

National Business Law Scholars Conference

June 20-21, 2019

University of California

Berkeley School of Law

THURSDAY, JUNE 20th

8:00-8:45 **Registration & Breakfast (Room 105)**

8:45-9:00 **Opening Remarks (Room 105)**

Steven Davidoff Solomon (UC Berkeley School of Law)

9:00-10:00 **Concurrent Panels**

Panel A (Room 175 – Booth Auditorium)

Disclosure

Moderator and Discussant: Nicole G. Iannarone (Georgia State University College of Law)

- George S. Georgiev (Emory University School of Law), *Securities Disclosure As Soundbite: The Case of CEO Pay Ratios*
- Virginia Harper Ho (University of Kansas School of Law), *Overdisclosure? Lessons from the Regulation S-K Concept Release*
- Ann M. Lipton (Tulane University Law School), *Not Everything Is About Investors: The Case for Mandatory Stakeholder Disclosure*

Panel B (Room 115)

Business and Social Responsibility

Moderator and Discussant: Michael B. Dorff (Southwestern Law School)

- Ofer Eldar (Duke University School of Law), *Designing Business Forms to Pursue Social Goals*
- David Hess (University of Michigan Ross School of Business), *The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights*
- Kish Parella (Washington and Lee University School of Law), *Nudging Corporations Toward Human Rights*

Panel C (Room 105)

Shareholder Voting and Activism

Moderator and Discussant: Emily Winston (New York University School of Law)

- Suren Gomtsian (University of Leeds School of Law), *Shareholder Stewardship by Large Institutional Investors: Evidence from the United Kingdom*
- Frank Partnoy (UC Berkeley School of Law), *Negative Activism*
- Dov Solomon (College of Law and Business, Israel), *The Importance of Inferior Voting Rights in Dual-Class Firms*

10:00-10:10 **Break**

10:10-11:50

Concurrent Panels

Panel A (Room 105)

Initial Public Offerings

Moderator and Discussant: Frank Partnoy (UC Berkeley School of Law)

- Anat Alon-Beck (Case Western Reserve University School of Law), *The New Unicorn Investors - Disruptors or Distractors?*
- Jordan M. Barry (University of San Diego School of Law), *Declines on the Rise: Negative Book Value of Equity Firms*
- Patrick Corrigan (Notre Dame Law School), *Greenshoe Options*
- Jordan B. Neyland (George Mason University Scalia Law School), *Do Lawyers Matter in Initial Public Offerings?*
- Maria Lucia Passador (Bocconi University), *In Vogue Again: The Re-Rise of Spacs in the IPO Market*

Panel B (Room 240)

Business Law & Technology

Moderator and Discussant: Kristin N. Johnson (Tulane University Law School)

- M. Bob Kao (Centre for Commercial Law Studies, Queen Mary University of London), *Cybersecurity Regulation of Insurance Companies: United States and Beyond*
- Nizan Geslevich Packin (City University of New York), *In Big Data Algorithms We Trust? Nudging to Get Second Opinions*
- Vadhindran Rao (Metropolitan State University), *Decentralized Underwriting in Finance – Reputation as Capital*
- Daniel Schwarcz (University of Minnesota Law School), *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*
- Samuel N. Weinstein (Benjamin N. Cardozo School of Law), *Blockchain & Competition Policy in Financial Services Markets*

Panel C (Room 175 – Booth Auditorium)

Rethinking Shareholder Primacy

Moderator and Discussant: Da Lin (Harvard Law School)

- Madison Condon (New York University School of Law), *Common Ownership, Shareholder Primacy, & Efficiency Framing*
- Grant M. Hayden (SMU Dedman School of Law) & Matthew T. Bodie (Saint Louis University School of Law), *After Shareholder Primacy: A Firm-Centric Model of Corporate Governance*
- Sung Eun (Summer) Kim (University of California, Irvine, School of Law), *Consumers as Owners of Contemporary Firms*
- Yaron Nili (University of Wisconsin Law School) & Cathy Hwang (University of Utah S.J. Quinney College of Law), *Shadow Governance*
- Asaf Raz (University of Pennsylvania Law School), *A Purpose-Based Theory of Corporate Law*

Panel D (Room 115)

Contract Law

Moderator and Discussant: Spencer Williams (Stanford Law School)

- M. Konrad Borowicz (Tilburg University), *Contracts as regulation: the ISDA Master Agreement*
- John Coyle (University of North Carolina School of Law), *A Short History of the Choice-of-Law Clause*
- David Epstein (University of Richmond School of Law), *Illusion of Illusoriness*
- Tal Kastner (New York University School of Law), *The Limits of Modularity in Contract*
- Emily N. Strauss (Duke University School of Law), *Counterintuitive Interpretation in Response to Unforeseen Shocks: The Sole Remedy Provision*

11:50-12:30 **Lunch (Room 105)**

12:30-2:00 **Plenary Panel (Room 105)**

Sustainability in Practice: Perspectives from Corporate Counsel

Moderator: Amelia Miazad (UC Berkeley School of Law)

2:00-2:10 **Break**

2:10-3:30 **Concurrent Panels**

Panel A (Room 100)

Tax Law

Moderator and Discussant: Christine Hurt (BYU Law School)

- Limor Riza (Ono Academic College, School of Law), *Chronicle of the Unemployment Benefit Tax: Taxation of Chronic Unemployment*
- Blaine G. Saito (Harvard Law School), *Design Flaws and Solutions for the Low-Income Housing Tax Credit*
- Sloan G. Speck (University of Colorado Law School), *Loss Limitations and the Evolving Business Tax Base*
- Andrew W. Swain (Indiana University Judd Leighton School of Business), *The Merging of Corporate Social Responsibility and Legal Tax Avoidance: A Theory of Natural Unity*

Panel B (Room 132)

Cryptocurrency Regulation

Moderator and Discussant: Nizan Geslevich Packin (City University of New York)

- Craig Calcaterra (Metropolitan State University), *Cryptocurrency Stability Mechanisms*
- Yuliya Guseva (Rutgers Law School), *Regulating Token Offerings*
- Neal Newman (Texas A&M University School of Law), *In Re Initial Coin Offerings – The SEC Needs to Get this Right*

Panel C (Room 140)

Antitrust and Monopoly Law

Moderator and Discussant: Menesh Patel (UC Davis School of Law)

- Gregory Day (University of Georgia Terry College of Business), *Supracompetitive Privacy*
- Joshua Macey (Cornell Law School), *It's Not Moral Hazard, It's the Market: Natural Monopoly and the Misregulation of Financial Market Utilities*
- Jeffrey Manns (George Washington University Law School), *The Natural Oligopoly Problem*
- Ramsi Woodcock (University of Kentucky College of Law), *Doubt and Action in Antitrust*

3:30-3:40 Break

3:40-4:20 Concurrent Panels

Panel A (Room 132)

#MeToo

Moderator and Discussant: Joan MacLeod Heminway (The University of Tennessee College of Law)

- Terry Morehead Dworkin (Seattle University School of Law) & Cindy A. Schipani (University of Michigan Ross School of Business), *Worker Voice and the #MeToo Era*
- Tom C.W. Lin (Temple University Beasley School of Law), *Executive Private Misconduct*

Panel B (Room 100)

Cryptocurrencies and Market Stability

Moderator and Discussant: Laura Napoli Cordes (Arizona State University Sandra Day O'Connor College of Law)

- Wulf A. Kaal (University of St. Thomas School of Law), *Stable Cryptocurrencies - Are they Needed?*
- Megan McDermott (University of Wisconsin School of Law), *The Crypto Quandary: Is Consumer Bankruptcy Ready for High Volatility Assets?*

Panel C (Room 140)

Antitrust and Competition Law

Moderator and Discussant: Afra Afsharipour (UC Davis School of Law)

- Menesh Patel (UC Davis School of Law), *Antitrust Breakups*
- Ramsi Woodcock (University of Kentucky College of Law), *The Indispensability of Per Se Rules in Budget-Constrained Antitrust Adjudication*

4:20-4:30 Break

4:30-5:50 Concurrent Panels

Panel A (Room 240)

Business and Property Law

Moderator and Discussant: Michael J. Burstein (Benjamin N. Cardozo School of Law)

- Robert Anderson (Pepperdine University School of Law), *A Property Theory of Corporate Law*
- Danielle D'Onfro (Washington University School of Law), *Companies as Commons*

Panel B (Room 140)

Business Bankruptcy

Moderator and Discussant: Eric C. Chaffee (The University of Toledo College of Law)

- Vince Buccola (The Wharton School, University of Pennsylvania), *Bankruptcy's Cathedral: Property Rules, Liability Rules, and Distress*
- Laura Napoli Coordes (Arizona State University Sandra Day O'Connor College of Law), *Reorganizing Health Care Bankruptcy*
- Jared A. Ellias (University of California Hastings College of the Law), *Bankruptcy Hardball*
- Lindsey Simon (University of Georgia School of Law), *Bankruptcy Appropriation by Non-Debtor Defendants*

Panel C (Room 132)

Business Law and Inequality

Moderator and Discussant: Tom C.W. Lin (Temple University Beasley School of Law)

- Matteo Gatti (Rutgers Law School) & Chrystin Ondersma (Rutgers Law School), *The Trouble with a Stakeholder Approach in Corporate Law—A Progressive Account*
- Gwendolyn Gordon (The Wharton School, University of Pennsylvania), *Corporate Reparations*
- Daniel J.H. Greenwood (Hofstra University Maurice A. Deane School of Law), *The Death of the Middle Class and the Life of Corporate Law*
- Emily Winston (New York University School of Law), *Examining the Effects of Securities Laws on Inequality Trends*

Panel D (Room 100)

Fiduciary Duties and Governance

Moderator and Discussant: Gregory H. Shill (University of Iowa College of Law)

- Ofer Eldar (Duke University School of Law), *Customizing Governance to Attract Capital*
- Joseph K. Leahy (South Texas College of Law), *Re-RUPA: Re-Envisioning, Re-Purposing & Revising the Fiduciary Duty Provisions of the (Revised) Uniform Partnership Act*
- Jeremy R. McClane (University of Illinois College of Law), *Financial Alchemy and the Decline of Lender Driven Corporate Governance*
- Andrew Tuch (Washington University School of Law), *Reassessing Self-Dealing*

6:00-7:00 Reception (2nd Floor - Steinhart Courtyard)

FRIDAY, JUNE 21st

8:00-8:30 Registration & Breakfast (Room 105)

8:30-9:30 Concurrent Panels

Panel A (Room 295 – Warren Room)

Investment Fund Regulation

Moderator and Discussant: Sung Eun (Summer) Kim (University of California, Irvine, School of Law)

- William W. Clayton (BYU Law School), *The Limits of Legal Counsel in Private Equity*
- Alexander I. Platt (Harvard Law School), *Index Fund Enforcement*

Panel B (Room 240)

Unincorporated Business Entities

Moderator and Discussant: William J. Magnuson (Texas A&M University School of Law)

- Ilya Beylin (Seton Hall Law School), *BigLaw*
- Eric C. Chaffee (The University of Toledo College of Law), *A Theory of the Business Trust*
- Emeka Duruigbo (Thurgood Marshall School of Law, Texas Southern University), *Inadvertent Partnerships and Fiduciary Duties*

Panel C (Room 115)

Designing Business Regulation

Moderator and Discussant: Robert F. Weber (Georgia State University College of Law)

- Benjamin P. Edwards (UNLV William S. Boyd School of Law), *Performance-Based Investor Protection*
- Seth C. Oranburg (Duquesne University School of Law), *The Geometry of Regulation*
- Michael Simkovic (USC Gould School of Law), *Measuring Regulation*

Panel D (Room 175 – Booth Auditorium)

Shareholder Voting

Moderator and Discussant: Asaf Raz (University of Pennsylvania Law School)

- Geeyoung Min (Michigan State University College of Law), *Governance by Dividends*
- Yaron Nili (University of Wisconsin Law School), *The Market for Votes*
- Jon Zytneck (New York University School of Law), *Retail Shareholder Voting as Political Expression*

9:30-9:40 Break

9:40-10:20 Concurrent Panels

Panel A (Room 240)

Delaware Law

Moderator and Discussant: Anat Alon-Beck (Case Western Reserve University School of Law)

- Jens Dammann (The University of Texas School of Law), *Deference to Delaware Corporate Law Precedents and Shareholder Wealth: An Empirical Analysis*
- William J. Moon (University of Maryland Carey School of Law), *Delaware's New Competition*

Panel B (Room 295 – Warren Room)

Designing the Board

Moderator and Discussant: Megan Wischmeier Shaner (University of Oklahoma College of Law)

- Jeremy R. McClane (University of Illinois College of Law) & Yaron Nili (University of Wisconsin Law School), *Corporate Boards Networks and the Impact of Director Connections on Governance*
- Gregory H. Shill (University of Iowa College of Law), *Population Density and the Production of Corporate Governance*

Panel C (Room 175 – Booth Auditorium)

Regulatory Structure and Business Law

Moderator and Discussant: Patrick Corrigan (Notre Dame Law School)

- William J. Magnuson (Texas A&M University School of Law), *The Race to the Middle*
- Michael Simkovic (USC Gould School of Law), *Fairness without Standards*

10:20-10:30 Break

10:30-12:10 Concurrent Panels

Panel A (Room 295 – Warren Room)

Securities Litigation and Arbitration

Moderator and Discussant: Donna M. Nagy (Indiana University Maurer School of Law)

- Christine Hurt (BYU Law School), *Short-Selling, Standing, and Securities Fraud*
- Nicole G. Iannarone (Georgia State University College of Law), *Winning, Defined*
- Dorothy S. Lund (USC Gould School of Law), *Toward a Mission Statement for Mutual Funds in Shareholder Litigation*
- Steven McNamara (American University of Beirut), *The Dutch WCAM and the Growth of the Global Synthetic Securities Class Action*
- A.C. Pritchard (University of Michigan Law School), *Working Hard, or Making Work? Plaintiffs' Attorneys Fees in Securities Fraud Class Actions*

Panel B (Room 105)

Policing the Business World

Moderator and Discussant: David Hess (University of Michigan Ross School of Business)

- Michael R. Bell (New Jersey City University School of Business), *Organizational Learning in Supply Chains: Insight Into Constructing a More Sustainable Corporate Compliance Architecture*
- Sue S. Guan (Columbia Law School & Columbia Business School), *Financial Benchmarks as "Price"*
- David Kwok (University of Houston Law Center), *The Organizational Victim of Fraud*
- Elizabeth Pollman (Loyola Law School, Los Angeles), *Corporate Oversight, Disobedience, and Accountability*
- Megan Wischmeier Shaner (University of Oklahoma College of Law), *When One-Size-Does Not-Fit-All: Rethinking a Board's Duty of Oversight*

Panel C (Room 175 – Booth Auditorium)

Understanding Systemic Risk

Moderator and Discussant: Alexander I. Platt (Harvard Law School)

- Kristin N. Johnson (Tulane University Law School), *Automating Risk*
- Jeremy C. Kress (University of Michigan Ross School of Business), *Solving Banking's "Too Big to Manage"*
- Joshua Macey (Cornell Law School), *Rate Regulation Redux*
- Matthew C. Turk (Indiana University, Kelley School of Business), *Stress Testing the Banking Agencies*
- Robert F. Weber (Georgia State University College of Law), *What We (Really) Talk About When We Talk About "Systemic Risk"*

12:10-1:30

Lunch and Keynote Address (Room 105)

Jill Fisch (University of Pennsylvania School of Law)

1:30-1:40

Break

1:40-3:20

Concurrent Panels

Panel A (Room 295 – Warren Room)

Insider Trading

Moderator and Discussant: Ilya Beylin (Seton Hall Law School)

- Michael D. Guttentag (Loyola Law School, Los Angeles), *Law, Surplus, and Insider Trading*
- Joan MacLeod Heminway (The University of Tennessee College of Law), *Friends and Family Insider Trading: Data and Implications*
- Mangesh Patwardhan (National Insurance Academy), *The Insider Trading Prohibition in India— In Search of a Doctrine*
- Michael A. Perino (St. John's University School of Law), *Real Insider Trading*
- Ido Baum (Haim Striks School of Law, College of Management-Academic Studies), *When Should You Abstain? A Call for a Global Rule of Insider Trading*

Panel B (Room 132)

Mergers & Acquisitions

Moderator and Discussant: Jeremy R. McClane (University of Illinois College of Law)

- Matteo Gatti (Rutgers Law School), *Did Delaware Really Kill Corporate Law? Shareholder Protection in a Post-Corwin World*
- Frank Gevurtz (University of the Pacific, McGeorge School of Law), *The Shareholder Approval Conundrum*
- Zachary J. Gubler (Arizona State University Sandra Day O'Connor College of Law), *What's the Deal with Revlon?*
- Tami Groswald Ozery (Harvard Law School), *Home Invasion: Cross Border Acquisitions by an Ultimate Foreign Sovereign — a Corporate Governance Perspective*
- Steven Davidoff Solomon (UC Berkeley School of Law), *Does Revlon Matter?: An Empirical Study*

Panel C (Room 100)

Comparative and International Business Law

Moderator and Discussant: Jens Dammann (The University of Texas School of Law)

- Fahad Alshammari (Washington University School of Law), *Bids as Shareholder Protection Under Kuwaiti Law*
- Anne-Claire Bernard-Tomasi (University of Westminster), *The Corporation, Corporate Legal Rights and Privacy Law: The Question of the Legal Protection of Privacy in the Corporate Context*
- Mariangela Iannaccone (Aarhus University Department of Law), *Corporate Abuse and Shadow Directorship: A Comparative Overview of the UK and Italy*
- Chang-hsien (Robert) TSAI (Institute of Law for Science & Technology, College of Technology Management National Tsing Hua University), *The Rise of the Sandbox Approach to Disruptive Innovations and Its Limits: Lessons from Taiwan*
- Jieyu Zhang (UC Berkeley School of Law), *Why M&A Due Diligence Practices Differ in China and the United States*

3:20-3:30 **Break**

3:30-4:30 **Concurrent Panels**

Panel A (Room 295 – Warren Room)

International Business Litigation

Moderator and Discussant: William J. Moon (University of Maryland Carey School of Law)

- Jay B Kesten (Florida State University College of Law), *Morrison's Impossibility*
- Tim R. Samples (University of Georgia Terry College of Business), *Sovereign Immunity in the 21st Century*
- Yanbai Andrea Wang (Stanford Law School), *Exporting American Discovery*

Panel B (Room 132)

Mergers & Acquisitions

Moderator and Discussant: Matteo Gatti (Rutgers Law School)

- Afra Afsharipour (UC Davis School of Law), *Women and M&A*
- Vera Korzun (The University of Akron School of Law), *Shareholder Litigation by Contract: Empirical Evidence on Mandatory Arbitration Bylaws*

4:30-4:45 **Closing Remarks (Room 105)**

Steven Davidoff Solomon (UC Berkeley School of Law)