

# Val Ricks

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## Positions

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**Professor of Law** (with tenure, August 2002 to present), South Texas College of Law Houston. **Charles Weigel II Research Professor**, August 2015 to August 2019. **Vinson & Elkins Research Professor**, May 2005 to May 2009. **Associate Professor of Law**, 1999-2002. **Assistant Professor of Law**, 1996-99.

**Adjunct Professor of Law**, University of Houston Law Center, Houston, Texas, Spring 2008 (by invitation, taught Business Associations as an overload).

**Visiting Professor of Law**, Texas Tech University School of Law, Lubbock, Texas, Fall 2004.

**Visiting Associate Professor of Law**, S.J. Quinney College of Law, University of Utah, Salt Lake City, Utah, Summer 2002.

**Visiting Assistant Professor of Law**, J. Reuben Clark Law School, Brigham Young University, Provo, Utah, Winter 1996.

**Associate Attorney**, Kirton & McConkie, Salt Lake City, Utah, 1992-96 (with a year's leave to serve as a judicial law clerk). I practiced primarily business transactions and organizations and some pre-trial and appellate litigation.

**Judicial Law Clerk** to the Honorable Charles E. Wiggins, United States Court of Appeals for the Ninth Circuit, Reno, Nevada, September 1993 through August 1994.

## Courses

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Courses in Current Rotation: Contracts I (26x), Contracts II (12x), Corporations (29x), Antitrust (4x), and Business & Law Seminar (3x). Other Courses: Agency & Partnership (18x), Securities Regulation (2x), Mergers & Acquisitions (2x), Jurisprudence or Philosophy of Law (3x), and Secured Transactions (1x).

## Works in Progress

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*Consideration as Bargain and Fairness* (showing that the doctrine of consideration, the touchstone of contractual liability, morally justifies contractual liability and remedies—the doctrine is not the formalism many have claimed).

*The Freedom to Be a Christian as a Limit on Private Law, and Implications for the Contract Doctrine of Consideration* (forthcoming 2019) (book chapter for a volume on Christianity and private law, to be published by a university press).

*Fraud Is Now Legal in Houston* (forthcoming 2019) (a critique of recent Texas case law absolving tort-feasors from liability if they committed the tort while a shareholder of a for-profit corporation (no kidding)).

## Publications

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### BOOKS

THE STORY OF CONTRACT LAW: FORMATION (CALI eLangdell Press 2016; 3d ed. 2019) (496 pages), available here: <http://www.cali.org/books/story-contract-law-formation>. This is a textbook for the first half of a course on contract law. TEACHER'S MANUAL FOR THE STORY OF CONTRACT LAW: FORMATION (CALI eLangdell Press 2016; 3d ed. 2019) (141 pages).

THE STORY OF CONTRACT LAW: IMPLEMENTING THE BARGAIN (CALI eLangdell Press 2017) (423 pages), available here: <https://www.cali.org/books/story-contract-law-implementing-bargain>. This is a textbook for the second half of a course on contract law. TEACHER'S MANUAL FOR THE STORY OF CONTRACT LAW: IMPLEMENTING THE BARGAIN (CALI eLangdell Press, 2017) (153 pages).

### ARTICLES

*Introduction, The Best and Worst of Contracts Decisions: An Anthology*, 45 Fla. St. U. L. Rev. 889 (2018). The *Best and Worst* anthology is available here: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3041444](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3041444).

*The Democratization of Contract Law: The Case of Mutual Promises*, 45 Fla. St. U. L. Rev. 949 (2018) (in *The Best and Worst of Contracts Decisions: An Anthology*, 45 Fla. St. U. L. Rev. 889).

Kirksey v. Kirksey, 45 Fla. St. U. L. Rev. 967 (2018) (with Charles Calleros; in *The Best and Worst of Contracts Decisions: An Anthology*, 45 Fla. St. U. L. Rev. 889).

Pillans and Rose v. Van Mierop and Hopkins: *The Worst Way to Win*, 45 Fla. St. U. L. Rev. 1018 (2018) (in *The Best and Worst of Contracts Decisions: An Anthology*, 45 Fla. St. U. L. Rev. 889).

*Authenticating Resolutions of Agency Authority in Large Transactions: Justifying Doubt Suppression*, 37 Corp. Couns. Rev. 257 (2018),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3395487](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3395487).

*Strategic Shareholder and Member Voting Agreements Under Texas Business Entity Law*, 68 Baylor L. Rev. 335 (2016),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2842378](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2842378),  
<https://www.baylor.edu/law/review/doc.php/270985.pdf>. Changes similar to those advocated in this paper were made in Act of May 22, 2019, 86th Leg., R.S., § 1 (S.B. 1971) (the statute incorporating these changes is Tex. Bus. Orgs. Code § 6.252).

*Self-Help in the Break-up of Informal Partnerships*, 12 DePaul Bus. & Com. L.J. 259 (2014), <https://via.library.depaul.edu/bclj/vol12/iss3/2/>,  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3249797](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3249797).

*The Twisted Veil of Texas LLCs*, 46 Tex. J. Bus. L. 67 (2014),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2842373](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2842373).

*Consideration and the Formation Defenses*, 62 U. Kansas L. Rev. 315 (2013),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2507989](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2507989),  
[https://kuscholarworks.ku.edu/bitstream/handle/1808/20283/Ricks\\_KLR\\_62-2.pdf](https://kuscholarworks.ku.edu/bitstream/handle/1808/20283/Ricks_KLR_62-2.pdf).

*Assent Is Not an Element of Contract Formation*, 61 U. Kansas L. Rev. 591 (2013),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1898824](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898824),  
[https://kuscholarworks.ku.edu/bitstream/handle/1808/20224/01-Ricks\\_Final.pdf](https://kuscholarworks.ku.edu/bitstream/handle/1808/20224/01-Ricks_Final.pdf).

*No Power to Be Disloyal (Or, How Not to Write a Loyalty Opinion)*, 6 JBEL (Journal of Business, Entrepreneurship & the Law) 247 (2013),  
<https://digitalcommons.pepperdine.edu/jbel/vol6/iss2/3/>,  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2508064](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508064).

*Texas Partners Owe Transferees Good Faith: Escaping from the Box*, 31 Corp. Couns. Rev. 119 (2012) (with David Bledsoe and Ryan Russo).

*Three Suggestions for the Texas Limited Liability Company Law*, 44 Tex. J. Bus. L. 29 (2011). Most of the problems identified in this article have been fixed legislatively.

*Service Partner Capital Agreements: The Leading Cases and a Response to Critics*, 12 Univ. Pa. J. Bus. L. 1 (2009),  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3247371](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3247371),  
<http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1339&context=jbl>.

*The Possibility of Plain Meaning: Wittgenstein and the Contract Precedents*, 56 Cleveland State L. Rev. 767 (2008),  
<https://engagedscholarship.csuohio.edu/clevstlrev/vol56/iss4/3/>.

*Texas' So-Called "Interested Director" Statute*, 50 S. Tex. L. Rev. 129 (2008)  
(advocating changes to Texas' interested director statute; changes similar to those advocated were made in Act of May 11, 2011, 82d Leg., R.S., § 28 (S.B. 748) (codified at Tex. Bus. Orgs. Code § 21.418)).

*"Dear Sister Antillico ...": The Story of Kirksey v. Kirksey*, 94 Geo. L.J. 321 (2006)  
(with William R. Casto), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=899002](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=899002).

*The Revival of De Facto Incorporation in Texas*, 25 Corp. Couns. Rev. 75 (2006) (by invitation).

*Marriage and the Constitutional Right to Free Sex: The State Marriage Amendments as Response*, 7 Fla. Coastal L. Rev. 271 (2005) (symposium issue, by invitation).

*The Death of Offers*, 79 Ind. L.J. 667 (2004) (showing why the death of a contract offeror should usually terminate the offeree's power to accept),  
<https://www.repository.law.indiana.edu/ilj/vol79/iss3/3/>.

*Teaching Consideration from Original Leading Cases*, Essay, in TEACHING THE LAW SCHOOL CURRICULUM 137 (Steven Friedland & Gerald F. Hess, eds., Carolina Academic Press 2004).

*Contract Law and Christian Conscience*, 2003 B.Y.U. L. Rev. 993,  
<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2175&context=lawreview>.

*Religious Doctrine and the Principles of Revelation*, 1 Univ. of St. Thomas L.J. 405 (2003) (inaugural/symposium issue, by invitation),  
<http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1018&context=ustlj>.

*Abortion and Latter-day Saint Experiences with Children and Law*, 2001 MARGINS: Maryland's Interdisciplinary Publication on Race, Religion, Gender, and Class 523 (symposium issue),  
<http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1017&context=rrgc>.

*The Sophisticated Doctrine of Consideration*, 9 Geo. Mason L. Rev. 99 (2000) (giving a history of, and urging flexibility in employing, this foundational doctrine of contract law).

*In Defense of Mutuality of Obligation: Why "Both Should Be Bound, or Neither,"* 78 Neb. L. Rev. 491 (1999) (giving a history and justification of the contract doctrine of mutuality of obligation).

*American Mutual Mistake: Half-Civilian Mongrel, Consideration Reincarnate,* 58 La. L. Rev. 663 (1998) (giving a history and justification of the contract formation defense of mutual mistake), reprinted in part in Randy E. Barnett, PERSPECTIVES ON CONTRACT LAW 428 (4th ed. 2009).

*Seeing the Diagonal Clearly: Telling Vertical from Horizontal in Antitrust Law,* 28 U. Tol. L. Rev. 151 (1996) (with R. Chet Loftis) (discussing legal issues that arise when market participants curtail competition on more than one level of a distribution chain).

*To God God's, to Caesar Caesar's, and to Both the Defining of Religion,* First Amendment Symposium, 26 Creighton L. Rev. 1053 (1993) (giving a history of judicial definitions of *religion* in the First Amendment and urging courts in future cases to defer to a degree to private parties who claim First Amendment rights).

*Knight v. State ex rel. Moore: How Bingo Won the Mississippi Lottery,* 61 UMKC L. Rev. 463 (1993).

Comment, *The Conversion of Intangible Property: Bursting the Ancient Trover Bottle with New Wine,* 1991 B.Y.U. L. Rev. 1681 (advocating that the tort of conversion be expanded to cover intangible property) (cited by the House of Lords in *OGB Limited v. Allan*, [2007] UKHL 21 ¶314).

*Pomerance's The Elephant Man,* The Explicator, 46(4): 48-49 (July 1988).

## Selected Presentations

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*A Christian View of Consideration in Contracts,* at the Christianity and Private Law Roundtable, February 2-3, 2018, at Pepperdine University School of Law, Malibu.

*Collaboration and Contracts Scholarship,* at the 13<sup>th</sup> International Contracts Conference, February 23, 2018, at Barry University School of Law, Orlando.

*Contract Doctrine as Contract Theory,* at the 11<sup>th</sup> International Contracts Conference, February 27, 2016, at St. Mary's University School of Law, San Antonio, TX.

*Beyond Contract Metaphysics,* at the 8<sup>th</sup> International Contracts Conference, February 22, 2013, at Texas Wesleyan University School of Law, Fort Worth, TX.

*Consideration and the Formation Defenses,* at the 7<sup>th</sup> International Contracts Conference, March 2, 2012, at Thomas Jefferson School of Law, San Diego, CA.

*2011 Legislative Changes to the Texas Business Organizations Code*, September 14, 2011, The Woodlands Bar Association, The Woodlands, TX.

*The Superfluity of Assent as a Separate Element of Contract Formation*, at the Spring Conference on Contracts, February 26, 2010, at University of Nevada, Las Vegas' William S. Boyd School of Law; at the J. Reuben Clark Law Society Faculty Section Conference, January 5, 2011, at Golden Gate University School of Law, San Francisco; at Texas Southern University Law School, October 12, 2011, Houston; and at a BYU Management Society meeting, April 26, 2012.

*A Christian Legal Scholar's Impediment and Blessing*, at The Second Annual J. Reuben Clark Law Society Faculty Section Conference, January 6, 2010, at Loyola University School of Law, New Orleans.

*Salvific Freedom: A Latter-day Saint Jurisprudence*, at the symposium, "Religious Legal Theory: The State of the Field," November 2009, at Seton Hall University School of Law, Newark.

*What a DJ Should Know About Contracts*, The Greater Houston Area Mobile Music Association, September, 2008.

*Fiduciary Duty & Executive Compensation*, at the 29<sup>th</sup> Annual Corporate Counsel Institute, April & May 2007, Houston & Dallas.

*Syndicate Short Covering: A Transaction Cost?*, at the 3d Annual International Conference on Contracts, February 2007, at South Texas College of Law, Houston.

*Would You Marry this Man?: Soper's Estate and Extrinsic Evidence*, at the 2d Annual International Conference on Contracts, February 2006, at Texas Wesleyan University School of Law, Fort Worth.

*Marriage and the Constitutional Right to Sexual Experience Without Consequence*, at the Symposium on State Marriage Amendments: Efforts to Protect Conjugal Marriage, Efforts to Legalize Same-Sex Unions; April 2005, at Georgia State University College of Law, Atlanta.

*Clinical Study Agreements: The Contract Lawyer's Perspective*, at the Clinical Research Workshop: "The Integrity of Clinical Research in Liver Disease: Protecting Patients and Investigators," American Association for the Study of Liver Diseases, May 2004, New Orleans (by invitation).

*Doctrine & Revelation*, part of an ecumenical panel, The Development of Religious Doctrine, at the symposium, "God, the Person, History, and the Law: Themes from the Work of Judge John T. Noonan, Jr.," October 2003, at Univ. of St. Thomas School of Law, Minneapolis (by invitation).

*Response: Contract Law and Conscience*, Latter-day Saint Perspectives on Law Symposium, October 2001, at Brigham Young University, Provo, Utah.

*Abortion and Latter-day Saint Experiences with Children*, MARGINS Symposium, “Legislating Morality: The Problem of Moral Right and Legal Rights,” March 2001, at Univ. of Maryland School of Law, Baltimore.

*The Sophisticated Doctrine of Consideration*, Young Scholars Workshop of the Southeastern Conference of the Association of American Law Schools, July 1999.

## Selected Service

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Editor, *Corporate Counsel Review*, August 2006 to present. The *Corporate Counsel Review* is a mostly student-edited journal sponsored by the Corporate Counsel Section of the State Bar of Texas. At the Bar’s request, I play an active role in the Review’s management.

Advisory Member, Texas State Bar Corporate Counsel Section Council, 2006-present.

South Texas College of Law Houston faculty service:

- Faculty Co-Advisor, South Texas Law Review (8/05 to present);
- Faculty Advisor, JRCLS Student Chapter (8/06 to present);
- Promotion, Tenure, & Reappointments (9/05 - 8/07, 10/09 - 8/10);
- Faculty Appointments (8/99 - 8/01, 8/02 - 8/04, 8/07 - 8/09);
- Special Hearing Committee (Spring 2003);
- Admissions (8/01- 8/03, 8/09 - 8/12);
- Transition to the Profession Focus Group (Spring 2002);
- Financial Aid (8/96 - 8/00, 8/05 - 12/05; 8/15 to present);
- Ad Hoc Committee on Sexual Harassment Policy (Fall 1998);
- Student Appeals and Discipline (8/06 - 8/14; 8/16 to present);
- Chair, Ad Hoc Scholarship Incentive Committee (3/09 - 12/09);
- Student/Faculty Committee (8/99 - 8/00, 8/05 - 8/10 (Chair, 99-00));
- Faculty Scholarship Committee (8/13 to present).

Chair, AALS Executive Committee of Section on Contracts, 2017 (Executive Committee, 2013 to present) (Chair Elect, 2016). As Chair, organizer of the panel, *Liability Without Assent: When contract occurs without assent, what grounds liability and remedy? Seeking positive premises*, presented at the AALS Annual Meeting, Jan. 6, 2018, in San Diego.

Co-Organizer, *Amended Article Two: Reversing the Curse?*, a symposium, April 2011, South Texas College of Law Houston.

Co-Organizer, Annual J. Reuben Clark Law Society Faculty Symposia, January 2010, New Orleans, LA; January 2011, San Francisco, CA; January 2012, Washington, DC; January 2014, New York, NY.

Co-Organizer, Third Annual Conference on Contracts, February 2007, Houston.

Member, AALS Executive Committee of Section on Agency, Partnership, LLCs & Unincorporated Associations (2005-06).

Member, AALS Executive Committee of Section on Law & Religion (2005).

Board of Editors, J. Reuben Clark Law Society Institute Program (2005-09).

Author/Editor of student chapter curriculum lessons: *The Theory or Doctrine of the State* (2005); *The Theological Role of Contract Law* (2008).

Essay, *Ten Reasons Why Every Law Student (Who Can) Should Serve as a Judicial Law Clerk* (distributed to students by the South Texas College of Law Houston Career Resource Center).

Essay on *Roe v. Wade*, South Texas College of Law 75<sup>th</sup> Anniversary Report (1998).

## Professional Associations

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Utah Bar, State Trial and Appellate and Federal Trial Courts, 1992 (inactive)  
Houston Bar Association  
American Bar Association  
Selden Society  
J. Reuben Clark Law Society

## Education

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**Juris Doctor**, J. Reuben Clark Law School, Brigham Young University, Provo, Utah, 1992.

- Summa cum laude*, 1st in class.
- Order of the Coif.
- Executive Editor, BYU Law Review Editorial Board.
- John S. Welch Award for Legal Writing (recognizing the student comment, *supra*).



**Bachelor of Arts**, Philosophy, Brigham Young University, Provo, Utah, 1989.

•*Summa cum laude.*

•Spori Scholar.

**Associate of Arts**, English, Ricks College, Rexburg, Idaho, 1987.

•*Summa cum laude.*

•Spori Scholar.

## Personal

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My bride Elizabeth and I are the parents of seven beautiful children and grandparents of two adorable grandsons. I enjoy reading, running, hiking, music, and astrophotography.

July 2019