

PETER LINZER

Professor of Law
University of Houston
4604 Calhoun Road
Houston, Texas 77204-6060

Cell Phone: (713) 876-5166
Fax: (713) 743-2256

E-mail: Plinzer@uh.edu
Office Phone: (713) 743-2176

EDUCATION

A.B., Cornell, 1960 (major in English)

J.D., Columbia, 1963
Columbia Law Review
Stone Scholar
National Scholar
Moot Court Honors

Additional Study

Hague Academy of International Law, 1963
The Hague, Netherlands
(under a scholarship from the International Legal Studies Fund)

National Endowment for the Humanities Seminars for Law Professors, 1982 (philosophy) and
1986 (origins of the Constitution)

PROFESSIONAL POSITIONS

Admitted to the Bars of Texas (1986); New York (1963); United States Supreme Court (1967)
and other federal courts

Elected Member, American Law Institute (1991).

ALI Life Member, 2016.

Board Certified Specialist in Civil Appellate Law, Texas Board of Legal Specialization (since
1991)

Editorial Reviser, Restatement Second of Contracts (1981).

Chair, 2002-03, Contracts Section, Association of American Law Schools

Member of the Members Consultative Group on the American Law Institute Restatement Third

of Restitution and Unjust Enrichment, 1999-2010.

Currently Member of the Members Consultative Groups for the:

ALI Restatement Third of the Law of Consumer Contracts,

ALI Principles of Data Privacy Law,

ALI Restatement Third of The U.S. Law of International Commercial Arbitration and

ALI Project on Election Law.

Member, State Bar of Texas, Pattern Jury Charge Committee-- Business Torts, Consumer & Employment Contracts, 1986-94

Faculty Senator, University of Houston, 1999-2000, 2001-04, 2005-08, 2012- present.

HONORS AND AWARDS

Lifetime Achievement Award, Eleventh International Contracts Conference (K-CON XI), San Antonio, Texas, February 26, 2016

University of Houston Law Foundation Scholar, 1992-93

Co-winner of the 1992 Houston Law Review Alumni Association Professional Writing Award (for *The Flesh Colored Band-Aid*)

First recipient (1979-80) of the University of Detroit School of Law's James T. Barnes, Sr., Memorial Faculty Scholar Award ("for excellence in teaching, scholarship and public service")

Nominated for the 1982-83 U. of D. President's Award for Excellence in Teaching and Research

PRINCIPAL ACADEMIC SUBJECTS

First Amendment

Constitutional Law

Contracts

Making and Drafting Contracts

Transactional Clinic

Equal Protection

International Contracting

Introduction to American Law (for foreign LL. M. candidates)

Torts

PUBLICATIONS

Current Projects

Casebook: *The First Amendment and Beyond: Speech and Press in the Twenty-first Century* (with Nicole B. Casarez) (under contract with Carolina Academic Press; publication is expected in 2016)

Work in Progress: *The Color of the Constitution* (an examination of constitutional law and race from 1776 forward)

Books

Volume 6 of the Revised Edition of *Corbin on Contracts* (The Parol Evidence Rule, Implied Terms, Default Rules and the Concept of Good Faith) (2010)

A Contracts Anthology (2d ed. 1995) (edited with commentary)

Collective Projects

Entry on “Dissents in the Supreme Court” in *Encyclopedia of the Supreme Court* (2008)

State Bar of Texas, Pattern Jury Charges, Vol. IV (Contracts, Consumer Law and Business Torts) (1990, 1992, 1993)

Articles

Compulsory Arbitration and Adhesion Contracts in the Age of Donald Trump, 48 *St. Mary's L. Rev.* 277 (2016) (revision of acceptance speech upon receiving Lifetime Achievement Award at K-CON XI)

Contract As Evil, 66 *Hastings LJ.* 971 (2015) (in *Hastings Law Review Festschrift* in honor of the fiftieth anniversary of Charles Knapp’s teaching career)

Unjust Impoverishment: Using Restitution Reasoning in Today’s Mortgage Crisis, 68 *Wash. & Lee L. Rev.* 949 (2011) (with Donna L. Huffman).

Teaching Transactional Skills and Law in an International Context, 12 *Transactions: The Tennessee Journal of Business Law* 275 (2011) (transcript of panel discussion with Deborah Burand and Kojo Yelapaala).

“Implied,” “Inferred,” and “Imposed”: Default Rules and Adhesion Contracts – the Need for Radical Surgery, 28 *Pace L. Rev.* 195 (2008).

From the Gutenberg Bible to Internet Neutrality – How Technology Makes Law and Why English Majors Need To Understand It, 39 *McGeorge L. Rev.* 1 (2008).

E. Allen Farnsworth’s Theory (Non-theory? Anti-theory?) of Contracts, in Theory and Anti-theory in the Work of Allen Farnsworth, 13 *Tex. Wesleyan L. Rev.* 1, 5-15 (2006) (based on paper given at the Second International Contracts Conference, held at the Texas Wesleyan University Law School, February, 2006). For comments and responses, see *id.* at 3-5, 15-30.

Hadley v. Baxendale and the Seamless Web of Law, 11 *Tex. Wesleyan L. Rev.* 225 (2005) (Foreword to Symposium, The Common Law of Contracts as a World Force in Two Ages of Revolution: A Conference Celebrating the 150th Anniversary of Hadley v. Baxendale.) This conference, held in Gloucester, England, in the summer of 2004, was the First International Contracts Conference.

Introduction to AALS Contracts Transcript, 14 *Toledo L. Rev.* 685 (2003) (Papers given at the Association of American Law Schools Contracts Section Symposium on “Teaching Contracts Transactionally,” January 2003)

The Comfort of Certainty: Plain Meaning and the Parol Evidence Rule, 71 Fordham L. Rev. 799 (2002) (in issue in honor of Joseph M. Perillo)

Rough Justice: A Theory of Restitution and Reliance. Contracts and Torts, 2001 Wis. L. Rev. 695 (in issue on papers from the 2000 Wisconsin Contracts Conference). For comments, see Caroline N. Brown, 2001 Wis. L. Rev. 777, and John Kidwell, 2001 Wis. L. Rev. 825, 828-29. (This article is also discussed in Hanoch Dagan, *The Law and Ethics of Restitution* 13-14, 169, 171, 206-09 (Cambridge Univ. Press 2004.)

Consider Consideration, 44 St. Louis L.J.1317 (2000) (in "Teaching Contracts" symposium)

Non- ["Un-"]American Law and the Core Curriculum, 72 Tulane L. Rev. 2031 (1998)

The UNIDROIT Principles of International Commercial Contracts: Should American Lawyers Pull Their Hair Out Over Them?, 13 Texas Transnational L.Q. 2 (1997)

Law's Unity -- An Essay For the Master Contortionist, 90 Nw. U. L. Rev. 183 (1995) (in Symposium: Reconsidering Grant Gilmore's *The Death of Contract*)

The *Carolene Products* Footnote and the Preferred Position of Individual Rights: Louis Lusky and John Hart Ely vs. Harlan Fiske Stone, 12 Const. Comm. 277 (1995)

Who Owns the Company?: Rethinking Capitalism for the Twenty-First Century, 3 Research in Law and Policy Studies 217 (1995)

White Liberal Looks at Racist Speech, 65 St. John's L. Rev. 187 (1991) (in symposium on the bicentennial of the Bill of Rights) (reprinted in part as Chapter 1 of *Speaking Freely* (H. M. Holzer, ed. 1994))

The Flesh Colored Band-Aid: Contracts, Feminism, Dialogue and Norms, 28 Houston L. Rev. 791 (1991) (with Patricia A. Tidwell)

Letter to David Dow -- Friendly Critic and Critical Friend, 28 Houston L. Rev. 861 (1991) (with Tidwell)

Is the First Amendment a Middle-Class Luxury?, 29 Houston Lawyer 18 (Nov.-Dec. 1991)

Why Bother With State Bills of Rights?, 68 Tex. L. Rev. 1573 (1990) (in symposium on the Texas Constitution)

Uncontracts: Contorts, Context and the Relational Approach, 1988 Ann. Survey of Amer. L. 139 (in NYU symposium on Contract Theory and Practice) (discussed at length in Julio César Cueto Rúa, El contrato como consentimiento y el contrato como relación in *Contratos: Homenaje a Marco Aurelio Risolía* 143 (Buenos Aires 1997))

Is Consent the Essence of Contract? -- Replying to Four Critics, 1988 Ann. Survey of Amer. L. 213

Precise Meaning and Open Texture in Legal Writing and Reading, in Walter, ed., Computing Power and Legal Language (1988)

The Decline of Assent: At-Will Employment As A Case Study of the Breakdown of Private Law Theory, 20 Ga. L. Rev. 323 (1986) (excerpted in Knapp & Crystal, Problems in Contract Law 551-53 (3d ed.

1993), and all succeeding editions)

On the Amoralism of Contract Remedies: Efficiency, Equity, and the Second Restatement, 81 Colum. L. Rev. 111 (1981) (in symposium on the Restatement (Second) of Contracts) (reprinted in *International Library of Essays in Law & Legal Theory*, Contracts Vol. II (L. Alexander, ed. 1991))

The Meaning of Certiorari Denials, 79 Colum. L. Rev. 1227 (1979) (excerpted in Hart & Wechsler, *The Federal Courts and the Federal System* 1860-63 (3d ed. 1988))

Law for Them and Medicine for Us: A "Counterdisciplinary" Approach to Learning, 55 J. Urban Law 113 (1977)

Amicus Curiae Brief in the United States Supreme Court

Brief suggesting that the Court dismiss the writ of certiorari as improvidently granted, in DIRECTV v. Imburgia, No. 14-462, a case involving application of the Federal Arbitration Act.

Book Reviews

of W. O. Douglas, *The Court Years*, 58 J. Urban Law 561 (1981)

of Walter Berns, *The Supreme Court and the Future of American Democracy*, 55 J. Urban Law 225 (1977)

Blog Entries

That Was No Contract. That Was My Lunch (May, 2013). *Law Professor Blog* discussion about form contracts.

Book Reviews of David Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford Univ. Press 1999) and Elizabeth Cooke, *The Modern Law of Estoppel* (Oxford Univ. Press 2000), *Jurist* (on-line law review/law professors' list serve), <http://jurist.law.pitt.edu/lawbooks/revapr01.htm#Linzer>.

PUBLIC PRESENTATIONS

Expert witness and consultant in contract and related cases.

Contributor on legal topics to radio and television programs in Houston and Detroit on constitutional and contract issues, including recently, *Ben Hall Legal* (KCOH); *Red, White and Blue* (KUHT Public Television, Channel 8); *Houston Matters* (KUHF, 88.7 FM Public Radio); and several appearances on Channels 2 (NBC), 11 (CBS), 13 (ABC), 26 (FOX) and 39 (CW); consultant to the [Salem, Oregon] Statesman Journal, reviewing a major municipal development contract.

Speaker at symposia held at University of California – Hastings College of Law (contracts) (October, 2014); Washington and Lee University (restitution); University of Wisconsin (contracts); New York University (contracts in theory and practice); the University of Texas (Texas Constitution); St. John's University (bicentennial of the Bill of Rights); and the University of Houston Institute for Business, Ethics, and Public Issues (privacy and rights in the work place).

Speaker and discussion leader of the Annual July 4 Meetings of the Houston Chapter of the Great Books Society, 2015 (*Obergefell v. Hodges* (same sex marriage)); 2014 (*Burwell v. Hobby Lobby*)

(religious rights of corporations to refuse to provide contraceptives under the Affordable Care Act); 2013 (earlier Supreme Court decisions on same sex marriage); 2012 (the Health Care decision (National Federation of Independent Business v. Sebelius))

Group Leader: Association of American Law Schools Mini-workshop on Professors in the Profession, 1995 Annual Meeting; AALS Week-long Contracts Conference, Cornell Law School, June, 1989; and AALS Workshop on Teaching Contract Law, University of Wisconsin Law School, Madison, Wisconsin, 1981

Selected Specific Presentations

“Contract As Evil” Paper presented at the University of California – Hastings College of Law’s Symposium in Honor of Charles Knapp’s Fifty Distinguished Years of Teaching, San Francisco, California, October 2014

“Chuck Knapp, the Stan Musial of Contracts,” brief tribute to Professor Knapp at the symposium mentioned above

Panel moderator on the role of the Consumer Financial Protection Bureau and pre-dispute consumer arbitration contracts at K-CON XI, the Eleventh International Contracts Conference, St. Mary's University Law School, Spring 2016

Speaker on adhesion contracts and federal agency review and commentator on papers given at K-CON IX, the Ninth International Contracts Conference, University of St. Thomas School of Law, Miami Gardens, Florida, Spring 2014,

Panel moderator at K-CON VIII, the Eighth International Contracts Conference, held February 23, 2013 at Texas Wesleyan University Law School (now Texas A&M Law School), Fort Worth, Texas

Delivered paper on Unjust Impoverishment at the “Restitution Rollout,” sponsored by the American Law Institute and the Washington & Lee Law Review at Washington & Lee Law School, Lexington, Virginia, February 25, 2011.

Panel Member, AALS Contracts Section Discussion of Intent, AALS Annual Meeting, January, 2011.

Panelist on Teaching Transactional Skills and Law in an International Context, Second Biennial Transactional Law Conference, “Transactional Education: What’s Next,” Emory University School of Law, June, 2010.

Delivered paper on implied terms in Wood v. Lucy, Lady Duff-Gordon at conference on 90th anniversary of that case held at Pace University School of Law, November 2007.

Panel Moderator at K-CON III, the Third International Contracts Conference, held at South Texas School of Law, February 23-24, 2007.

“Distinguished Speaker” in the 14th Pacific–McGeorge Law School Distinguished Speakers Series, November 7, 2006, at the University of the Pacific, Sacramento, California.

Speaker at the K-CON II, the Second International Contracts Conference, held at Texas Wesleyan University Law School, February, 2006.

Speaker and panelist on civil liberties after 9/11, Federal Bar Ass'n presentation at the Texas State Bar Annual Meeting, June 2003.

Speaker and panelist on third world labor problems at Conference on Commodities and Communities, American University, Washington, D.C., March 2003

Speaker and panelist on restitution suit against several business entities that used slaves before the Civil War, before the Remedies Section of the Association of American Law Schools, 2003 Annual Meeting, January 2003, Washington, D.C.

Panelist at Association of American Law Schools Conference On Access to Justice, University of Texas School of Law, February 23, 2001

Featured speaker delivering paper at the University of Wisconsin Law School's Contracts Conference, October 14, 2000

Speaker and panelist on using transnational contracts to improve third world labor problems like child labor and exploitation of workers at Conference on Transatlantic Labor Problems, cosponsored by University College Dublin, the Labor Section of the New York State Bar Association and St. John's University Law School, Dublin, Ireland, July 22, 2000

Member of a panel debating the choice of law provision of the proposed revision of Article One of the Uniform Commercial Code, American Bar Association Convention, New York, July 9, 2000

Speaker at *Seminario sobre Contratos Internacionales. Reglas de UNIDROIT para contratación comercial en América del Norte*, sponsored by the Universidad Panamericana and the Banco de Comercio Exterior of México, México City, November 12-15, 1996

Speaker at Symposium on Relational Contracting at the Academy of Management's Annual Meeting, Vancouver, B.C., August, 1995

Lecturer at the 1993 Texas State Bar Advanced Appellate Practice Course

Member of Executive Committee and Board of Directors of the Greater Houston Chapter of the American Civil Liberties Union (1987-92) and the Clark Read Foundation for Civil Liberties (1987-95)

Appellate litigator for the American Civil Liberties Union and other organizations and for private parties in constitutional and employment cases. *Representative cases include:*

Texas v. Johnson, 491 U.S. 397 (1989) (flagburning -- First Amendment) (attorney for National ACLU as amicus curiae)

Meadowbriar Home for Children, Inc. v. Gunn, 81 F.3d 521 (5th Cir. 1996) (attorney for provider of housing for emotionally disturbed women in Fair Housing Act case)

Texas v. Morales, 869 S.W.2d 941 (Tex. 1994) (attorney for amici curiae arguing the unconstitutionality of the Texas anti-sodomy law under the Texas Constitution)

Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (Tex. 1989) (school funding -- State Constitution) (attorney for several Hispanic organizations and the Texas Civil Liberties Union as amici curiae)

Jones v. Memorial Hospital, 746 S.W.2d 891 (Tex. Ct. App.--Houston [1st Dept.] 1988, no writ); id., 677 S.W.2d 221 (Tex. Ct. App.--Houston [1st Dept.] 1985, no writ) (at-will employment and speech rights under the Texas State Constitution) (ACLU pro bono attorney for nurse discharged for criticizing hospital)

Sabine Pilot Serv. v. Hauck, 687 S.W.2d 733 (Tex. 1985) (at-will employment) (amicus brief in favor of employee successfully arguing against at-will rule)

Woodland v. Michigan Citizens Lobby, 423 Mich. 188, 378 N.W.2d 337 (1985) (citizen access to shopping malls under State Constitution) (Michigan Civil Liberties Union pro bono attorney for Michigan Citizens Lobby)

PROFESSIONAL BACKGROUND

1983-Present: Professor of Law (Visiting Professor, 1983-84), University of Houston Law Center

2004-05: Visiting Professor of Law, Washburn University School of Law, Topeka, Kansas

1976-84: Associate Professor, then Professor of Law, University of Detroit (now University of Detroit Mercy) School of Law

1973-76: Associate Professor of Law (Adjunct Associate Professor of Medical Jurisprudence, 1976), University of Cincinnati

1969-73: Associate, Marshall, Bratter, Greene, Allison & Tucker, New York, New York

1968-69: Executive Assistant to the Finance Administrator of the City of New York

1966-68: Assistant Corporation Counsel, Law Department, City of New York

1963-66: Associate, Cahill, Gordon & Reindel, New York, New York

Summer, 1962: Summer Associate, Cahill, Gordon & Reindel, New York, New York