)

New Modes of Discourse in the Corporate Law Literature, 52 *George Washington Law Review* 582 (1984)

The Responsive Model of Contract Law, 36 *Stanford Law Review* 1107 (1984)

Shortcomings of the Arguments Against Modernizing Corporate Law, 9 *Delaware Journal of Corporate Law* 626 (1984)

The Modernization of Corporate Law: An Essay for Bill Cary, 37 *University of Miami Law Review* 187 (1983) (Baron de Hirsch Meyer Lecture)

Corporate Legitimacy, Conduct, and Governance -- Two Models of the Corporation, 17 *Creighton Law Review* 1 (1983) (TePoel Lecture)

The Principles of Consideration, 67 *Cornell Law Review* 640 (1982)

The Bargain Principle and Its Limits, 95 *Harvard Law Review* 741 (1982)

Donative Promises, 47 *University of Chicago Law Review* 1 (1979)

Participation, Responsiveness, and the Consultative Process: An Essay for Lon Fuller, 92 *Harvard Law Review* 410 (1978)

Prominence as a Determinant of Bargaining Outcomes, 20 *Journal of Conflict Resolution* 523 (with M. Patch) (1976)

Private Ordering Through Negotiation: Dispute Settlement and Rulemaking, 89 *Harvard Law Review* 637 (1976)

Legal Models of Management Structure in the Modern Corporation: Officers, Directors, and Accountants, 63 *California Law Review* 375 (1975)

The Model Business Corporation Act and the Model Business Corporation Act Annotated, 29 *The Business Lawyer* 1407 (1974)

Megasubsidiaries: The Effect of Corporate Structure on Corporate Control, 84 *Harvard Law Review* 1577 (1971)

Access to the Corporate Proxy Machinery, 83 *Harvard Law Review* 1489 (1970)

The Legal Roles of Shareholders and Management in Modern Corporate Decisionmaking, 57 *California Law Review* 1 (1969)

Professional Positions and Honors

LL.D. (hon.), University of Cologne (2004).

LL.D. (hon.), University of Milan (1998).

Fellow, American Academy of Arts and Sciences.

Guggenheim Fellow (1971-72).

Fulbright Senior Scholar (Australia 1987).

Justice R. Ammi Cutter Chair, American Law Institute (1991-1993).

Member and Consultant, ABA Committee on Corporate Laws (1992–2009).

Coif Triennial Book Award Honorable Mention (for The Structure of The Corporation) (1980).

University Distinguished Teaching Award, University of California at Berkeley (1990).

Rutter Outstanding Teaching Award, University of California at Berkeley, School of Law (2002).

Lifetime Achievement Award, University of California at Berkeley, School of Law (2008)

Contracts Law Professors, Lifetime of Services to the Contract Law Academe Award (2012)

Lifetime Achievement Award, State Bar of California, Section of Business Law (2008)

Fellow, Doshisha University (Kyoto) (2002-2007).

Pileggi Lecturer, Widener University (2004).

George Wythe Lecturer, William & Mary Law School (1999)

Ladd Lecturer, Florida State University (1997).

Sobeloff Lecturer, University of Maryland Law School (1994).

Robert L. Levine Distinguished Lecturer, Fordham University (1993).

Roy E. Ray Lecturer, Southern Methodist University (1993).

Inaugural Lecturer, University of Iowa (1987).

Cooley Lecturer, University of Michigan Law School (1985).

Baron de Hirsch Meyer Lecturer, University of Miami Law School (1983).

TePoel Lecturer, Creighton University Law School (1982).

Freehill, Hollingsdale & Page Visiting Fellow, University of New South Wales (1994).

Kimber Fellow, Osgoode Hall Law School, York University, Toronto (1989).

Distinguished Mellon Scholar, University of Pittsburgh School of Law (1989).

Canterbury Visiting Fellow, University of Canterbury (1988).

Manuel F. Cohen Visiting Scholar, George Washington University Law School (1985).

Visitor-in-Residence, University of Milan School of Law (1992).

Visitor-in-Residence, Murdoch University School of Law, Perth (1992).

Visitor-in-Residence, University of Western Australia School of Law, Perth (1992).

Visitor-in-Residence, University of Cologne School of Law (1984).

Visitor-in-Residence, McGill University Law School (1981).

Member, Visiting Committee University of Arizona College of Law (1995-2000).

Co-Chair, ALI-ABA Institute on Corporate Governance (1999-2000).

Chair, Business Associations Section, Association of American Law Schools (1998)

Chair, Contracts Section, Association of American Law Schools (1989).

Chair, Planning Committee, Workshop on Contracts, Association of American Law Schools (1986).