FACULTY SCHOLARSHIP
2022-2023
The excellence of a law school is defined both in the classroom and in the quality of scholarly research and writing produced by its faculty. The professors at the University of Houston Law Center are not only outstanding educators and communicators but also exceptional legal scholars whose published work ranks among the nation’s most cited in legal journals and judicial opinions.

I am proud, on behalf of the Law Center, to share this compilation of recent scholarship from our faculty, each of whom embodies excellence in legal education.
Richard M. Alderman
Professor of Law, Emeritus

Richard M. Alderman & Dee Pridgen, Consumer Credit and the Law (2022-2023 ed.).

Emily Berman
Professor of Law, Royce R. Till Professorship

Emily Berman, The Foreign Intelligence Surveillance Act and the Court, in ABA Standing Committee on Law and National Security, 60th Anniversary, An Anthology (2023).
Emily Berman, Reimagining Surveillance Law, 2023 U. Ill. L. Rev. 1235.

Johnny Rex Buckles
Professor of Law, Mike and Teresa Baker College Professor

David Westfall, George Mair & Johnny Rex Buckles, Estate Planning Law and Taxation (5th ed. Fall 2022 Supp.).
David Westfall, George Mair & Johnny Rex Buckles, Estate Planning Law and Taxation (5th ed. Spring 2023 Supp.).
The Speech Clause of the First Amendment bears tremendous promise to bring about social change. That potential, however, has all too often been distributed unequally, with historically disadvantaged groups experiencing greater constraints on their ability to use speech as a tool for empowerment. Professor Daniel Morales’ article focuses on one particular historically disadvantaged group—immigrants—and asks the provocative question how Speech Clause law needs to change to realize fully its capacity to allow this group to grasp its aspiration of becoming part of the American polity. This new vision of an “emancipatory” First Amendment would require law to jettison longstanding doctrinal principles. It would entail, Morales argues, taking action seriously as a form of speech and considering the social status of the speaker when evaluating rights claims. Embracing this radical reimagining of the First Amendment would, however, have the tremendous upside of finally realizing the transformative potential of speech not only for the privileged, but for all members of our republic.


Crump, Continued


William V. Dorsaneo, III, Elizabeth G. Thornburg, Elaine Grafton Carlson & David Crump, Texas Civil Procedure: Trial and Appellate Practice (2022-23 ed.).

David R. Dow
CULLEN PROFESSOR OF LAW

David R. Dow & Craig Smyser, 49 Texas Practice Series: Contract Law (2022-23 Supp.).

Michael S. Ewer
PROFESSOR OF PRACTICE


Michael S. Ewer et al., Case Reports in Cardio-oncology: 2022, 10 Frontiers Cardiovascular Med. 1235015 (2023).

Ilana Schlam, Michael S. Ewer & Sandra M. Swain, Potential and Pitfalls of Pharmacovigilance Databases in Oncology, 5 JACC CardioOncology 99 (2023).
For some time, the Supreme Court has insisted on an effect-neutral reading of both the Free Exercise and Equal Protection Clauses. If a law is facially neutral and lacks a discriminatory purpose, the Court has declined to hold that it violates either Clause—even if it has negative effects on members of some faith or of a protected class. Recent Free Exercise cases, though, show increased solicitude for considering the effect of a law on religious observance. Professor Laura Portuondo leverages this trend to argue that the Court should also consider the effects of laws on protected classes in its Equal Protection jurisprudence. She shows that both Free Exercise and Equal Protection cases have historically rested on shared theoretical and doctrinal foundations and demonstrates that the Court’s recently articulated reasons for considering effects in the Free Exercise context warrant consideration of effects in the Equal Protection setting as well. Portuondo acknowledges that doing so would necessitate doctrinal reforms, such as lowering the level of scrutiny that has long been afforded to both Free Exercise and Equal Protection claims. She argues, though, that such a change would be a welcome way to consider a broader array of rights claims and make recognition of such claims easier. And even if the current Court is not open to such arguments in the Equal Protection context, Portuondo highlights the promising possibility that other government or popular actors may be.


Tracy Hester, Privilege by Design: A Proposal to Use Experimental Jurisprudence to Define Environmental Self-Audit Protection, 72 Syracuse L. Rev. 1267 (2022).


Valerie Gutmann Koch et al., *The Trauma of Illegal Abortions and Forced Pregnancy: Urgent Implications for Acute Care Surgeons*, 8 Trauma Surgery & Acute Care Open e001067 (2023).


Ryan Marquez, *Clinical Associate Professor*

Rosemary Jackson, Steven Kennedy, Ryan Marquez & Jeffrey Tompkins, *O’Connor’s Texas Property Code Plus* (2022-2023 ed.).
Discrimination remains a persistent problem in American society despite decades of efforts to combat it. Affirmative action is one such antidiscrimination tool that is increasingly dismissed as practically ineffective and legally invalid. In this article, Professor Peter Salib argues that artificial intelligence has the potential to remedy both of these critiques of affirmative action and to chart a promising pathway toward ameliorating discrimination. He first shows how big data could work to provide a targeted, precise form of affirmative action. It could, for example, adjust Black prisoners’ sentences down or women’s salaries up to reflect a specifically quantified level of harm. Next, Salib shows that such an approach would have both efficacy and legal validity. Unlike other ameliorative measures like antibias training that have debatable effects, AI-driven affirmative action would operate directly on injustices to remedy them. This approach would also survive the Supreme Court’s various objections to affirmative action because it stands on solid empirical ground and is narrowly tailored to remedy specific injustices.

**Douglas K. Moll & Robert Ragazzo, Closely Held Corporations** (2022 ed.).


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Laws across various doctrinal areas systematically disfavor tenants. In this piece, Professor Kellen Zale (along with Professor Sarah Schindler of the University of Denver Sturm College of Law) weave together these previously disaggregated sources of inequality to identify a previously unappreciated feature of property law they term the “anti-tenancy doctrine.” The authors begin by surveying laws affecting tenants from a variety of disparate areas from constitutional law to land use law to criminal law, showing how these doctrines systematically disadvantage tenants. They also highlight the costly consequences of these laws, which perpetuate income inequality, exacerbate racial injustice, and worsen the affordable housing crisis. Next, Professors Zale and Schindler trace the historic origins of the anti-tenancy doctrine. This analysis illustrates that the anti-tenancy doctrine is rooted in intentional law and policy choices that privilege landowners over tenants. Finally, the authors chart a normative path out of the current anti-tenancy default that pervades American law. In particular, they caution against reflexively using housing tenure status as a basis for unequal legal treatment. In so doing, Professors Zale and Schindler suggest prescriptions that promise to move in the direction of greater parity for similarly situated tenants and landowners.

Douglas K. Moll & Robert A. Ragazzo, Closely Held Corporations (2022 ed.).


Matt Crockett, Kathryn Geiger, Elizabeth Stone Miller, Robert A. Ragazzo & Nancy Saint-Paul, 13 Texas Practice Series: Texas Methods of Practice (2023 ed.).

Jessica L. Roberts et al., Cases in Precision Medicine: Is There an Obligation to Return Reinterpreted Genetic Results to Former Patients?, 176 Annals Internal Med. 563 (2023).


Joseph Sanders, A.A. White Professor of Law


Robert Schuwerk, Professor of Law, Emeritus


Jacqueline Lang Weaver, Professor of Law, Emerita


Bret Wells, Reform of Section 367(a) and Section 367(b) in a Post-TCJA Era, 23 Hous. Bus. & Tax L.J. 195 (2023).


