

THE TENTH BIENNIAL CONFERENCE ON THE LAW OF OBLIGATIONS

CONFERENCE PROGRAM

Obligations X: Private Law and the State

**BANFF CENTRE FOR
ARTS & CREATIVITY**



**ALBERTA, CANADA
JULY 11-14, 2023**

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FOR PRIVATE ENTERPRISE AND THE LAW



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DAY 1: TUESDAY, JULY 11

8:15–15:30

Sulphur Mountain/Banff Gondola Hike (optional)

16:00–17:30

KC 100 Galleria
South

Registration

17:30–19:00

KC 101 & 103

Welcome

Professor Erika Chamberlain, Dean of Western Law

Plenary 1
KC 101 & 103

Opening plenary session

Chair: Erika Chamberlain

TT Arvind (York), *The Public in Private Law*

Allan Beever (AUT), *Private Law and the Rule of Law*

Graham Virgo (Cambridge), *Private Law and Public Universities*

19:30

KC 101 & 103

Opening reception

*Sponsored by the Marcel A Desautels Centre for Private
Enterprise and the Law*

DAY 2: WEDNESDAY, JULY 12

7:00–8:30	Vistas Dining Room	Breakfast
8:30–9:30	Plenary 2.1 KC 101 & 103	Plenary session Chair: Justice Kós (New Zealand Supreme Court) Arthur Ripstein (Toronto), <i>Public and Private in the Law of Public Nuisance</i> Catherine Sharkey (NYU), <i>Public Health & Safety Nuisances</i>
9:40–10:40	Parallel 2a KC 105	Panel I: Contract's Limits Chair: Jennifer Nadler John Enman-Beech (KCL), <i>The Penalty Doctrine: Distinguishing Compensation and Punishment</i> Krish Maharaj (Thompson Rivers University), <i>Organizing Principles and Overriding Concerns of Public Policy: Does Good Faith Get You Past an Exclusion Clause?</i>
	KC 201	Panel II: Domestic Relations Chair: Mitchell McInnes Amy Sepinwall (Penn), <i>Shared Obligations Among Intimates</i> Emily Stolzenberg (Villanova), <i>Intimacy Biases in Private Law</i>
	KC 205	Panel III: Human Rights and Constitutional Law Chair: Jodi Gardner Alexandre Marcotte (Justice), <i>Charter Damages for the Enactment of Statute: Parting Ways with the Common Law</i> P Sean Morris (Helsinki), <i>The Project of 'Nominal Domain'</i>
10:40–11:00	KC 100 Galleria Central	Coffee break

DAY 2: WEDNESDAY, JULY 12

11:00–12:30 Parallel 2b

KC 105

Panel I: The Personality of Public Authorities

Chair: Catherine Sharkey

Nicolas Cornell (Michigan), *The Inconsistent Reach of Public Duty*

Chris Essert (Toronto), *Public Trespass*

Manish Oza (Western), *The Personality of Public Authorities*

KC 201

Panel II: Public and Private Perspectives

Chair: TT Arvind

Niamh Connolly (UCL), *Approaching Conflicts between Public*

Law and Private Law Principles in Restitution and Contract

James Lee (KCL), *Lord Reed's Vision of Private Law and the State*

KC 205

Panel III: Institutional Abuse as Tort

Chair: Sarah Worthington

Kylie Burns (Griffith), *The Forgotten Injured: Can Private Law Remedies Compensate for Public Regulatory Failure in Residential Aged and Disability Care?*

Paula Gilliker (Bristol), *Tort Law and the State: How Best to Compensate Victims of Institutional Child Sexual Abuse?*

Margaret Hall (SFU), *Article 12 ('Equal Recognition Before the Law') of the Convention on the Rights of Persons with Disabilities: Implications for Private Law Doctrine*

12:30–13:30

Vistas Dining Room

Lunch

DAY 2: WEDNESDAY, JULY 12

13:30–15:00 Parallel 2c

KC 105

Panel I: Remedies

Chair: Robert Stevens

Alex Georgiou (Oxford) & Sandy Steel (Oxford), *Remedies and the Public Interest*

Malcolm Lavoie (Alberta), *Knowledge, Information, and Judicial Remedies*

David Winterton (Sydney), *Remedies Impacting Rights: How the Availability (or Non-Availability) of Specific Performance Impacts the Assessment of Common Law Damages*

KC 201

Panel II: Offices

Chair: Christopher Essert

Andrew Gold (Brooklyn), *Relocating Corrective Justice: From Private Law to Public Law*

Haris Psarras (Southampton), *Plaintiffs as Acting Officials*

KC 205

Panel III: The State and Enforcement

Chair: Arthur Ripstein

Andrew Robertson (Melbourne), *The Role of the State in the Law of Obligations*

Nick Sage (LSE), *Between the Individual and the State*

Fred Wilmot-Smith (Oxford), *Norms and the Sword*

15:00–15:20

KC 100
Galleria Central

Coffee break

15:20–16:20

Plenary 2.2
KC 101 & 103

Plenary session

Chair: Justice Kós (New Zealand Supreme Court)

Ellen Bublick (Arizona), *Private Actions for Public Nuisance: A View from US Case Law*

John Goldberg (Harvard), *On Being a Nuisance*

DAY 2: WEDNESDAY, JULY 12

16:30–18:00 Parallel 2d

KC 105

Panel I: Trusts

Chair: Ben McFarlane

Adam Hofri-Winogradow (UBC), *Looking Through Trusts: Theory, Law, Practice and Analysis*

Kelvin Low (Singapore), *Frozen: How Confucianism and Certainty Have Retarded Implied Trusts in Singapore*

KC 201

Panel II: The Body

Chair: Christopher Essert

Marie-Louise Holle (Copenhagen), *Commodification of Human Remains: Public Policy in Contract Law*

Yehezkel Margalit (Netanya), *From (Moral) Status (Of the Frozen Embryo) To (Relational) Contract and Back Again to (Relational Moral) Status*

Ben Porat (Hebrew University), *Evaluating Bodily Injury: Human Nature and Social Structure*

KC 205

Panel III: Private International Law

Chair: Stephen Pitel

Sagi Peari (Western Australia), *Choice-of-Law, States, and the Right to Contract*

Johannes Ungerer (Oxford), *Private Legal Obligations Under the Influence of Foreign States*

18:30

KC 101 & 103

BBQ

Sponsored by Miller Thomson

DAY 3: THURSDAY, JULY 13

7:00–8:30	Vistas Dining Room	Breakfast
8:30–9:30	Plenary 3.1 KC 101 & 103	Plenary session Chair: Justice Mary Newbury (British Columbia Court of Appeal) Larissa Katz (Toronto), <i>The Property/Licence Interface</i>
9:40–10:40	Parallel 3a KC 105	Panel I: The Role of the Plaintiff Chair: John Goldberg Grigorios Bacharis (EUI), <i>Private Enforcement as Hybrid Public-Private Law</i> Michael Lok (Des Voeux Chambers/HKU), <i>Contempt Proceedings and the Permission of the State</i>
	KC 201	Panel II: Legislative Intervention Chair: John Murphy Kwan Ho Lau (Singapore), <i>Private Law Damages for Incursions of Data Rights: A Model Case for State Intervention</i> Stephen Pitel, <i>The Extraterritorial Impact of Statutory Jurisdiction</i>
	KC 205	Panel III: Equity I Chair: Birke Häcker Jennifer Nadler (Osgoode Hall), <i>The Equitable Doctrine of Unjust Enrichment</i> Amitpal Singh (Holwell, Shuster & Goldberg LLP), <i>Declaring Rights: Equity's Modus Operandi</i>
10:40–11:00	KC 100 Galleria Central	Coffee break

DAY 3: THURSDAY, JULY 13

11:00–12:30 Parallel 3b

KC 105

Panel I: The Morality of Contract

Chair: Nick McBride

Orit Gan (Sapir), *Contract Law, State Power, and Equality*
Katarzyna Kryla-Cudna (Bristol), *Contract Law and the Circular Economy: A Normative Justification*

Anthony Sangiuliano (Cornell), *Good Faith in Contractual Performance and Antidiscrimination: Some Skeptical Reflections*

KC 201

Panel II: Allocative Justice

Chair: Ellen Bublick

Jodi Gardner (Auckland), *Private Law and the Protection of a Social Minimum*

Peter Jaffey (Leicester), *Can a Welfare Maximisation Approach Account for Private Law in its Traditional Form?*

Rebecca Stone (UCLA), *A Qualified Defense of the Misfeasance-Nonfeasance Distinction*

KC 205

Panel III: Public Authority Liability I

Chair: Erika Chamberlain

Neil Foster (Newcastle), *Hoist by its Own Petard: Can the State be Liable in a Civil Action for Breach of Statutory Duty?*

Geoff McLay (Victoria), *What the Failures of Government Liability Law Teach us about Rights, Duties, and Powers*

12:30–13:30 Vistas Dining Room

Lunch

DAY 3: THURSDAY, JULY 13

13:30–15:00 Parallel 3c

KC 105

Panel I: Equity II

Chair: Sandy Steel

Sam Beswick (UBC), *Equality Under Ordinary Law*
David Salmons (Aston), *Reassessing the Role of Moral Standards and Public Values in the Law of Equity*
Man Yip (SMU), *Equity and Society: Public Values and Techniques*

KC 201

Panel II: Property & Security Interests

Chair: Larissa Katz

Ben McFarlane (Oxford), *Responding to Failure: The Interaction of Public Regulation and Private Law in Building Safety*
Yael Lifshitz (KCL), *The Future of Property*
Ernesto Vargas Weil (Cambridge), *State and Ideology in the Delineation of Modern Property Law*

KC 205

Panel III: Private Law and Social Justice

Chair: Jodi Gardner

François G DuBois (Leicester), *Beyond Corrective Justice: Holding the State to Account for Colonial Misdeeds*
Joshua Teng (Skrine, Malaysia), *Enforcing Native Customary Rights: Between Public and Private Law*
Mark Wilde (Reading), *Tort as a Form of Judicial Review in an Environment Context: Anathema or Necessity?*

15:00–15:20

KC 100
Galleria Central

Coffee break

15:20–16:20

Plenary 3.2
KC 101 & 103

Plenary session

Chair: Jason Neyers

Justice Edelman (High Court of Australia), *The Liability of Public Authorities for Torts*

16:30–18:00 Parallel 3d

KC 105

Panel I: Public Influence on Private Law

Chair: Paula Gilliker

Christine Beuermann (Newcastle), *Liability of Public Authorities for Failing to Confer a Benefit in the Provision of Professional Services*

Paul Davies (UCL), *The 'Arbitrability' of Private Law Claims*

Nicole Moreham (Victoria), *The Citizen-State Relationship at the Heart of ZXC v Bloomberg: Re-examining Privacy, Breach of Confidence and Police Investigations*

KC 201

Panel II: Illegality

Chair: Mitchell McInnes

John McCamus (Osgoode Hall), *Is Illegality a Defense to Unjust Enrichment?*

Frederik Peeraer (Gent), *Restitution Under an Illegal Contract as Public Law: French, German, and Italian Perspectives*

Doug Rendleman (Washington & Lee), *Illegality: Testing a New Standard in Prostitution and Marijuana Agreements*

KC 205

Panel III: Contract's Terms

Chair: Catharine MacMillan

Nancy Kim (Chicago Kent), *Adhesive Terms: A Taxonomy and a Proposal*

Marcus Moore (UBC), *Comparing Private Law, State, and Intermediate Responses to Unfair Terms in Boilerplate Contracts*

Angela Swan & Jakub Adamski, *Contracts in Society*

18:30

KC 101 & 103

Conference dinner

Sponsored by BLG

DAY 4: FRIDAY, JULY 14

7:00–8:30	Vistas Dining Room	Breakfast
8:30–9:30	Plenary 4.1 KC 101 & 103	Plenary session Chair: Andrew Robertson (Melbourne) Erika Chamberlain (Western), <i>Diceyan Equality: Floor or Ceiling</i> Robert Stevens (Oxford), <i>Human Rights and Private Law</i>
9:40–10:40	Parallel 4a KC 105	Panel I: Public Authority Liability II Chair: Elise Bant Ellen Rock (Tech, Sydney), <i>Mapping the Relationship Between Excess of Power and Government Liability in Tort</i> Desmond Ryan (Trinity College Dublin), <i>Damages for False Imprisonment by the State: Counterfactual and Vindicatory Approaches in Comparative Perspective</i>
	KC 201	Panel II: Uncertainty and Silence Chair: John McCamus Andrew J Bell (Bristol) & Joanna McCunn (Bristol), <i>The Law and the State in States of Uncertainty</i> Rory Gregson (Oxford), <i>Mind the Gap: When Agreements are Silent and Why it Matters</i>
	KC 205	Panel III: Business and Human Rights Chair: Andrew Gold Bashar Malkawi (Arizona), <i>Contracting and Responsible Production in Global Value Chains</i> Astrid Sanders (LSE), <i>The Role of the State in Transnational Human Rights Litigation</i>
10:40–11:00	KC 100 Galleria Central	Coffee break

DAY 4: FRIDAY, JULY 14

11:00–12:30 Parallel 4b

KC 105

Panel I: Contract Theory

Chair: Jason Neyers

Mark Gergen (Berkeley), *Debt Enforcement and the Morality of Contract*

Prince Saprai (UCL), *The Politics of Contract Interpretation*

Stéphane Sérafin (Ottawa), *Law and Morality in Anglo-American Contract Theory*

KC 201

Panel II: Democracy, Institutions, and Private Law

Chair: Benjamin Zipursky

Greg Keating (USC), *Tort and Basic Justice*

Arie Rosen (Auckland), *The Constitutional Structure of Contract Law*

Matt Shapiro (Rutgers), *How Is Civil Litigation ‘Democratic’?*

12:30–13:30

Vistas Dining Room

Lunch

13:30–15:00 Parallel 4c

KC 105

Panel I: Procedure, Remedies, and the State's Institutional Role

Chair: Graham Virgo

Suzie Chiodo (Osgoode Hall), *Private Law, Public Disputes: How do Procedures for the Aggregation of Claims Transform Private Law Litigants into Quasi-Public Regulators?*

Catharine MacMillan (KCL), *Wither the State? Challenges to Private and Public Law Created by Contracting out State Functions*

Michael Pressman (NYU), *A New Approach to Prejudgment Interest*

KC 201

Panel II: Public Policy in Contract

Chair: John McCamus

Greg Bowley (UNB), *The Public Limits of Private Justice – An Account of the Doctrine of Public Policy in Contract*

Poorna Mysoor (Cambridge), *Public Policy in Private Ordering—the Contested Category of 'Implied by Law'*

Benjamin Zipursky (Fordham), *The Defences of Unconscionability and Public Policy – A Crucial Distinction*

KC 205

Panel III: Public Limits on Property

Chair: Ben McFarlane

Magdalena Habdas (Silesia) & Kancelaria Mariusz Fras (Silesia), *When Neighbor Law Fails – A Comparative Perspective on Public Intervention and Non-Trespassory Invasions in Areas Surrounding Airports*

Magda Raczynska (UCL), *The Public Dimension of Security Interests*

Duncan Sheehan (Leeds), *Control and Possession of Crypto- or Digital Assets: A Critique of the Law Commission's Proposals*

15:00–15:20

KC 100
Galleria Central

Coffee break

15:20 - 16:20 Plenary 4.2
KC 101 & 103

Plenary session

Chair: Zoë Sinel

Elise Bant (University of Western Australia), *Holding Governments to Account for Dishonest and Predatory Conduct: Insights from Private Law*
Sarah Worthington (LSE), *The Public Aspect of Contract Remedies*

16:30–18:00 Parallel 4d
KC 105

Panel I: Public Exceptionalism in Immunity and Liability

Chair: Andrew Robertson

Haim Abraham (UCL), *Tort Law and the State of War*
Jérémy Boulanger-Bonnely (McGill), *David v Goliath: When the State Creates its own Private Claims*
Betsy Grey (Arizona State), *Removing Torts*

KC 201

Panel II: Rights of Resistance and Claims for Compensation

Chair: Gregory Keating

Eric Claeys (George Mason), *Securing Rights Across Private and Public Law*
Matt Dyson (Oxford), *When the State Compensates*
Nick McBride (Cambridge), *The Right to Resist*

18:30 KC 101 & 103

Closing reception

Sponsored by Polley Faith LLP

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