# Curriculum Vitae
# Mark P. Gergen

## Employment

Berkeley Law School (2008 to present). Robert and Joann Burch D.P. Professor of Tax Law and Policy (2012 to present).

University of Texas School of Law. Fondren Chair for Faculty Excellence (2004 - 2008), Professor (1989 - 2004), Assistant Professor (1985 – 1989).

Visitor, Harvard Law School (Fall 2007).

Visitor, University College London Faculty of Law (Fall 2002).

Associate, Arnold & Porter, Washington, D.C., 1983 to 1985. Practice in tax and general corporate.

Law Clerk to the late Honorable Harrison L. Winter, Chief Judge of the United States Court of Appeal for the Fourth Circuit, Baltimore, Maryland. 1982 to 1983.

## Education

J.D., University of Chicago School of Law, Chicago, Illinois. 1982. Order of the Coif. Associate Editor of the University of Chicago Law Review.

B.A., Yale University, New Haven, Connecticut. 1979. Summa Cum Laude, nominated to Phi Beta Kappa, Distinction in History Major.

## Courses taught

Contracts, Property, Torts, Remedies, Oil and Gas Law, Commercial Torts, Income Tax, Partnership Tax, Corporate Tax, Taxation of Financial Instruments and Institutions, and Tax Policy.

## Member

District of Columbia Bar
American Law Institute
Order of the Coif
American Association of Law Schools, Tax and Contracts sections

## Professional service

Advisor, Restatement Third, Economic Torts (2010 to present)
Reporter, Restatement Third, Economic Torts and Related Wrongs (2005 to 2007)
Advisor, Restatement Third, Restitution and Unjust Enrichment (2004 to 2011)
American Editor, Restitution Law Review (from 2004)
Consultant to American Law Institute, Federal Income Tax Project on Taxation of Pass-Through Entities (1995 to 1999)

## Administrative

Associate Dean for Faculty Development and Research, Aug. 2016-present.
Co-Chair UC Berkeley Faculty Welfare Committee 2014-2015, 2015-2016
Served on UC System Faculty Welfare Committee 2014-2015, 2015-2016
Served on UC System Task Force on Investment Return 2015-present
Chair Merit Review Advisory Committee 2015-2016
Served on Berkeley Law School Faculty Appointments, Merit Review Advisory Committee, Financial Aid, and UC Berkeley Faculty Welfare Committees.
Chaired UT Law School Appointments Committee, Budget Committee, Curriculum Committee, Tax CLE Planning Committee, and Ad Hoc Committee on Loan Forgiveness.
Chaired UT Ad Hoc Committee on Medical Benefits.
Served on UT Law School Dean Search, Appointments, Budget, Tenure, and Admissions Committees.
Served on UT Faculty Senate, University Faculty Welfare Committee, University Ad Hoc Committee on UT Faculty Salaries, and University Ad Hoc Committee on Modified Service and Early Retirement.
Board of Directors, University Coop (2002-2006)

Open Door Award from the Student Bar Association, 1986.

## Publications

### Books

Fuller, Eisenberg, and Gergen, Basic Contract Law (9th ed. 2013)

Fuller, Eisenberg, and Gergen, Basic Contract Law: Concise Edition (9th ed. 2013)

Teacher's Manual to Fuller, Eisenberg, and Gergen, Basic Contract Law (9th ed. 2013)

### Restatement

Restatement Third, Torts: Liability for Economic Loss, Preliminary Draft No. 1 (Sept. 29, 2005)

Restatement Third, Economic Torts and Related Wrongs, Preliminary Draft No. 2 (May 15, 2006)

Restatement Third, Economic Torts and Related Wrongs, Council Draft No. 1 (Oct. 2, 2006)

Restatement Third, Economic Torts and Related Wrongs, Preliminary Draft No. 3 (April 12, 2007)

Restatement Third, Economic Torts and Related Wrongs, Council Draft No. 2 (Oct. 5, 2007).

**Essays and articles**

How to Tax Capital, forthcoming Tax Law Review

Privity's Shadow: Exculpatory Terms in Extended Forms of Private Ordering, 43 Fla. St. L. Rev. 1 (2015)

The Right to Perform After Repudiation and Recover the Contract Price in Anglo-American Law, Comparative Contract Law: British and American Perspectives (Dimattio & Hogg, eds.,)(Oxford University Press 2016)

Negligent Misrepresentation as Contract, 101 Cal. L. Rev. 953 (2013)

Tax Law Influences on the Form and Substance of Equity Compensation in the US, Enterprise Law: Contracts, Markets, and Laws in the US and Japan (Zenichi Shishido ed)

Common Law Judicial Decision Making: The Case of the New York Court of Appeals, 60 Buffalo L. Rev. 897 (2012)(with Kevin M. Quinn)

Causation in Disgorgement, 92 Boston University Law Review 827 (2012)

The Supreme Court's Accidental Revolution? The Test for Permanent Injunctions, 112 Columbia Law Review 203 (2012)(with John M. Golden and Henry E. Smith)

Principles for Resolving Hard Cases of Carelessly Caused Pure Economic Loss, Torts in Commercial Law (J. Edelman, J. Gouldkamp, and S. Degeling eds)(Thomson Reuters Australia 2011)

Uncertainty and Tax Enforcement: A Case for Modest Fault-Based Penalties, 64 Tax L. Rev. 453 (2011)

A Theory of Self-Help Remedies in Contract, 89 B.U.L. Rev. 1397 (2009)

Contracting Out of Liability for Deceit, Inadvertent Misrepresentation and Negligent Misstatement, in Exploring Contract Law (Hart 2009)

A Pragmatic Case for Taxing an Equity Fund Manager's Profit Share as Compensation, 87 Taxes 139 (March 2009)

How Corporate Integration Could Kill the Market for Corporate Tax Shelters, 61 Tax L. Rev. 145 (2008)

Towards Understanding Equitable Estoppel in Structure and Justification in Private Law (Hart 2008)

The Ambit of Negligence Liability for Pure Economic Loss, 48 Ariz. L. Rev. 749 (2006)

The Law's Response to Exit and Loyalty in Contract Disputes, in Comparative Remedies for Breach of Contract (Hart 2005)

A Thoroughly Modern Theory of Restitution, 84 Tex. L. Rev. 173 (2005)(review essay)

Restitution and Contract: Reflections on the Third Restatement, 13 Restitution L. Rev. 224 (2005)

Self-Interested Intervention in the Law of Unjust Enrichment, in Grundstrukturen eines Europaischen Bereicherungsrechts (Mohr Siebeck 2005)

The Story of Subchapter K: Mark H. Johnson's Quest, in Business Tax Stories (2005)

The Restatement Third, Restitution and Unjust Enrichment at Midpoint, 56 Current Legal Problems 289 (2003)

The End of the Revolution in Partnership Tax?, 56 SMU L. Rev. 343 (2003)

Restitution as a Bridge Over Troubled Contractual Waters, 71 Fordham L. Rev. 709 (2002)

The Logic of Deterrence: Corporate Tax Shelters, 55 Tax Law Review 255 (2001)

What Renders Enrichment Unjust?, 79 Texas L. Rev 1927 (2001)

The Common Knowledge of Tax Abuse, 54 SMU L. Rev. 131 (2001)

The Jury's Role in Deciding Normative Issues in the American Common Law, 68 Fordham L. Rev. 407 (1999)

The Influence of Tax Law on Securities Innovation in the United States: 1981-1997, 52 Tax L. Rev. 119 (1997), with Paula Schmitz

A Priest Responds to the Bean Counters: "Ill-Gotten Gains Evasion, Blackmail, Fraud and Kindred Puzzles of the Law," 22 Law and Social Inquiry 879 (1998)(Review Essay)

Subchapter K and Passive Financial Intermediation, 51 SMU L. Rev. 37 (1997)

Tortious Interference: How it is Engulfing Commercial Law, Why this is Not Entirely Bad, and a Prudential Response, 38 Ariz. L. Rev.1175 (1996)

A Grudging Defense of the Role of the Collateral Torts in Wrongful Termination Litigation, 74 Tex. L. Rev. 1693 (1996)

Apocalypse Not?, 50 Tax L. Rev. 833 (1995)

A Defense of Judicial Reconstruction of Contracts, 71 Ind. L. J. 45 (1995)

The Effects of Price Volatility and Strategic Trading Under Realization, Expected Return, and Retrospective Taxation, 49 Tax. L. Rev. 209 (1994)

A Cautionary Tale About Contractual Good Faith in Texas, 72 Tex. L. Rev. 1235 (1994)

Reforming Subchapter K: Compensating Service Partners, 48 Tax L. Rev. 69 (1992)

Reforming Subchapter K: Contributions and Distributions, 47 Tax L. Rev. 173 (1991)

The Use of Open Terms in Contract, 92 Colum. L. Rev. 997 (1992)

Reforming Subchapter K: Special Allocations, 46 Tax L. Rev. 1 (1990)

Liability for Mistake in Contract Formation, 64 U.S.C.L. Rev. 1 (1990)

The Texaco-Pennzoil Affair and the Economic Analysis of Remedies for Mistakes in Contract Formation, 9 Rev. of Litigation 441 (1990)

Pooling or Exchange: The Taxation of Joint Ventures Between Labor and Capital, 44 Tax L. Rev. 519 (1989)

The Case for a Charitable Contributions Deduction, 74 Va. L. Rev. 1393 (1988)

Equality and the Conflict of Laws, 73 Iowa L. Rev. 893 (1988)

The Selfish State and the Market, 66 Tex. L. Rev. 1097 (1988)

Interagency Disputes Over Dry Fields or Clean Water: A Case Study of the Conflict Between Agricultural Drainage Programs and the Chesapeake Bay Cleanup, 4 Va. J. Nat. Res. L. 219 (1985), with Timothy Lindon.

Constitutional Limitations on State Long Arm Jurisdiction, 49 U. Chi. L. Rev. 156 (1982) (comment)

**Treatises and other**

Partnership Interests (chapter), in Ferguson, Freeland, and Ascher, Federal Income Taxation of Estates, Trusts, and Beneficiaries (Aspen Law & Business)(2001 to present)

Regional digest (caselaw update), United States, Restitution Law Review, from Volume 13 (2005 to present).

**Brief reviews, notes and correspondence**

A Candle is Lit: The Restatement Third, Restitution and Unjust Enrichment, 20 Restitution L. Rev. 112 (2012).

Making Do in a Mongrel Accrual-Realization Regime, 50 Canadian Tax Journal 212 (2002)

What to Do When Good Liquidated Damage Terms Go Bad, 8 Commercial Damages Reporter 141 (1993)

Why A Partnership Should Recognize Gain on an Exchange of a Partnership Interest for Services, 47 Tax Notes 1487 (1990)

Disproportionate Loss Allocations, 48 Tax Notes 1051, 1059 (1990)

In Defense of Disallowing Economic Losses, 48 Tax Notes 364 (1990)(viewpoint)

Atiyah, P.S. *Essays on Contract*, 101 Ethics 204 (1990)(booknote)

Territoriality and the Perils of Formalism, 86 Mich. L. Rev. 1735 (1988)(correspondence)