

December 2011

**JEAN BRAUCHER**

Roger C. Henderson Professor of Law  
University of Arizona, James E. Rogers College of Law  
Address: 1201 E. Speedway, PO Box 210176  
Tucson, AZ 85721-0176  
Phone: 520-626-7251 Fax: 520-621-9140  
Email: [Braucher@law.arizona.edu](mailto:Braucher@law.arizona.edu) Cell: 520-271-3787

**ACADEMIC APPOINTMENTS**

Roger C. Henderson Professor of Law, University of Arizona (since 1998).

Distinguished Scholar and Chair of the Wisconsin Contracts Project, Institute for Legal Studies, University of Wisconsin Law School (courtesy appointment since 2007). (Project dedicated to a socio-legal approach to contract law scholarship and teaching).

Robert Zinman Scholar in Residence, American Bankruptcy Institute, Alexandria, Va. (spring 2011).

Visiting Professor of Law, Cornell Law School (1997-98).

Gustavus H. Wald Research Professor of Law, University of Cincinnati College of Law  
(Faculty member 1987-1998; Wald professor 1995-98; full professor with tenure as of 1990; associate professor 1987-90).

Kraft W. Eidman Centennial Visiting Professor in Law, University of Texas School of Law  
(1990-91).

Visiting Associate Professor of Law, Boston College Law School (1986-87).

Associate Professor of Law, University of Puget Sound School of Law (now Seattle University)  
(Faculty member 1982-87; associate professor as of 1985; assistant professor 1982-85).

Visiting Assistant Professor of Law, Cardozo School of Law, Yeshiva University (1981-82).

**INTERNATIONAL TEACHING**

Introduction to the Common Law, a course for Portuguese lawyers, at the Instituto Superior de Ciencias do Trabalho e da Empresa, Lisbon, Portugal (June 2008) (lectured on contract law, commercial law and bankruptcy).

Athens, Greece, summer program of Temple University School of Law (June-July 2003) (taught International Commercial Transactions).

**TEACHING AREAS**

Contracts, Commercial Law, Bankruptcy.

## **EDUCATION**

Boston University School of Law, J.D. cum laude, 1978.

Brown University, A.B. (English literature), 1972.

## **OTHER LEGAL EMPLOYMENT**

Associate, Gaston Snow & Ely Bartlett, Boston, 1979-81.

Law Clerk for Justice Nathan S. Heffernan (later Chief Justice), Wisconsin Supreme Court, 1978-79.

**SSRN AUTHOR PAGE** [http://papers.ssrn.com/sol3/cf\\_dev/AbsByAuth.cfm?per\\_id=329668](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=329668)

## **CASEBOOKS**

CONTRACTS: LAW IN ACTION, VOL I AND II (3d Ed. Lexis/Nexis 2010 and 2011) (with Stewart Macaulay et al.).

CONSUMER CREDIT AND CONSUMER BANKRUPTCY (work in progress).

## **BOOK CHAPTERS**

*A Law-in-Action Approach to Comparative Study of Repayment Forms of Consumer Bankruptcy* (Hart Publishing Co., Oxford and Portland, Oregon, 2009), chapter 16, pp. 331-353.

*New Basics: 12 Principles for Fair Commerce in Mass-Market Software and Other Digital Products*, in CONSUMER PROTECTION IN THE AGE OF THE 'INFORMATION ECONOMY,' edited by Jane K. Winn (Ashgate Publishing Ltd., 2006).

*Debtor Education in Bankruptcy: The Perspective of Interest Analysis*, in CONSUMER BANKRUPTCY IN A GLOBAL PERSPECTIVE, edited by Johanna Niemi-Kiesilainen, Iain Ramsay, and William Whitford (Hart Publishing Co, Oxford and Portland, Oregon, 2003), chapter 16, pp. 319-342.

## **ARTICLES**

*Mortgaging Human Capital: Federally-Funded Subprime Higher Education*, WASH. & LEE L. REV. (FORTHCOMING 2012).

*Race, Attorney Influence and Bankruptcy Chapter Choice*, J. OF EMPIRICAL LEGAL STUDIES (with Dov Cohen and Robert L. Lawless) (forthcoming 2012).

*The Sacred and Profane Contracts Machine: The Complex Morality of Contract Law In Action*, 45 SUFFOLK U. L. REV. (forthcoming 2012).

*Humpty Dumpty and the Foreclosure Crisis: Lessons from the Lackluster First Year of the Home Affordable Modification Program (HAMP)*, 52 ARIZ. L. REV. 727 (2010)

*Getting Realistic: In Defense of Formulaic Means Testing*, 83 AM. BANKR. L. J. 398 (2009).

*A Guide to Interpretation of the 2005 Bankruptcy Law*, 16 AM. BANKR. INST. L. REV. 349 (2008).

*Cowboy Contracts: The Arizona Supreme Court's Grand Tradition of Transactional Fairness*, 50 ARIZ. L. REV. 191 (2008).

*US Influence with a Twist: Lessons about Unfair Contract Terms from US Software Customers*, 15 AUSTRALIAN COMPETITION AND CONSUMER L. J. 7 (2007).

*The Challenges to the Bench and Bar Presented by the 2005 Bankruptcy Act: Resistance Need Not Be Futile*, 2007 U. Ill. L. Rev. 93.

*Deception, Economic Loss and Mass-Market Customers: Consumer Protection Statutes as Persuasive Authority in the Common Law of Fraud*, 48 ARIZ. L. REV. 829 (2006).

*Making Post-Petition Mortgage Payments Inside Chapter 13 Plans: Facts, Law, Policy*, with Gordon Bermant, 80 AM. BANKR. L. J. 261 (2006).

*A Fresh Start for Personal Bankruptcy Reform: The Need for Simplification and a Single Portal*, 55 AM. U. L. REV. 1295 (2006).

*Theories of Over-Indebtedness: Interaction of Structure and Culture*, 7 THEORETICAL INQUIRIES IN LAW 323 (2006).

*Rash and Ride-Through Redux: The Terms for Holding on to Cars, Homes and Other Collateral under the 2005 Act*, 13 AM. BANKR. INST. L. REV. 457 (2005).

*Consumer Bankruptcy as Part of the Social Safety Net: Fresh Start or Treadmill?* 44 SANTA CLARA L. REV. 1065 (2004)

*The Failed Promise of UCITA's Mass-Market Concept and Its Lessons for Policing of Standard Form Contracts*, 7 LEWIS & CLARK J. OF SMALL AND EMERGING BUS. LAW 393 (2003).

*Means Testing Consumer Bankruptcy: The Problem of Means*, 7 FORDHAM J. OF CORP. & FIN. LAW 407 (2002) (with comment by Eric A. Posner and response).

*When Your Refrigerator Orders Groceries Online and Your Car Dials 911 After an Accident: Do We Really Need New Law for the World of Smart Goods?*, 8 WASH. U. J. OF LAW & POL'Y 241 (2002).

*An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 AM. BANKR. INST. L. REV. 557 (2001).

*Rent Seeking and Risk Fixing in the New Statutory Law of Electronic Commerce*, 2001 WIS. L. REV. 527.

*Delayed Disclosure in Consumer E-Commerce as an Unfair and Deceptive Practice*, 46 WAYNE L. REV. 1805 (2000).

*Deadlock: Consumer Transactions under Revised Article 9*, 73 AM. BANKR. L. J. 83 (1999).

*Getting It for You Wholesale: Making Sense of Bankruptcy Valuation of Collateral after Rash*, 102 DICKIN. L. REV. 763 (1998).

*Increasing Uniformity in Consumer Bankruptcy: Means Testing as a Distraction and the National Bankruptcy Review Commission's Proposals as a Starting Point*, 6 AM. BANKR. INST. L. REV. 1 (1998).

*The Repo Code: A Study of Adjustment to Uncertainty in Commercial Law*, 75 Wash. U. L. Q. 549 (1997).

*Counseling Consumer Debtors to Make Their Own Informed Choices--A Question of Professional Responsibility*, 5 AM. BANKR. INST. L. REV. 165 (1997).

*Politics and Principle in the Drafting of UCC Consumer Protection Provisions*, 29 UCC L. J. 68 (1996).

*The Afterlife of Contract*, 90 NW. U. L. REV. 49 (1995).

*Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L. J. 501 (1993).

*Contract versus Contractarianism: The Regulatory Role of Contract Law*, 47 WASH. & LEE L. REV. 697 (1990). (Quoted by Justice O'Connor, concurring in part and dissenting in part, in *American Airlines, Inc. v. Wolens*, 115 S. Ct. 817 (1995).) (Reprinted in A CONTRACTS ANTHOLOGY 106, Peter Linzer, editor (2nd Ed. 1995).)

*Defining Unfairness: Empathy and Economic Analysis at the Federal Trade Commission*, 68 B.U.L. REV. 349 (1988).

*An Informal Resolution Model of Consumer Product Warranty Law*, 1985 Wis. L. Rev. 1405.

## **SHORTER PIECES, COMMENTS, REVIEWS AND REVIEW ESSAYS**

*Reflections on the Law of Contracts: Unconscionability in the Age of Sophisticated Mass-Market Framing Strategies and the Modern Administrative State* CANADIAN BUS. L. J. (2008).

*Contracting Out of Article 2 Using a "License" Label: A Strategy that Should Not Work for Software Products*, 40 LOY. OF L.A. L. REV. 261 (2007).

*Under the Surrounding Circumstances: Amended Article 2's Redundant (Or Worse) Electronic Commerce Provisions*, 68 OHIO STATE L. J. 115 (2007).

*New Frontiers in Private Ordering—An Introduction*, 49 Ariz. L. Rev. 577 (2007).

*E. Allan Farnsworth and the Restatement (Second) of Contracts*, 105 COLUM. L. REV. 1420 (2005).

*Middle-Class Knowledge* (Review of Elizabeth Warren & Amelia Warren Tyagi, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS & FATHERS ARE GOING BROKE*), 21 EMORY BANKR. DEV. J. 193 (2004).

*E-Disclosure: A Short Guide to Going Paperless in Consumer Financial Services*, 60 BUS. LAWYER 397 (2004).

*Amended Article 2 and the Decision to Trust the Courts: The Case Against Enforcing Delayed Mass-Market Terms, Especially for Software*, 2004 WIS. L. REV. 753 (Comment).

*Means Measurement Rather Than Means Testing: Using the Tax System to Collect from Can-Pay Consumer Debtors after Bankruptcy*, with Charles W. Mooney Jr., AMERICAN BANKRUPTCY INSTITUTE JOURNAL, January, 2003.

*Replacing Paper Writings With Electronic Records in Consumer Transactions: Purposes, Pitfalls and Principles*, 7 N.C. BANKING INSTITUTE J. 29 (2003).

*Allgemeine Einführung zum UCITA B UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, DER E-COMMERCE-Vertrag nach amerikanischem Recht* (Mathias Lejeune, hrsg.) (Verlag Dr. Otto Schmidt Köln 2001) (General Introduction to UCITA in a book published in German).

*Uniform Computer Information Transactions Act (UCITA): Objections from the Consumer Perspective*, CYBERSPACE LAWYER, Vol. 5, No. 6, p. 2 (September 2000).

*Options in Consumer Bankruptcy: An American Perspective*, 37 OSGOODE HALL L. J. 155 (1999).

*Why UCITA, like UCC Article 2B, is Premature and Unsound*, UCC BULLETIN 1 (July 1999).

*Foreword--Symposium on Consumer Protection and the Uniform Commercial Code*, 75 WASH. U. L. Q. 1 (1997).

*The UCC Gets Another Rewrite*, ABA JOURNAL (October 1996).

*Distinguishing a True Lease from a Secured Transaction*, 20 ALI-ABA COURSE MATERIALS JOURNAL 5 (1996).

*Book Review*, 51 BUS. LAWYER 795 (1996) (reviewing Jay M. Feinman, *Economic Negligence: Liability of Professionals and Businesses to Third Parties for Economic Loss*).

*Bankruptcy Reorganization and Economic Development*, 23 CAP. U. L. REV. 499 (1994).

*Toward A Broader Perspective on the Role of Economics in Legal Policy Analysis: A Retrospective and an Agenda from Albert O. Hirschman* (Review Essay), 13 LAW & SOC. INQUIRY 741 (1988).

## **RECENT ACADEMIC PRESENTATIONS**

Mortgaging Human Capital: Federally-Funded Subprime Higher Education  
Symposium on Regulation in the Fringe Economy at Washington & Lee University  
School of Law, November 2011.

International Association of Consumer Law, Brunel University, London, June 2011.  
Law & Society Association Annual Meeting, San Francisco, June 2011.

Empirical and Lyrical: Revisiting the Contracts Scholarship of Stewart Macaulay  
Commentator, Symposium at the University of Wisconsin, Madison, October 2011.

Unfair Terms in Comparative Perspective: The Example of Software Contracts  
Symposium on Contract Law in Transatlantic Perspective, University of Sheffield,  
Sheffield, UK, September 2011.

The Sacred and Profane Contracts Machine: The Complex Morality of Contract Law in Action  
Symposium on Contract as Promise at 30: The Future of Contract Theory, Suffolk  
University Law School, Boston, March 2011.

Roundtable, The Scholarship of Stewart Macaulay  
Contracts Conference, Stetson University, Gulfport, Florida, February 2011.

Roundtable, Means Testing in Consumer Bankruptcy  
Association of American Law Schools Annual Meeting, Section on Creditors' and  
Debtors' Rights, San Francisco, January 2011.

Humpty Dumpty and the Foreclosure Crisis: Lessons from the Lackluster First Year of the Home  
Affordable Modification Program (HAMP)  
Law & Society Association Annual Meeting, Chicago, May 2010.

The Law-in-Action Approach to Teaching Contracts  
University of Oregon School of Law Colloquium, March 2009.  
Loyola of Los Angeles School of Law Colloquium, April 2009.

Real Estate Transactions in Trouble Times  
Panelist, AALS Annual Meeting, San Diego, January 2009 (Joint program of the  
Sections on Creditors' and Debtors' Rights and Real Estate Transactions.)

A Guide to Interpretation of the 2005 Bankruptcy Law  
St. John's University School of Law Faculty Colloquium, April 2008.

A Comparative Analysis of Repayment Forms of Bankruptcy  
University of Iowa College of Law Faculty Colloquium, February 2008.  
Law & Society Association Annual Meeting, Berlin, Germany, July 2007.

Reflections on the Law of Contracts: Unconscionability in the Context of Modern Framing Strategies and the Modern Administrative State

36<sup>th</sup> Annual Canadian Workshop on Commercial & Consumer Law, Banff, Alberta, October 2006.

US Influence with a Twist: The Customer Coalition's Principles Project as a Model for Reform of the Law of Digital Products

Keynote Presentation, University of Sydney Consumer Law Roundtable, Sydney, Australia, September 2006.

Faculty Colloquium, Griffith University Faculty of Law, Brisbane, Australia, October 2006.

Teaching Consumer Credit and Consumer Bankruptcy as an Integrated Course,

University of Houston College of Law, Conference on Teaching Consumer Law, May 2006.

The Challenges to the Bench and Bar Presented by the 2005 Bankruptcy Act: Resistance Need Not Be Futile

University of Illinois School of Law Symposium on the 2005 Bankruptcy Law, Chicago, April 2006.

A Fresh Start for Personal Bankruptcy Reform,

University of Colorado Faculty Colloquium, March 2006.

American University Law Review Symposium, Washington, DC, February 2006.

New Developments in Consumer Protection

Panel presentation, AALS Conference on Commercial Law, Montreal, June 2005.

Theories of Over-Indebtedness: Interaction of Structure and Culture

Tel Aviv University Faculty of Law, June 2005.

International Association of Consumer Law, Lima, Peru, May 2005.

New Basics: 12 Principles for Fair Commerce in Mass-Market Software and Other Digital Products

Shidler Center for Law, Commerce & Technology, University of Washington School of Law, March 2005.

## **LAW REFORM**

Vice President, National Consumer Bankruptcy Rights Center (2010-present).

Board of Directors, National Association of Consumer Bankruptcy Attorneys (2010-present).

Member, American Law Institute (Adviser, 2004-2009, Principles of the Law of Software Contracts; ALI representative on the Drafting Committee to revise UCC Article 2A of the Uniform Commercial Code, 1996-1999; advisor to Council Ad Hoc Committee on Revised Article 9, 1997-99; member of Consultative Groups on Revised Articles 2 and 9; ALI delegate to the 1997, 1998 and 1999 annual meetings of the National Conference of Commissioners on Uniform State Laws).

Co-Chair, American Bar Association Committee on the Law of Cyberspace, Working Group on Consumer Protection (1999-2004), which developed [www.safeshopping.org](http://www.safeshopping.org), an ABA public service Web site to provide consumers with information about protecting themselves when shopping on line. Also completed project: E-Disclosure: Strategies for Providing Legally Effective Consumer Protection Disclosures and Notices by Electronic Means.

## **RECENT PUBLIC AND CONTINUING LEGAL EDUCATION**

National Association of Chapter Thirteen Trustees, Who Uses Bankruptcy: A Statistical Profile, Anaheim, CA, August 2011.

Podcast presentation, Pros and Cons of a Bankruptcy Chapter for States, American Bankruptcy Institute, April 2011. Available at: <http://podcast.abi.org/>.

Speaker, Unintended Consequences of the Dodd-Frank Wall Street Reform and Consumer Protection Act, American Bankruptcy Institute Annual Spring Meeting, National Harbor, Md., April 2011.

Podcast presentation, A Conversation with Prof. Kathleen Engel, author of THE SUBPRIME VIRUS, March 2011. Available at <http://podcast.abi.org/>.

Educational Press Briefing, Experts Discuss Supreme Court Decision in Ransom v. FIA Card Services, January 2011. Available at [http://www.abiworld.org/webinars/2011/Ransom\\_FIA/index.html](http://www.abiworld.org/webinars/2011/Ransom_FIA/index.html).

Speaker, Bankruptcy Intensive Training, National Consumer Law Center Consumer Rights Litigation Conference, Boston, November 2010.

Speaker, Caselaw Update, National Association of Consumer Bankruptcy Attorneys Fall Workshop, Puerto Rico, November 2010.

Speaker, The Big Four: U.S. Supreme Court Bankruptcy Decisions in 2009-2010, Consumer Bankruptcy Conference, University of Texas Continuing Legal Education, Galveston, August 2010.

Speaker, Caselaw Update, National Association of Consumer Bankruptcy Attorneys Annual Meeting, San Francisco, April 2010.

Speaker, Treatment of Home Mortgages in Consumer Bankruptcy, National Association of Consumer Bankruptcy Attorneys Annual Meeting, Chicago, Ill., May 2009.

Keynote Speaker, Comparative Consumer Bankruptcy, Insolvency Trustee Service Australia, Sydney, Australia, November 2008.

Speaker, Means Testing in Consumer Bankruptcy, National Association of Consumer Bankruptcy Attorneys Fall Workshop, Hilton Head, S.C., October 2008.

Speaker, Collateral Issues in Consumer Bankruptcy, National Association of Consumer Bankruptcy Attorneys Annual Meeting, Hollywood, CA, May 2008.

Speaker, Arbitration in Bankruptcy and Treatment of Real Estate Leases in Bankruptcy, Southeastern Bankruptcy Law Institute, Atlanta, Ga., April 2007.

Speaker, Fraud, Deception and Unfairness: The Enforcers' Theories of Liability, Consumer Protection Conference, ABA Section of Antitrust Law, Georgetown University, Washington, D.C., January 2007.

Co-chair, Steering Committee for One-Year Anniversary Program on the 2005 Bankruptcy Act, American Bankruptcy Institute, Washington, D.C., October, 2006.

## **SERVICE RELATED TO LEGAL EDUCATION**

Association of American Law Schools:

Chair (2008), Section on Creditors' and Debtors' Rights. Also chaired program committee for the section's meeting in October 2007 in conjunction with the National Conference of Bankruptcy Judges.

Chair (2006), Section on Contract Law; also Executive Committee of the Section (2003-2007, 1997). Chaired 2007 annual meeting program on "New Private Ordering," published 2007, Arizona Law Review.

Planning Committee (2004-2005), Professional Development Conference on Contract Law.

Committee to Review Scholarly Papers for the 1999 Annual Meeting.

Chair (1996), Section on Commercial and Related Consumer Law, organized 1997 section program and law review symposium (75 WASH. U. L. Q. 1 et seq. 1997), "Consumer Protection and the Uniform Commercial Code."

Chair (1995), Section on Creditors' and Debtors' Rights, organized 1996 annual meeting program, "Streamlining Chapter 11."

Service at the University of Arizona:

Chair, Faculty Research, Enrichment and Development Committee, 2011-12, 2009-2010

Chair, Self-Study Committee, Fall, 2010

Chair, Faculty Appointments Committee, 2008-2009, 2000-2002 (member 1998-2006, 2007 to 2009)

Member, Dean Search Committee, 2008-2009

Bell Award for Faculty Service, 2008

Chair, University Committee on Academic Freedom and Tenure, 2005-2006 (vice chair, 2004-05; member, 2003-2006)

Chair, Ad Hoc Committee on Student Transfers, 2007

Member, College of Law Executive Committee, 2006-2007

Member, Five-Year Review Committee for Dean Toni Massaro, 2003-2004  
Member, Ad Hoc Committee on Future Planning, 2003-2004  
Chair, Faculty Enrichment Committee, 1999-2000  
Advisor, ACLU Student Organization, 1999 to present

### **PROFESSIONAL AND SCHOLARLY ASSOCIATION MEMBERSHIPS**

American Law Institute; Law & Society Association; American Bankruptcy Institute.

### **COMMUNITY SERVICE**

Board of Directors, Amigos de las Americas, Tucson Chapter, 2006-2010 (youth service and leadership organization, training high school students for summer service in Latin America).

President and Board Member, ACLU of Arizona, 1998-2006.

### **PERSONAL**

Born in Boston, October 6, 1950.

Married (to David R. Wohl). Two children (Robert B. Wohl, born in 1988, and Emma R. B. Wohl, born in 1991).