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Beyond Unprecedented: The Post-Pandemic Economy
Season 5, Episode 4:
"Betting on the Future: Prediction Markets and the Law"

[00:00:03] **Michelle Nicole Diamond:** The theory is that prediction markets are offering accurate, unbiased forecasts of the likelihood of important future events. And that's why people are interested in them. That's why they're buying and selling contracts. I think the real reason is, it's fun.

[00:00:21] **[Music and media clips of journalists]:** The coronavirus pandemic has tanked the global economy with unprecedented speed. The steepness of the decline here is unprecedented. This is a crisis that is unprecedented and we just don't know.

[00:00:34] **Eric Talley:** This is *Beyond Unprecedented: The Post-Pandemic Economy*, a limited series podcast from Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. I'm Eric Talley, Marc and Eva Stern Professor of Law and Business at Columbia Law School and co-director of the Millstein Center.

[00:00:52] **Dorothy Lund:** And I'm Dorothy Lund, Columbia 1982 Alumna Professor of Law at Columbia Law School and co-director of the Millstein Center.

[00:01:04] **Talley:** Today we'll be taking a look at prediction markets, from their dramatic rise to the complex legal and regulatory questions they raise. Now, prediction markets are exchanges where users buy and sell a yes-no contract that pays you either a dollar or nothing, depending on the outcome of some future real-world event. The underlying event can range from economic to political to athletic and even weather-related events. And you can typically buy either the yes or the no contract and the market essentially determines how much you're going to pay for each side.

[00:01:40] **Lund:** Prediction markets are hardly new. They've been around in small corners of the market for over two decades, but they've exploded into a multibillion dollar industry in recent years. Between 2024 and 2025, global trading volume on prediction markets grew by over 400%, from under $16 billion in 2024 to almost $64 billion in 2025. Over the last year, trading volume in Kalshi and Polymarket, which are the two largest prediction market platforms, this volume rose substantially. In September 2025, their combined monthly global trading volume was under $5 billion. Fast forward to April 2026, and it was around $24 billion. As of May, almost 40% of American men ages 18 to 34 have made a prediction market trade. This recent surge in prediction markets poses legal and regulatory questions. Who has jurisdiction over this activity? Are some events, like sporting contests, too easy for players to manipulate? Are others like military strikes or elections too sensitive to be the subject of a prediction market bet? How will government authorities, prediction market operators, and other organizations address the risk of insider trading on these markets? And how might the industry evolve as sophisticated traders and potentially Wall Street firms get more engaged? Eric, have you ever actually placed a bet on a prediction market?

[00:03:03] **Talley:** You know, I have. I have, and one of the reasons I have is that I teach a class in corporate finance at Columbia, and a bunch of that is trying to, you know, teach students about the operations of various types of financial contracting, derivatives, stock markets, and so forth. And prediction markets are in some ways the easiest way to introduce that. It also turns out that a ton of my students are pretty heavily into them as well. I remember one class I was teaching about prediction markets and arbitrage conditions, and I had students who were actively trading on Kalshi and Polymarket inside my class. I didn't know whether that was an insult or kind of a, you know, kind of accommodation field test. Have you placed a bet on a prediction market?

[00:03:48] **Lund:** You know, I actually haven't. I'm illustrating the reality, which is most J.D.s are pretty risk averse and don't like to engage in gambling in any form. So I have, I have never, but you're, you know, this conversation is making me wonder if I should. What was the bet that you engaged in, in your class?

[00:04:05] **Talley:** Well, you know, one of the things that is really important for understanding how to price risk in all kinds of markets is making predictions about which way the market is going to go. So in addition to, you know, are the Knicks going to win the NBA series?—I didn't bet on that one—to, you know, where is the overall stock market going to be—is it going to be above or below a certain level? That turns out to be hugely important to backstop a lot of asset pricing. So I ended up sort of doing that, but a lot of my students figured out that on different platforms, they sometimes saw different prices and they could take the yes contract in one, the no contract in the other, and they thought that they could just pocket the differences, that kind of a risk-free form of arbitrage. And in some cases they could. But the one thing that I was always confused about is the evolving legal status of prediction markets. It's still something that's a little bit up in the air and it seems to be changing on a daily basis.

[00:04:59] **Lund:** Well, it's great that we have a guest here today to speak with us about these issues. And we're joined by Michelle Nicole Diamond, who's a partner and co-chair of the Sports and Gaming Practice at WilmerHale, where she's represented companies involving sports and gaming across a variety of sectors. And her practice focuses on internal and government-facing investigations and also crisis management. She's also a proud alumna of Columbia Law School. Welcome, Michelle.

[00:05:25] **Diamond:** Thanks so much for having me.

[00:05:27] **Lund:** Can you give us some examples of the range of event contracts that are traded on major prediction markets? We covered sports markets and world events, but, you know, what are you seeing in your practice?

[00:05:42] **Diamond:** The range of contracts that you can be involved in are basically only limited by folks' imaginations. You can place bets on not just something like who's going to win the NBA Finals, but you can bet on how many goals will be scored in the France-Senegal World Cup game. You can bet on who is going to lead Venezuela after Maduro was captured by the United States. You could bet on whether the United States was going to get into war with Iran. It is really very, very wide-ranging.

[00:06:22] **Lund:** What's the weirdest thing you've seen?

[00:06:25] **Diamond:** I think the weirdest contract that I have seen is who was going to lead Venezuela post-Maduro, because the platforms ultimately had to issue a clarification about whether that meant like lead, according to the constitution who was still technically in charge of Venezuela, versus who is de facto leading the country. And I think that there were a number of people who lost significant sums of money by taking the position that Delcy Rodríguez was going to lead the country and the platform saying, well, technically Maduro was still in charge.

[00:07:05] **Talley:** I've got another question for you, Michelle. So prediction market contracts are just another form of financial risk allocation contracts about future events. And Dorothy and I spend our day job basically teaching students about these different categories of future risk contracting. So insurance, securities, derivatives, gambling. I asked my students, what's the difference between these things? And, you know, honestly, on some level, the main difference is how boring is the thing that you are betting on, with insurance being maximally boring and sports being maximally exciting. Prediction markets seem to kind of mush the distinctions even further. Was there already some tension in distinguishing between what is gaming, what is insurance, what is securities trading, what is derivatives trading?

[00:07:55] **Diamond:** I think that's right. And as Dorothy said at the outset, you know, prediction markets aren't new, but you've really seen this explosion in the last couple of years. And I think now, because you have so many people who are on these platforms and who are engaging with contracts in such quick succession, you end up having these sort of very minute decisions like whether the Yankees are going to throw a strong opening pitch in a game, that I think arguably were previously boring, now seem kind of sexy.

[00:08:28] **Lund:** Let's talk about this super-rapid rise in prediction markets. I'm just going to give you guys another figure. In early 2024, monthly trading volume on prediction markets was under $100 million. And by the end of 2025, it was exceeding $13 billion. We actually got a single-day record on Super Bowl Sunday when trading volume topped $1 billion. What is driving this recent growth?

[00:08:53] **Diamond:** So I think the theory is that prediction markets are offering accurate, unbiased forecasts of the likelihood of important future events. And that's why people are interested in them.

That's why they're paying attention. That's why they are buying and selling contracts. I think the real reason is, it's fun. And because some of the sums that you can trade on are so small, it's sort of accessible to a lot of people. You can be 18 to trade on these prediction market platforms where if you are interested in gambling, which I think for some folks might offer the same sort of excitement, you have to be 21. If you are in a state where you cannot legally bet on sports, you can engage with prediction markets. And so I think these prediction markets really sort of open this opportunity to a host of people for whom it wasn't available before.

[00:09:51] **Talley:** Well, you know, that kind of raises another question, right? That there have been these long-standing regulatory prohibitions on access to, say, to gaming markets, but a different set of regulations on can you open up a brokerage account and start trading in financial markets? Who gets to ultimately regulate prediction markets? Is it going to be gaming commissions? Is it gonna be insurance commissioners? These are at the state level. Or is it going to be, you know, federal authorities and particularly the CFTC [Commodity Futures Trading Commission], the go-to federal regulator for derivatives. Now, it seems as though the CFTC has gotten a bit of an edge in this regulatory showdown, but don't the sort of the regulatory parameters of prediction markets continue to pose jurisdictional questions on whose turf a particular type of event contract is trading?

[00:10:42] **Diamond:** That is the million-dollar question, and now that I'm saying that, it's probably much higher, because I imagine you can trade on this already. So, I mean, that's exactly right. The CFTC has taken the position that sports-related event contracts, like these are swaps subject to their exclusive jurisdiction. They've said that the Commodity Exchange Act [CEA] is very broad, and so it covers these types of agreements that are associated with some potential financial, economic, or commercial consequence. The states have taken the position that, you know, if it walks like a duck, talks like a duck, it's gambling. And these look very much like the types of bets that states historically regulate. Ultimately, I think that this is going to have to go to the Supreme Court. As you said, Eric, the 3rd Circuit gave the CFTC an edge. You also have a district court in Maryland saying, actually, no, this looks like gaming and gaming is historically in the states' wheelhouse and sort of didn't answer the same question that the 3rd Circuit argued. And so I think as these cases continue to percolate up through the courts, ultimately this is gonna go to the Supreme Court.

[00:11:55] **Talley:** Can you also include another group that struck me as you were talking as playing a potentially significant role? I grew up in the desert Southwest and about every 40 miles, there was another tribal casino that basically under a set of long-standing government compacts had kind of a monopoly to various types of gaming activities. I'm guessing the tribal casinos have a big fish in this game as well, right?

[00:12:22] **Diamond:** That's a great point. And the nuances of tribal gaming law are far more complicated than my knowledge, but I think that's exactly right. I think you are certainly going to see the tribes trying to get in on the action as well.

[00:12:35] **Talley:** It's not just a federal versus state law issue, right? It could be a federal versus federal law issue on how the rights to various types of prediction markets end up being allocated. Ultimately, how do you expect these various legal questions are going to be resolved? If you had to buy a prediction market security on it, which one would have the highest price?

[00:12:57] **Diamond:** There are good arguments on both sides. Ultimately, my bet is that this Supreme Court will not find that the CEA wholly preempts the field and will leave some room for state regulation.

[00:13:16] **Talley:** Do you think this could be on a subject matter by subject matter basis? Like if we're dealing with agricultural commodities, clearly a CFTC issue. If we're dealing on whether the Yankees pitcher is gonna throw a split-finger fastball next pitch, we're dealing with gaming authorities?

[00:13:33] **Diamond:** Part of me wants to say, I think that's really messy, but actually I think the CFTC's recent rule kind of paves the way for some sort of bifurcation, right? So the CFTC has recently taken the position that some trades are not in the public interest. And now the CFTC is more focused on things like whether people are buying contracts related to assassination or terrorism or other things that are sort of generally viewed as bad. But you could see a world in which the Supreme Court does sort of split the baby and say, agriculture, commodities, things like that that are squarely in the CFTC's wheelhouse seem like those should go to the CFTC, and we might see contracts related to sports events with the states since that looks a little bit more like sports gaming. How exactly you draw that line, I think is going to be tricky and I think courts are not, don't tend to be interested in having to have parties come back to them and say, OK, but what about this one? But that is a really interesting thought. And I think you could draw some defensible lines that would give folks guidance going forward.

[00:14:45] **Lund:** Well, so this is a great segue to where we wanted to take you next, which is this idea of, you know, sensitive events, certain things that just should be off-limits in terms of a prediction market bet. And so, as you mentioned, the CFTC has the authority to specify that certain activities like assassination, war are against the public interest, and they can bar you from making bets. They've also tried to seek public comment on some rules that would get to this issue, specifically seeking input about this public interest analysis. Federal lawmakers have also introduced bills to ban or strengthen bans on prediction market bets involving sensitive topics like terrorism, military matters, even sports. And so I guess I want to better understand what are some of the concerns driving these restrictions, and what next steps are coming from legislators and prediction market operators in terms of regulating the types of things that we can and can't bet on?

[00:15:51] **Diamond:** The CFTC will take public comment on the rule. They'll sort of get some sense of what folks think is kosher and not. And then that, I think, is open for about 45 days. And then the CFTC will issue a rule. I think this is certainly not the last rule that we see from the CFTC on prediction markets. At the end of the day, I think what it comes down to is it feels icky to be betting on whether or not someone is going to be killed, or whether something really terrible is going to happen. Now, I think the alternative argument is if the value of prediction markets is to increase the amount of real-world accurate information that is available to the public, I think that you have an argument to say even if it's bad, you know, people should be able to know. Now, I think the counterargument to that is, well, what is the value? Like, what are they actually able to do with this information? So ultimately, I do think that the CFTC is going to say they're just some things that we think are too icky for folks to be able to engage with contracts on. Congress is tricky. My prediction is that you will see a lot more congressional inquiries. I think you will see folks from prediction markets, you're already starting to see this brought into Congress for congressional testimony, because I think Congress is in a place where they're trying to understand better prediction markets and how to regulate them. I could also imagine Congress being a little bit wary of wading into the fight with the expectation that the Supreme Court will ultimately be weighing in on this also.

[00:17:37] **Talley:** Now, another angle, by the way, is general garden-variety insider trading, right? Using confidential or material nonpublic information to trade on prediction market platforms. Now, the CFTC regulations have an insider trading prohibition. It looks very much like conventional securities fraud insider trading, and the CFTC-registered exchanges have to adopt controls that guard against these sorts of unfair practices. I'll also note that Kalshi, possibly sensing some heat on this issue, just recently adopted a rule that requires traders to disclose their employer as well, so that that creates a little bit more of an evidentiary trail. And there have been well-covered examples. There was a CFTC complaint that was also a U.S. Attorney's Office complaint against a U.S. service member, alleging that he engaged in insider trading over the removal of Venezuelan President Nicolás Maduro. In another recent case, an employee at Google allegedly used confidential information inside Google to make prediction bets on Google-related activities. What do these episodes tell us about the likelihood and the pervasiveness of threats of insider trading, and how should, you know, the CFTC, the Department of Justice, state attorneys general respond to these sorts of risks?

[00:19:04] **Diamond:** I think we're in early days of the various actors figuring out how and whether to enforce insider trading prohibitions related to prediction markets. But my view is that it's inevitable. I think you already see the prediction markets themselves have set up these very extensive compliance regimes to track potential incidents of insider trading. And I think that insider trading was very hot for prosecutors in SDNY [the Southern District of New York] for a number of years. And I think that it is something that appeals to—at least has historically appealed to—prosecutors. I think going after insider trading is something that will appeal to Congress in part because it just feels unfair. And that's something I think that resonates with people, even if they don't have a good handle on what prediction markets are.

[00:19:56] **Lund:** One interesting dynamic about prediction markets is that you have retail investors trading against other retail investors. You've got these "sharps"—there are these sophisticated retail traders that make hundreds of thousands of dollars on event contracts. And they're basically trading against casual users who are doing this via Robinhood or Coinbase. And we don't have any institutions really in the mix at all. So I wonder, Michelle, if you see this as something that might change. You know, are we going to get large institutional funds investing, I don't know, like 401(k) assets, or do we have to wait for legal and regulatory clarity before it's possible for these large institutional players to participate?

[00:20:42] **Diamond:** This may be a failure of imagination on my part, but I find it hard to see a world in which you have these major institutional traders responsible for folks' 401(k)s engaging with prediction markets in a meaningful way. Certainly, I would expect that you would have to see some legal clarity about who the regulators are, what regulations are in place, whether trading on material nonpublic information is permissible under this new legal regime. That said, if you had asked me about prediction markets 10 years ago, even maybe five years ago, whether you would see them explode the way they have, I probably would have said no, and I most certainly would have said no, and so it is certainly possible, but I think especially when you think about pension funds and that are bound up with these major institutional investors, it's hard for me to imagine a world where that becomes the norm.

[00:21:49] **Talley:** Michelle, can I push you a little bit on something that's actually a very lawyerly question? So it's a good thing that we're all lawyers here, which is that, you know, this market is moving so quickly that the prescriptions in these contracts themselves are sometimes either poorly specified or vague or inconsistent with one another. There have been some event contracts that have been open for betting even after the event either occurred or didn't occur. Some users have assumed they could just continue to bet and make kind of almost risk-free money on it. And that's caused the big providers to give themselves or assert a type of authority to make clarifications about whether the unwritten details of the rules regarding, you know, trading on a particular event contract prohibit something or allow something. Can you give us a little sense about how these contracts are evolving? Are they doing a better job over time at plugging some of these obvious holes? Or is this something that's just kind of endemic that we're likely gonna have to live with for some time?

[00:22:57] **Diamond:** The clarification component of prediction markets is fascinating. We talked about it a little bit in the context of who is leading Venezuela post–Maduro's capture. Is it Maduro? Is it Rodríguez? Is it Trump? How do you decide? And inevitably, it's the platforms that are making these calls. And there was an article in *The Wall Street Journal* about a student who thought he found a loophole, where there was a contract about whether a company would have sold Bitcoin by a certain time period, and the contract was still open and the company had made the announcement, and he put a very large bid expecting to buy a Porsche coming out of it. And ultimately, the prediction market platform said, no, no, in order for that to have been the case, the announcement had to have come before the close of business on, like, May 31. And so he lost somewhere in the neighborhood of, I think it was around $30 million of what he thought he was going to win. The bet wasn't that high. And so I think it's still really messy describing the parameters of a trade, especially when there are so many trades being made on so many different things. And there's not necessarily the infrastructure in place to think about like, OK, are we being completely clear on what the parameters of this are? I mean, it makes sense that that would be challenging to do, but I think you're going to still continue to see some of these clarifications on the back end. And the platforms have said, they rarely issue clarifications, but I think we're going to continue to see these if the volume and the types of contracts stay the way that they do where you really can take a position on almost anything.

[00:24:47] **Lund:** All right, so we're going to wrap with a lightning round, OK? And in the spirit of the topic for today, these are going to be prediction market–style questions about the industry. Of course, none of this constitutes legal or investment advice. But Michelle, we want to hear your rapid-fire answer, OK. Question one: Will the annual trading volume of prediction markets top $1 trillion by 2030—which, by the way, is half of SpaceX value as of today?

[00:25:15] **Diamond:** Yes.

[00:25:17] **Lund:** Will the legal fight over the CFTC's claim to exclusive prediction markets jurisdiction reach the Supreme Court during the court's 2026–2027 term?

[00:25:27] **Diamond:** No.

[00:25:28] **Lund:** OK, I know I said lightning round, but I want to hear a little bit more about that.

[00:25:32] **Diamond:** I think that the Supreme Court is going to wait a little bit longer to see how additional courts shake out. I think right now the courts that have weighed in on whether prediction markets fall under CFTC's jurisdiction or the states' have sort of talked past each other. It's not like they've looked at the same exact question and come at it differently. And so I imagine the Supreme Court may say, let's give it a little bit more time; let's see a true circuit split before ultimately weighing in because it is a very thorny question.

[00:26:07] **Lund:** And if you were a betting woman, and we actually have never asked you if you've placed a bet on Polymarket or Kalshi, but if you are a betting woman, when would you guess this would be resolved by the Supreme Court?

[00:26:18] **Diamond:** My bet would be within the next five years, but probably closer to five than to one.

[00:26:27] **Lund:** And last question for you: Will the CFTC issue at least one more proposed new rule on prediction markets before this Labor Day?

[00:26:35] **Diamond:** If you had said before the end of the year, I would have said yes. If you say before Labor Day, I'm gonna say no. I think there are going to be a ton of comments on this rule. I think that this is the CFTC dipping a toe and seeing the kind of responses they get. And my bet would be that they will take a little bit more time before putting out the next formulation of a rule.

[00:27:03] **Talley:** Michelle, I have one more question for you because while Dorothy was taking you through the lightning round, I was pulling up my Polymarket account. One of the event contracts they have is on whether a law barring sports prediction markets will be enacted in 2026. It's currently trading at 19 cents, so I can buy the yes for 19 cents. What do you think?

[00:27:27] **Diamond:** I think it's a bad bet.

[00:27:28] **Talley:** OK.

[00:27:29] **Diamond:** I think sports betting has taken off so significantly that you are going to have congressmen and -women who are mindful of their constituents' interests and something that a lot of folks see as fun and not harmful and not wade into that area.

[00:27:49] **Lund:** Michelle, thank you so much for joining us.

[00:27:50] **Talley:** Thanks, Michelle.

[00:27:52] **Diamond:** Oh, this was so much fun. Happy to do it.

[00:27:55] **Lund:** Our guest today was Michelle Diamond. Make sure to follow us on Apple, Spotify, or wherever you get your podcasts. Thanks so much for listening. *Beyond Unprecedented* is brought to you by Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. This podcast is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School.

[00:28:18] **Talley:** Our executive producer is Michael Patullo. Julie Godsoe, Cary Midland, and Martha Moore are producers. Editing and engineering by Jake Rosati. Special thanks to Erica Mitnick Klein and Molly Calkins at the Millstein Center. If you like what you hear, please leave us a review on your podcast platform. If you're interested in learning more about law, the economy, and society, visit us at law.columbia.edu or follow us on LinkedIn, Instagram, Facebook, and X.