

## PUBLICATIONS

### Books and Book Chapters:

*Contract Hazards: Lawyers and Their Landmines*, Oxford Academic (2025) (with Stephen J. Choi and Mitu Gulati).

CONTRACT LAW AND THEORY, CAROLINA ACADEMIC PRESS (6th ed. 2023) (with Jody P. Kraus).

*A Joint Maximization Theory of Contract and Regulation*, in RESEARCH HANDBOOK ON PRIVATE LAW THEORY 22, Elgar Pub. (2020).

*Contractual Arbitrage*, in OXFORD HANDBOOK OF INTERNATIONAL GOVERNANCE, Oxford U. Press (2020) (with Steven Choi & Mitu Gulati).

*Contract, Uncertainty and Innovation* in CONTRACT GOVERNANCE Oxford U. Press (2017) (with Ronald Gilson & Charles Sabel)

THE THREE AND A HALF MINUTE TRANSACTION: BOILERPLATE AND THE LIMITS OF CONTRACT DESIGN, Univ. Chicago Press (2013) (with Mitu Gulati).

CONTRACT LAW AND THEORY, Lexis Pub., (5<sup>th</sup> ed., 2013) (with Jody S. Kraus).

*The Promise and Peril of Relational Contract Theory* in REVISITING THE CONTRACTS SCHOLARSHIP OF STEWART MACAULAY 105, Hart Pub. (2013).

*Contract, Uncertainty, and Innovation* in RULES FOR GROWTH: PROMOTING INNOVATION AND GROWTH THROUGH LEGAL REFORM 223, Kauffman Press (2011) (with Ronald Gilson & Charles F. Sabel).

*In Partial Defense of Strict Liability in Contract* in FAULT IN AMERICAN CONTRACT LAW 20, (Cambridge Univ. Press, 2010).

FOUNDATIONS OF COMMERCIAL LAW, Foundation Press (2010) (with George G. Triantis)

THE LIMITS OF LEVIATHAN – CONTRACT THEORY AND THE ENFORCEMENT OF INTERNATIONAL LAW, Cambridge Univ. Press, (2006) (with Paul B. Stephan).

PAYMENT SYSTEMS AND CREDIT INSTRUMENTS, Foundation Press, (2d ed., 2007) (with Clayton P. Gillette & Alan Schwartz).

*Rethinking the Uniformity Norm in Commercial Law*, in THE JURISPRUDENTIAL FOUNDATIONS OF CORPORATE AND COMMERCIAL LAW 149, Cambridge Univ. Press, (2000).

*A Contract Theory of Marriage*, in THE FALL AND RISE OF FREEDOM OF CONTRACT, Duke Univ. Press, (1999) (with Elizabeth S. Scott).

CONTRACT LAW AND THEORY, The Michie Co., (2d ed. 1993) (with Douglas L. Leslie).

COMMERCIAL TRANSACTIONS: PRINCIPLES AND POLICIES, Foundation Press, (2d ed., 1991) (with Alan Schwartz).

SALES LAW AND THE CONTRACTING PROCESS, Foundation Press, (2d. ed., 1991) (with Alan Schwartz).

### **Articles:**

*Contractual Landmines*, 41 Yale J. Reg. 307 (2024) (with Stephen Choi & Mitu Gulati).

*Contract Production in M&A Markets*, 171 U. Pa. L. Rev. 1881 (2023) (with Stephen Choi, Mitu Gulati & Mathew Jennejohn).

*Obsolescence: The Intractable Production Problem in Contract Law*, 121 Colum. L. Rev. 1659 (2021) (with Alan Schwartz).

*What Do Lawyers Contribute to Law and Economics?*, 38 Yale J. on Reg. 707 (2021) (with George Triantis).

*The Case Against Equity in American Contract Law*, 93 S. Cal. L. Rev. 1323 (2020) (with Jody Kraus).

*The Paradox of Contracting in Markets*, 83 Law & Contemp. Probs. 71 (2020).

*Revising Boilerplate: A Comparison of Private and Public Company Transactions*, 2020 Wisc. L. Rev. 629 (with Stephen Choi & Mitu Gulati).

*Anticipating Venezuela's Debt Crisis: Hidden Holdouts and the Problem of Pricing Collective Action Clauses*, 100 B.U. L. Rev. 253 (2020) (with Mitu Gulati & Stephen Choi).

*Can Restitution Save Spiderless Networks*, 8 Harv. Bus. L. Rev. 1 (2018) (with Ariel Porat).

*Variation in Boilerplate: Rational Design or Random Mutation?*, 20 Am. L. & Econ. Rev. 1 (2018) (with Mitu Gulati & Stephen Choi).

*The Black Hole Problem in Commercial Boilerplate*, 67 Duke L. J. 1 (2017) (with Mitu Gulati & Stephen Choi).

*The Common Law of Contract and the Default Rule Project*, 102 Va. L. Rev. 1523 (2016) (with Alan Schwartz).

*From Contract to Status: Collaboration and the Evolution of Novel Family Forms*, 115 Colum. L. Rev. 293 (2015) (with Elizabeth Scott).

*Contract Design and the Shading Problem*, 99 Marquette L. Rev. 1 (2015) (Boden Memorial Lecture).

*Contractual Networks and Third Party Beneficiary Law*, 7 J. Legal Analysis 325 (2015) (with Alan Schwartz).

*Ex Ante Choice of Jury Waiver Clauses in Mergers*, 17 Am. L. & Econ. Rev. 566 (2015) (with Darius Palia).

*Text and Context: Contract Interpretation as Contract Design*, 100 Cornell L. Rev. 23 (2014) (with Ronald Gilson & Charles Sabel).

*Contract and Innovation: The Limited Role of Generalist Courts in the Evolution of Novel Contractual Forms*, 88 N.Y.U. L. Rev. 170 (2013).

*Origin Myths, Contract, and the Hunt for Pari Passu*, 38 L. & Soc. Inquiry 72 (2013) (with Mitu Gulati and Mark Weidemaier).

*Rethinking the Laws of Good Faith Purchase*, 111 Colum. L. Rev. 1332 (2011) (with Alan Schwartz).

*Braiding: The Interaction of Formal and Informal Contracting in Theory, Practice, and Doctrine*, 110 Colum. L. Rev. 1377 (2010) (with Ronald Gilson & Charles Sabel).

*Contract Interpretation Redux*, 119 Yale L. J. 926 (2010) (with Alan Schwartz).

*Hoffman v. Red Owl Stores and the Limits of the Legal Method*, 61 Hastings L.J. 859 (2010).

*Contract Design and the Structure of Contractual Intent*, 84 N.Y.U. L. Rev. 1023 (2009) (with Jody Kraus).

*In (Partial) Defense of Strict Liability in Contract*, 107 Mich. L. Rev. 1381 (2009).

*Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration*, 109 Colum. L. Rev. 431 (2009) (with Ronald Gilson & Charles Sabel).

*Market Damages, Efficient Contracting, and the Economic Waste Fallacy*, 108 Colum. L. Rev. 1610 (2008) (with Alan Schwartz).

*Precontractual Liability and Preliminary Agreements*, 120 Harv. L. Rev. 661 (2007) (with Alan Schwartz).

*Hoffman v. Red Owl Stores and The Myth of Precontractual Reliance*, 68 Ohio St. L. J. 71

(2007), reprinted in *CONTRACT STORIES*, Foundation Press (D. Baird ed. 2007).

*Anticipating Litigation in Contract Design*, 115 Yale L. J. 814 (2006). (with George Triantis).

*Incomplete Contracts and the Theory of Contract Design*, 56 Case W. Res. L. Rev. 187 (2005) (essay with George Triantis).

*The Political Economy of International Sales Law*, 25 Int'l Rev. L. & Econ. 446 (2005) (with Clayton Gillette).

*Embedded Options and the Case Against Compensation in Contract Law*, 104 Colum. L. Rev. 1428 (2004) (with George Triantis).

*The Death of Contract Law*, 54 U. of Toronto L. J. 369 (2004) (Wright Memorial Lecture)

*Self-Enforcing International Agreements and the Limits of Coercion*, 2004 Wis. L. Rev. 551 (with Paul Stephan).

*Contract Theory and the Limits of Contract Law*, 113 Yale L. J. 541 (2003) (with Alan Schwartz).

*A Theory of Self-Enforcing Indefinite Agreements*, 103 Colum. L. Rev. 1641 (2003).

*Rethinking the Default Rule Project*, 6 Va. J. 84 (2003) (essay).

*The Rise and Fall of Article 2*, 63 La. L. Rev. 1109 (2002) (Hawklaw Symposium).

*Is Article 2 the Best We Can Do?*, 52 Hastings L. J. 677 (2001) (essay).

*The Limits of Behavioral Theories of Law and Social Norms*, 86 Va. L. Rev. 1603 (2000).

*The Case for Formalism in Relational Contract*, 94 Nw. U. L. Rev. 847 (2000).

*Marriage as Relational Contract*, 84 Va. L. Rev. 1225 (1998) (with Elizabeth Scott).

*The Truth About Secured Financing*, 82 Cornell L. Rev. 1436 (1997).

*Parents as Fiduciaries*, 81 Va. L. Rev. 595 (1995) (with Elizabeth Scott).

*The Political Economy of Private Legislatures*, 143 U. Pa. L. Rev. 595 (1995) (with Alan Schwartz).

*The Mythology of Article 9*, 79 Minn. L. Rev. 853 (1995) (comment).

*The Politics of Article 9*, 80 Va. L. Rev. 1783 (1994).

*Chaos Theory and the Justice Paradox*, 35 W&M L. Rev. 329 (1993) (George Wythe Memorial Lecture).

*Plea Bargaining as Contract*, 101 Yale L. J. 1909 (1992) (with William Stuntz).

*Imperfect Bargains, Imperfect Trials, and Innocent Defendants*, 101 Yale L. J. 2011 (1992) (with William Stuntz).

*The Case for Market Damages: Revisiting the Lost Profits Puzzle*, 57 U. Chi. L. Rev. 1155 (1990).

*A Relational Theory of Default Rules for Commercial Contracts*, 19 J. Legal Stud. 59 (1990).

*Sharing the Risks of Bankruptcy*, 1989 Colum. Bus. L. Rev. 183.

*Rethinking the Regulation of Coercive Creditor Remedies*, 89 Colum. L. Rev. 730 (1989)

*On the Nature of Bankruptcy: An Essay on Bankruptcy Sharing and the Creditors' Bargain*, 75 Va. L. Rev. 155 (1989) (with Thomas Jackson).

*Conflict and Cooperation in Long-Term Contracts*, 75 Calif. L. Rev. 2005 (1987).

*A Relational Theory of Secured Financing*, 86 Colum. L. Rev. 901 (1986).

*Through Bankruptcy with the Creditors' Bargain Heuristic*, 53 U. Chi. L. Rev. 690 (1986) (review essay).

*Error and Rationality in Individual Decisionmaking: An Essay on the Relationship Between Cognitive Illusion and the Management of Choice*, 59 S. Cal. L. Rev. 329 (1986).

*The Limits of Expanded Choice: An Analysis of the Interactions Between Express and Implied Contract Terms*, 73 Calif. L. Rev. 261 (1985) (with Charles Goetz).

*The Mitigation Principle: Toward a General Theory of Contractual Obligation*, 69 Va. L. Rev. 967 (1983) (with Charles Goetz).

*Principles of Relational Contract*, 67 Va. L. Rev. 1089 (1981) (with Charles Goetz).

*Enforcing Promises: An Examination of the Basis of Contract*, 89 Yale L. J. (1980) (with Charles Goetz).

*Measuring Sellers Damages: The Lost Profits Puzzle*, 31 Stan. L. Rev. 323 (1979) (with Charles Goetz).

*Liquidated Damages, Penalties and the Just Compensation Principle: Some Notes on an ENFORCEMENT MODEL AND A THEORY OF EFFICIENT BREACH*, 77 COLUM. L. REV. 554 (1977) (with

Charles Goetz).

*Constitutional Regulation of Provisional Creditor Remedies: The Cost of Procedural Due Process*, 61 Va. L. Rev. 807 (1975).

*Abusive Debt Collection: A Proposed Model Statute*, 15 W. & M. L. Rev. 567 (1974) (with Diane Strictland).

*The Reality of Procedural Due Process: A Study of the Implementation of Fair Hearing Requirements by the Welfare Caseworker*, 13 W&M L. Rev. 725 (1972).

*The Regulation and Administration of the Welfare Hearing Process: The Need for Administrative Responsibility*, 11 W&M L. Rev. 291 (1970).

### **Work in Progress:**

THE CONTRACT PRODUCTION PARADOX (working draft) (with Mitu Gulati & Stephen Choi).

*Commercial Boilerplate: A Review and Research Agenda*, (forthcoming Am. Rev. L. & Soc. Sci. (2024)).

*Comparing Agency Costs in Contract Production: Private Equity M&A versus Corporate and Sovereign Bonds*, 173 Case W. L. Rev. --- (2024).

INNOVATION AND CONTRACT: ADAPTABILITY AND COLLABORATION IN AN UNCERTAIN WORLD, Cambridge U. Press, (forthcoming 2021) (with Ronald Gilson & Charles Sabel).