

DAVID HORTON

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ACADEMIC POSITIONS

University of California, Davis, School of Law (King Hall)

Martin Luther King, Jr. Professor of Law, 2021 - present

Professor of Law, 2014 – 2021

Acting Professor of Law, 2012 – 2014

Honors: UC Davis Chancellor's Fellow (2017-2022); Winner, Association of American Law Schools' Scholarly Paper Competition (2015); Distinguished Teaching Award (Winner, 2015, Nominee 2014, 2016, 2017, 2018, 2020, 2021, 2022); Winner, Mangano Dispute Resolution Advancement Award (2017); Winner, Best Article Award, AALS Section of Dispute Resolution (2020); Faculty Commencement Speaker (Classes of 2014, 2016, 2018, 2022).

Courses: Contracts; Trusts, Wills, and Estates; Introduction to Law; Federal Arbitration Act Seminar.

Loyola Law School (Los Angeles)

Associate Professor of Law (untenured), 2009 – 2012

Courses: Contracts; Adhesion Contracts Seminar; Trusts, Wills, and Estates.

University of California, Berkeley, School of Law

Lecturer in Residence, 2007 – 2009

Courses: Legal Research and Writing; Written and Oral Advocacy.

ARTICLES AND ESSAYS

The Arbitration Federalism Paradox: The Limits of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, 132 YALE L.J. FORUM -- (forthcoming 2022).

Forced Remote Arbitration, 108 CORNELL L. REV. -- (forthcoming 2022).

Pirate Arbitration, 106 MINN. L. REV. -- (forthcoming 2022).

The Future of Testamentary Capacity, 79 WASH. & LEE L. REV. – (forthcoming 2022) (with Reid Kress Weisbord).

Probate Litigation, 2022 U. ILL. L. REV. – (forthcoming 2022) (with Reid Kress Weisbord).

Revoking Wills, 73 NOTRE DAME L. REV. -- (forthcoming 2021).

The Dead Voter Rule, 73 ALA. L. REV. 341 (2021).

Inheritance Crimes, 96 WASH. L. REV. 561 (2021) (with Reid Kress Weisbord).

Heir Hunting, 169 U. PA. L. REV. 383 (2021) (with Reid Kress Weisbord).

All Alone in Arbitration, 73 FLA. L. REV. FORUM 75 (2021) (invited reply).

Probate Lending: Data from San Francisco, 169 U. PA. L. REV. ONLINE -- (forthcoming 2021) (with Reid Kress Weisbord).

Inside the Black Box: A Short Comment on Soia Mentschikoff's Commercial Arbitration, in DISCUSSIONS IN DISPUTE RESOLUTION: THE FOUNDATIONAL ARTICLES (Oxford University Press 2021).

The Arbitration Rules: Procedural Rulemaking by Arbitration Providers, 105 MINN. L. REV. 619 (2020).

- Reviewed by Martin H. Malin, *Focusing on an Often-Neglected Player in the Mandatory Arbitration Game*, JOTWELL (Nov. 5, 2020), <https://worklaw.jotwell.com/focusing-on-an-often-neglected-player-in-the-mandatory-arbitration-game/>.

Do-It-Yourself Wills, 54 U.C. DAVIS L. REV. 2357 (2020) (symposium).

COVID-19 and Formal Wills, 73 STAN. L. REV. ONLINE 18 (2020) (with Reid Kress Weisbord).

Inheritance Forgery, 69 DUKE L.J. 855 (2020) (with Reid Kress Weisbord).

- Reviewed by Sarah Waldeck, *Don't Forget About the Fakes*, JOTWELL (Nov. 25, 2021), <https://trustest.jotwell.com/dont-forget-about-the-fakes/>.

Boilerplate No Contest Clauses, 82 LAW & CONTEMP. PROB. 69 (2020) (with Reid Kress Weisbord) (invited contribution).

- Reviewed by Mitu Gulati, *The Mad Mad World of No Contest Provisions in Wills*, Credit Slips (June 28, 2019), <https://www.creditslips.org/creditslips/2019/06/the-mad-mad-world-of-no-contest-provisions-in-wills.html>.

Infinite Arbitration Clauses, 168 U. PA. L. REV. 633 (2020).

- Winner, Best Article Award, AALS Section of Dispute Resolution.

Wills Without Signatures, 99 B.U. L. REV. 1623 (2019).

- Reviewed by Kathleen Guzman, *Fits, Starts, and Finishes*, JOTWELL (Dec. 17, 2019), <https://trustest.jotwell.com/fits-starts-and-finishes/>.

Arbitration Nation: Data from Four Providers, 107 CALIF. L. REV. 1 (2019) (with Andrea Cann Chandrasekher).

Clause Construction: A Glimpse into Arbitral and Judicial Decision-Making, 68 DUKE L.J. 1323 (2019).

Arbitration About Arbitration, 70 STAN. L. REV. 363 (2018).

- Reviewed by Robert Hillman, *Who Should Decide Whether the Parties Formed a Valid Agreement to Arbitrate?*, JOTWELL (Oct. 22, 2018), <https://contracts.jotwell.com/who-should-decide-whether-the-parties-formed-a-valid-agreement-to-arbitrate/>.

Partial Harmless Error for Wills: Evidence from California, 104 IOWA L. REV. 2027 (2018) (invited symposium contribution).

Borrowing in the Shadow of Death: Another Look at Probate Lending, 59 WM. & MARY L. REV. 2447 (2018).

- Reviewed by Gerry W. Beyer, *The Consequences of Cashing-In at Death*, JOTWELL (Mar. 27, 2019), <https://trustest.jotwell.com/the-consequences-of-cashing-in-on-death/>.

Boilerplate and Default Rules in Wills Law: An Empirical Analysis, 103 IOWA L. REV. 663 (2018) (with Reid Kress Weisbord).

- Reviewed by Danaya C. Wright, *Commentary on Reid Kress Weisbord and David Horton, Boilerplate and Default Rules in Wills Law: An Empirical Analysis*, 103 IOWA L. REV. ONLINE 123 (2018) and Mark Glover, *Boilerplate in Pour-Over Wills*, 103 IOWA L. REV. ONLINE 138 (2018).

Intestacy, Wills, and Intent: A Short Comment on Wright & Sterner, 43 ACTEC L.J. 1301 (2018) (invited reply).

Tomorrow's Inheritance: The Frontiers of Estate Planning Formalism, 58 B.C. L. REV. 539 (2017).

Probate Lending, 126 YALE L.J. 102 (2016) (with Andrea Cann Chandrasekher).

- Reviewed by Sergio Pareja, *The Lucrative Business of Lending Against an Expected Inheritance*, JOTWELL (Apr. 13, 2017), <http://trustest.jotwell.com/the-lucrative-business-of-lending-against-an-expected-inheritance/>.

Donative Trusts and the Federal Arbitration Act, in *ARBITRATION OF INTERNAL TRUST DISPUTES: ISSUES IN NATIONAL AND INTERNATIONAL LAW* (Oxford University Press 2016).

The Limits of Testamentary Arbitration, 58 FLA. L. REV. FORUM 12 (2016) (invited reply).

Employment Arbitration after the Revolution, 65 DEPAUL L. REV. 457 (2016) (with Andrea Cann Chandrasekher) (invited symposium contribution).

After the Revolution: An Empirical Study of Consumer Arbitration, 104 GEO. L.J. 57 (2015) (with Andrea Cann Chandrasekher).

- Selected for the 2015 Conference on Empirical Legal Studies.
- Winner, Mangano Dispute Resolution Advancement Award (2017).

Wills Law on the Ground, 62 UCLA L. REV. 1094 (2015).

- Reviewed by Kerry Ryan, *Law on the Books Meets Law in Action*, JOTWELL (Apr. 7, 2015), <http://trustest.jotwell.com/law-on-the-books-meets-law-in-action/>.

In Partial Defense of Probate: Evidence From Alameda County, California, 103 GEO. L.J. 605 (2015).

- Winner, Association of American Law Schools' Scholarly Paper Competition.

Contractual Indescendibility, 66 HASTINGS L.J. 1047 (2015) (invited symposium contribution).

The Stored Communications Act and Digital Assets, 67 VAND. L. REV. 1729 (2014) (invited symposium contribution).

Indescendibility, 102 CALIF. L. REV. 543 (2014).

- Reviewed by Alexander Boni-Saenz, *Descendibility: The Neglected Stick in the Bundle*, JOTWELL (Sept. 22, 2014), <http://trustest.jotwell.com/descendibility-the-neglected-stick-in-the-bundle/>.

Mass Arbitration and Democratic Legitimacy, 85 U. COLO. L. REV. 459 (2014) (book review of MARGARET JANE RADIN, *BOILERPLATE: THE FINE PRINT, VANISHING RIGHTS, AND THE RULE OF LAW* (Princeton University Press 2013)).

Federal Arbitration Act Preemption, Purposivism, and State Public Policy, 101 GEO. L.J. 1217 (2013).

Testation and Speech, 101 GEO. L.J. 61 (2012).

- Reviewed by Anne Marie-Rhodes, *To Praise a Testator's Speech*, JOTWELL (Sept. 30, 2013), <http://trustest.jotwell.com/2013/09/>.

The Federal Arbitration Act and Testamentary Instruments, 90 N.C. L. REV. 1027 (2012).

Arbitration and Inalienability: A Critique of the Vindication of Rights Doctrine, 60 U. KAN. L. REV. 723 (2012) (invited symposium contribution).

Unconscionability Wars, 106 NW. U. L. REV. 387 (2012) (originally published at 106 NW. U. L. REV. COLLOQUY 13 (2011)).

Arbitration as Delegation, 86 N.Y.U. L. REV. 437 (2011).

The Mandatory Core of Section 4 of the Federal Arbitration Act, 96 VA. L. REV. IN BRIEF 1 (2010).

The Shadow Terms: Contract Procedure and Unilateral Amendments, 57 UCLA L. REV. 605 (2010).

Unconscionability in the Law of Trusts, 84 NOTRE DAME L. REV. 1675 (2009).

Flipping the Script: Contra Proferentem and Standard Form Contracts, 80 U. COLO. L. REV. 431 (2009).

The Uneasy Case for California's Care Custodian Statute, 12 CHAP. U. L. REV. 47 (2008).

Extreme Sports and Assumption of Risk: A Blueprint, 38 U.S.F. L. REV. 599 (2004).

Comment, *Rethinking Assumption of Risk and Sports Spectators*, 51 UCLA L. REV. 339 (2003).

CASEBOOKS

A PRIMER ON LAW SCHOOL AND THE AMERICAN LEGAL SYSTEM: BEASTIES V. MONSTER (2020).

CASES, PROBLEMS, AND MATERIALS ON CONTRACTS (Aspen 8th ed. 2019) (with Douglas J. Whaley).

WILLS, TRUSTS, AND ESTATES: THE ESSENTIALS (Aspen 2nd ed. 2021) (with Reid Kress Weisbord and Stephen K. Urice).

AMICUS BRIEFS

Author, Brief of *Amici Curiae* Law Professors in Support of Petitioner, *Morgan v. Sundance, Inc.*, No. 21-328 (U.S. Jan. 6, 2022) (with Linnet Davis-Stermitz and Richard H. Frankel).

Author, Brief of *Amicus Curiae* Fifty-One Law Professors in Support of Plaintiff/Appellee, *Meyer v. Kalanick*, Nos. 16-2752, 16-2750, 2016 WL 7157290 (2d. Cir. Dec. 6, 2016) (with Nancy Kim).

Author, Brief of California Law Professors in Support of Respondent, *DIRECTV v. Imburgia*, No. 14-462 (U.S. July 24, 2015), 2015 WL 4698387.

Author, Brief of Law Professors on Rehearing *En Banc* in Support of Plaintiffs-Appellants, *Kilgore v. KeyBank Nat'l Assoc.*, No. 09-16703 (9th Cir. Oct 12, 2012), 2012 WL 5196969 (*en banc*) (with Hiro N. Aragaki).

Author, Brief of Contracts Professors in Support of Respondent, *AT&T Mobility LLC v. Concepcion*, No. 09-893 (U.S. Oct. 6, 2010), 2010 WL 3973891.

EDUCATION

UCLA School of Law, J.D., 2004

Order of the Coif

Chief Articles Editor, *UCLA Law Review*

Carleton College, B.A., *cum laude*, in American Studies, 1997

SELECTED CONFERENCES AND PRESENTATIONS

Presenter, *Infinite Arbitration Clauses*, UNLV School of Law/AALS Dispute Resolution Best Article Award Ceremony, March 2022.

Presenter, *Borrowing in the Shadow of Death: Another Look at Probate Lending*, Texas Tech Law School, February 2022.

Co-Presenter, *Probate Litigation*, American College of Trusts and Estates Counsel Summer Meeting, June 2021.

Presenter, *Inheritance Forgery*, TrustMe! Podcast, June 2021.

Co-Presenter, *Probate Litigation*, Law and Society, May 2021.

Moderator and Organizer, *Recent Developments in Trusts and Estates*, Trusts and Estates Program, Association of American Law Schools Annual Conference, January 2021.

Presenter, Repeat Players in Arbitration—Perception vs. Reality, 13th Annual Weil Lecture, Western Justice Center, January 2020.

Presenter, *Wills Without Signatures*, Trusts and Estates Program, Association of American Law Schools Annual Conference, January 2020.

Presenter, *Infinite Arbitration Clauses*, Santa Clara/Stanford Conflict Resolution Series, Santa Clara University School of Law, October 2019.

Presenter, *Do-It-Yourself Wills*, American College of Trusts and Estates Counsel and *UC Davis Law Review* Symposium, UC Davis School of Law, October 2019.

Presenter, *Arbitration Nation: Data from Four Providers*, Civil Justice Research Initiative's Symposium on Ethics in Arbitration, UC Irvine Law School, April 2019.

Presenter, *Borrowing in the Shadow of Death: Another Look at Probate Lending*, California Department of Business Oversight, April 2019.

Presenter, *Arbitration Nation: Data from Four Providers*, Civil Procedure Workshop, Stanford Law School, November 2018.

Presenter, *Borrowing in the Shadow of Death: Another Look at Probate Lending*, American College of Trusts and Estates Counsel Annual Meeting, June 2018.

Panelist, *The Uber Case: The Future of Consumer Arbitration?*, American Bar Association, Section of Antitrust Law, March 2018.

Presenter, *Boilerplate and Default Rules in Wills Law: An Empirical Analysis*, Trusts and Estates Program, Association of American Law Schools Annual Conference, January 2018.

Presenter, *Partial Harmless Error for Wills: Evidence from California*, University of Iowa College of Law, *Iowa Law Review* and the American College of Trusts and Estates Counsel's Wealth Transfer Law in Comparative & International Perspective, September 2017.

Presenter, *After the Revolution: An Empirical Study of Consumer Arbitration*, St. John's Law School, Mangano Dispute Resolution Advancement Award Acceptance Ceremony, March 2017.

Presenter, *Probate Lending*, Trusts and Estates Program, Association of American Law Schools Annual Conference, January 2017.

Presenter, *Probate Lending*, Commercial and Related Consumer Law and Contracts Joint Program, Association of American Law Schools Annual Conference, January 2017.

Presenter, *Probate Lending*, Yale Law School, *Yale Law Journal* Reading Group, November 2016.

Presenter, *Probate Lending*, Tulane Law School Faculty Workshop Series, February 2016.

Presenter, *After the Revolution: An Empirical Study of Consumer Arbitration*, 10th Annual Conference on Empirical Legal Studies, Washington University School of Law (St. Louis), October 2015.

Presenter, *Employment Arbitration After the Revolution*, 21st Annual Clifford Symposium on Tort Law and Social Policy, DePaul Law School, April 2015.

Presenter, *In Partial Defense of Probate: Evidence from Alameda County, California*, Golden Gate Law School LLM Tax Program, March 2015.

Presenter, *In Partial Defense of Probate: Evidence from Alameda County, California*, Association of American Law Schools 2015 Scholarly Paper Competition, January 2015.

Presenter, *Contractual Indescendibility*, *Hastings Law Journal* Symposium in Honor of Charles L. Knapp, October 2014.

Presenter, *The Stored Communications Act and Digital Assets*, *Vanderbilt Law Review* and the American College of Trusts and Estates Counsel's Symposium on the Role of Federal Law in Private Wealth Transfer, February 2014.

Presenter, Arbitration and Access to Justice, United States District Court for the Eastern District of California Conference, October 2013.

Panel Member, Arbitration of Internal Trust Disputes, Southeastern Association of Law Schools Conference, August 2013.

Presenter, *Mass Contracting and Democratic Legitimacy*, Eighth Annual Contracts Conference, Texas Wesleyan School of Law, February 2013.

Presenter, *Testation and Speech*, University of San Francisco Faculty Workshop Series, February 2013.

Presenter, *Arbitration and Inalienability: A Critique of the Vindication of Rights Doctrine*, Seventh Annual Contracts Conference, Thomas Jefferson School of Law, March 2012.

Panel Member, *Hastings Business Law Journal* Symposium on *AT&T v. Conception*, February 2012.

Presenter, *Testation and Speech*, PrawfsFest Conference, December 2011.

Presenter, *Arbitration and Inalienability: A Critique of the Vindication of Rights Doctrine*, *Kansas Law Review* Symposium on Current Perspectives on Arbitration Law, November 2011.

Presenter, *Testation and Speech*, Southeastern Association of Law Schools Conference, July 2010.

Presenter, *Testation and Speech*, Arizona State Junior Faculty Conference, March 2010.

Moderator, Insurance Law Panel, Sixth Annual Contracts Conference, UNLV William Boyd Law School, February 2010.

MISCELLANEOUS

Academic Fellow, American College of Trust and Estate Counsel.

Chair, Association of American Law Schools Trusts and Estates Section (2021).

Member, Judicial Council of California, Probate and Mental Health Advisory Committee (2021-2022).

Selected Media Quotations: *New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Forbes*, *Financial Times*, ABC World News, *Consumer Reports*, *Philadelphia Inquirer*, *Las Vegas Review-Journal*, Vice.com, Sacramento 10 News, *The ABA Journal*, *The Recorder*, Law.com, *The Chronicle of Higher Education*.

Blogging: Contributing Editor, JOTWELL (August 2019); Columbia Law School's Blue Sky Blog, March 2019; Consumer Law and Policy Blog, June 2015; SCOTUSblog Arbitration Symposium, September 2011; Contracts Profs Blog, April 2010 and November 2012; Prawfsblawg, November 2010.

Peer Reviewer: *Yale Law Journal*; *Stanford Law Review*; *University of Chicago Law Review*; *Journal of Empirical Legal Studies*; *California Law Review*; *Stanford Journal of Complex Litigation*; *McGill Journal of Dispute Resolution*; Netherlands Organization for Scientific Research; Israeli Science Foundation; Association of American Law Schools' Scholarly Paper Competition.

Expert Reviewer, National Conference of Bar Examiners, Multistate Essay Exam, Trusts Question (2015, 2016, 2018).

Bar Admission: California.

LEGAL EXPERIENCE

Horton & Roberts, LLP, Oakland, CA
Associate, 2006 – 2007

The Honorable Ronald M. Whyte, United States District Court
for the Northern District of California, San Jose, CA
Law Clerk, 2005 – 2006

Morrison & Foerster, LLP, San Francisco, CA
Associate, 2004 – 2005

The Honorable Ming W. Chin, The California Supreme Court, San Francisco, CA
Extern, Summer 2002