

D. GORDON SMITH

The University of Wisconsin Law School
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Academics

Tenure-Track Appointments

University of Wisconsin Law School, Madison, Wisconsin

- Professor of Law, 2002-Present
- Associate Director, Initiative for Studies in Technology Entrepreneurship (INSITE), 2002-Present
- Faculty, Master of Science in Biotechnology, 2004-Present
- Faculty, Global Legal Studies Initiative, 2004-Present

Lewis & Clark Law School, Portland, Oregon

- Associate Professor of Law, 1997-2002 (tenured 2000)
- Assistant Professor of Law, 1994-1997

International Appointments

Suffolk University Law School – Summer Law Program, Lund, Sweden

- University of Lund, June 2005 (“International Corporations”)

Justus Liebig Universität, Gießen, Germany

- Faculty exchange program, June 2004 (“Venture Capital Contracting”)

University of International Business & Economics, Beijing, China

- East Asian Legal Studies Center, May 2004 (“Venture Capital Contracting”)

Management Development Institute, Gurgaon, India

- Faculty Development Program, January 2004 (Center for International Business Education & Research)

The University of San Diego School of Law – Paris Institute, Paris, France

- Institute on International & Comparative Law, July 2002 (“International Corporations”)

The University of Sydney, Sydney Australia

- International Faculty in Corporate, Securities & Finance Law, November 2001 & August 2003 (“Emerging Businesses and Venture Capital”)

Helsinki University of Technology, Helsinki, Finland

- Executive MBA Program, June 2001 (Seminar on “Current Issues in Corporate Governance”)

Visiting Appointments

Vanderbilt University Law School, Nashville Tennessee

- Visiting Professor of Law, 2001-2002

Arizona State University College of Law, Tempe, Arizona

- Visiting Associate Professor of Law, Spring 1999

Washington University School of Law, St. Louis, Missouri

- Visiting Associate Professor of Law, Fall 1998

Current Courses

Business Associations

- Published casebook (see below) covering the law of agency, general partnerships, hybrid entities (LLPs, LPs, and LLCs), and corporations.

Law & Entrepreneurship

- Publishing casebook (see below) with materials relating to how businesses raise capital from startup through initial public offering, including venture capital, franchising, strategic alliances, secured debt, etc.

Contracts

- Use the “Wisconsin Materials” (STEWART MACAULAY ET AL., CONTRACTS: LAW IN ACTION) to explore the role of contracts in society.

Honors & Awards

- Faculty Graduation Speaker, University of Wisconsin Law School, May 12, 2006 (elected by graduating class)
- Team Member, Collaborative Grant Award for project entitled “Technology Entrepreneurship & Institutions: Contemporary Issues and International Insights,” from the Center for World Affairs and the Global Economy (WAGE), University of Wisconsin, 2005-2008
- Corporate Law Scholar in Residence, Widener University School of Law, Wilmington, Delaware, April 2005

Associations

- Member, American Law Institute, 2006-Present (elected by members)
- Member, Delaware Bar
- Member, American Law & Economics Association
- Member, Law & Society Association

Law School Service

- Substantial service on faculty committees, including Academic Planning Committee, Tenure and Promotion, Appointments, Building, Curriculum, Judicial Clerkship, and Strategic Planning
- Chair-elect, Section on Business Associations, Association of American Law Schools, 2006-2007
- Editor, University of Wisconsin Legal Studies Research Paper Series, Social Science Research Network, 2005-Present
- Assisted students in organizing conference on “Economic Globalization and Corporate Governance,” held at the University of Wisconsin Law School, March 11-12, 2005. Papers to be published in the WISCONSIN INTERNATIONAL LAW JOURNAL
- Organized faculty working paper series, University of Wisconsin Law School, 2003-04
- Organized conference on “Latter-day Saint Perspectives on Law,” held at Brigham Young University on October 19, 2001. Mormon law professors explored issues of criminal law, religious liberties, contract law, and corporate law. Papers published in 2003 BYU LAW REVIEW.
- Organized the Law & Entrepreneurship Research Conference, held at Northwestern School of Law of Lewis & Clark College, Portland, Oregon on October 20, 2000. An interdisciplinary conference of legal, finance, and management scholars, focusing on a wide variety of issues relating to law and entrepreneurship.
- Organized 1997 Lewis & Clark Law Forum, “Financing Innovation: The Future of Capital Formation for Small and Emerging Businesses,” held at Northwestern School of Law of Lewis & Clark College, Portland, Oregon on September 26, 1997. Papers published in 2 J. SMALL & EMERGING BUS. L. 1-298 (1998).
- Founding Faculty Advisor, *The Journal of Small and Emerging Business Law*

Education

The University of Chicago Law School, Chicago, Illinois

- J.D., with honors, 1990
- Law Review Managing Board, Comment Editor, 1989-1990
- Law Review Staff Member, 1988-1989
- Bradley Law and Government Fellow, 1990 (selected by faculty)

Brigham Young University, Provo, Utah

- B.S. (Accounting), *magna cum laude*, 1986

Legal Experience

Skadden, Arps, Slate, Meagher & Flom, Wilmington, Delaware

- Corporate Associate, 1991-1994

Judge W. Eugene Davis, Fifth Circuit Court of Appeals, Lafayette, Louisiana

- Clerk, 1990-1991

Publications

Casebooks

- BUSINESS ORGANIZATIONS: CASES, PROBLEMS & CASE STUDIES (Aspen 2004) (with Cynthia A. Williams)
- THE LAW OF ENTREPRENEURIAL FINANCE: CASES & MATERIALS (Aspen, forthcoming 2007) (with Larry T. Garvin)

General Law Review Articles

- *The Exit Structure of Venture Capital*, 53 UCLA L. REV. 315 (2005)
- *The Critical Resource Theory of Fiduciary Duty*, 55 VAND. L. REV. 1399 (2002)
- *Toward a New Theory of the Shareholder Role: "Sacred Space" in Corporate Transactions*, 80 TEXAS L. REV. 261 (2001) (with Robert B. Thompson), reprinted in 44 Corporate Practice Commentator 453 (2002) (selected as one of the Best Corporate & Securities Articles of 2002 in a poll of corporate and securities law professors)
- *The Shareholder Primacy Norm*, 23 J. CORP. L. 277 (1998)
- *Corporate Governance and Managerial Incompetence: Lessons From Kmart*, 74 N.C. L. REV. 1037 (1996)
- *Beyond "Public Concern": New Free Speech Standards for Public Employees*, 57 U. CHI. L. REV. 249 (1990) (student comment)

Articles Published as Part of a Symposium

- *The Exit Structure of Strategic Alliances*, 2005 ILL. L. REV. 303 (2005), for “Uncorporation: A New Age?,” Chicago, Illinois on April 23, 2004
- *Independent Legal Significance, Good Faith, and the Interpretation of Venture Capital Contracts*, 40 WILLAMETTE L. REV. 825 (2004), for “Venture Capital after the Bubble,” Portland, Oregon on March 5, 2004
- *A Proposal to Eliminate Director Standards From the Model Business Corporations Act*, 68 U. CIN. L. REV. 1201 (1999), for the Twelfth Annual Conference on Corporate Law, University of Cincinnati School of Law, Cincinnati, Ohio on March 11, 1999
- *Team Production in Venture Capital Investing*, 24 J. CORP. L. 949 (1999), for the Sloan Conference on Team Production in Business Associations, Georgetown Law Center, Washington, D.C. on March 4-5, 1999
- *Venture Capital Contracting in the Information Age*, 2 J. SMALL & EMERGING BUS. L. 133 (1998), for “Financing Innovation: The Future of Capital Formation for Small and Emerging Businesses,” Northwestern School of Law of Lewis & Clark College, Portland, Oregon on September 26, 1997
- *Chancellor Allen and the Fundamental Question*, 21 SEATTLE U. L. REV. 577 (1998), for “A Tribute to Chancellor William T. Allen”

Business Articles

- *Experience, Contractual Covenants and Venture Capitalists' Responses to Unmet Expectations*, 2004 FRONTIERS OF ENTREPRENEURSHIP RESEARCH (with Annaleena Parhankangas and Hans Landström), for 2004 Babson College/ Kauffman Foundation Entrepreneurship Research Conference, Hunter Centre for Entrepreneurship at Strathclyde, University of Strathclyde, Glasgow, Scotland on June 3-5, 2004 (received Taylor & Francis Publishers Award for Excellence in Research on the Topic of Venture Capital)
- *How Early Stage Entrepreneurs Select Venture Capitalists*, J. PRIVATE EQUITY (Winter/Spring 2001) (also in 1999 FRONTIERS OF ENTREPRENEURSHIP RESEARCH), for the 1999 Babson College/ Kauffman Foundation Entrepreneurship Research Conference, The Darla Moore School of Business, University of South Carolina, Columbia, South Carolina on May 12-15, 1999

Blogs

- *Conglomerate* (<http://www.theconglomerate.org/>)
- *Times & Seasons* (<http://www.timesandseasons.org/>)

Selected Speeches & Presentations

- “Bit by Bit: A Case Study of Bloggership,” Conference on Bloggership: How Blogs are Transforming Legal Scholarship, The Berkman Center for Internet and Society, Harvard Law School, Cambridge, Massachusetts (April 28, 2006)
- “New Questions About Relational Contracts,” Harvard Negotiation Law Review Symposium, Harvard Law School, Cambridge, Massachusetts (April 26, 2006)
- “Law & Entrepreneurship: Do Courts Matter?” Entrepreneurial Business Law Journal Conference, Moritz College of Law, The Ohio State University, Columbus, Ohio (February 17, 2006)
- “Venture Capital Startups and the Fiduciary Duty to Creditors,” Twilight in the Zone of Insolvency: Fiduciary Duty and Creditors of Troubled Companies, University of Maryland School of Law, Baltimore, Maryland (November 4, 2005)
- “Fiduciary Law & Entrepreneurship,” Technology Transfer Society 2005 Annual Conference, Kauffman Foundation, Kansas City, Missouri (September 30, 2005)
- “Fiduciary Law & Entrepreneurship,” Corporate Law Scholar in Residence Lecture, Widener University School of Law, Wilmington, Delaware (April 18, 2005)
- “Recent Developments in Corporate Fiduciary Law,” Super CLE Week, University of Minnesota Law School, Minneapolis, Minnesota (March 17, 2005)
- “Control and Exit in Venture Capital Relationships,” Berkeley Law & Economics Workshop, University of California – Berkeley (January 31, 2005)
- “Comment on ZORINA KHAN, THE DEMOCRATIZATION OF INVENTION: PATENTS AND COPYRIGHTS IN AMERICAN ECONOMIC DEVELOPMENT, 1790-1920,” History of Intellectual Property Conference, University of Wisconsin Law School (November 13, 2004)
- “Venture Capital Exits,” Academy of Management Annual Meeting, New Orleans, Louisiana (August 9, 2004)
- “The Governance Structure of Strategic Alliances,” Conference on Uncorporation: A New Age?, University of Illinois College of Law (sponsor), Chicago, Illinois (April 23, 2004)
- “Tale of Two Doctrines: Good Faith & Independent Legal Significance,” Conference on Venture Capital After the Bubble, Willamette University College of Law (sponsor), Portland, Oregon (March 5, 2004)
- “Corporate Governance Practices, Firm Strategy & Competitive Advantage,” State of Wisconsin Investment Board, Directors’ Summit, (October 2, 2003) (panel with Professor Mason Carpenter)
- “The Law of Opportunism,” Law & Society Association Annual Meeting, Pittsburgh, Pennsylvania (June 7, 2003)

- “Pedagogical Uses of Field Study Research in the Law School Classroom,” Sloan Project on Business Associations, Georgetown University Law Center (November 2, 2002)
- “The Critical Resource Theory of Fiduciary Duty,” University of Minnesota Law School, Minneapolis, Minnesota (March 7, 2002)
- “Exits,” University of Wisconsin Law School, Madison, Wisconsin (February 15, 2002)
- “The Critical Resource Theory of Fiduciary Duty,” Michael E. Moritz College of Law of Ohio State University, Columbus, Ohio (February 1, 2002)
- “The Critical Resource Theory of Fiduciary Duty,” Florida State University College of Law, Tallahassee, Florida (January 18, 2002)
- “International Trends in Entrepreneurial Businesses,” University of Sydney Faculty of Law, Sydney, Australia (November 19, 2001)
- “Prosperity,” Conference on LDS Perspectives on Law, J. Reuben Clark Law Society, Brigham Young University, Provo, Utah (October 19, 2001)
- “The Critical Resource Theory of Fiduciary Duty,” Vanderbilt University Law School, Nashville, Tennessee (October 16, 2001)
- “The Critical Resource Theory of Fiduciary Duty,” Cecil C. Humphrey’s School of Law, University of Memphis, Memphis, Tennessee (October 8, 2001)
- “Culture and Convergence in Financial Contracting: An International Comparative Study of Venture Capital Contracts,” Law & Society Association Annual Meeting, Central European University, Budapest, Hungary (July 4-7, 2001)
- “Control Over Exit in Venture Capital Relationships,” 2001 Annual Meeting of the European Financial Management Association, Lugano, Switzerland (June 27-30, 2001)
- “The Competition for Entrepreneurial Firms: A Case Study of Oregon,” 21st Annual Babson College/Kauffman Foundation Entrepreneurship Research Conference, Jönköping International Business School, Jönköping, Sweden (June 14-16, 2001)
- “Current Issues in Corporate Governance,” Helsinki University of Technology, Helsinki, Finland (June 8, 2001)
- “Control Over Exit in Venture Capital Relationships,” Law & Entrepreneurship Research Conference, Northwestern School of Law of Lewis & Clark College, Portland, Oregon (October 20, 2000)
- “Control Over Exit in Venture Capital Relationships,” Vanderbilt University Law School, Nashville, Tennessee (October 16, 2000)
- “The Market for Entrepreneurial Firms,” 2000 Lewis & Clark Law Forum, Northwestern School of Law of Lewis & Clark College, Portland, Oregon (October 7, 2000)

- “Control Over Exit in Venture Capital Relationships,” Boston College Law School, Boston, Massachusetts (September 25, 2000)
- “Looking Backward on the Modern Corporation,” Federalist Society’s Fifth Annual Corporate Governance Conference, New York, New York (September 22, 2000)
- “Venture Capital Contracting,” E-business and law seminar 2000 on *Legal and valuation issues of E-business*, Tias Business School, Tilburg University, Tilburg, The Netherlands (September 13-15, 2000)
- “Registration Rights in Venture-Backed Companies,” 20th Annual Babson College/Kauffman Foundation Entrepreneurship Research Conference, Babson College, Wellesley, Massachusetts (June 8-10, 2000)
- “The Governance Role of Uniformity,” University of Notre Dame Law School, South Bend, Indiana (December 13, 1999)
- “Teaching Venture Capital in the Basic Course,” Conference on Teaching Corporate Law, University of Georgia School of Law, Athens, Georgia (October 15-16, 1999)
- “How Early Stage Entrepreneurs Evaluate Venture Capitalists,” 19th Annual Babson College/Kauffman Foundation Entrepreneurship Research Conference, The Darla Moore School of Business, University of South Carolina, Columbia, South Carolina (May 12-15, 1999)
- “The Limits of Fiduciary Duty in Corporate Law,” Arizona State University College of Law, Tempe, Arizona (April 20, 1999)
- “A Proposal to Eliminate Director Standards From the Model Business Corporations Act,” Twelfth Annual Conference on Corporate Law, University of Cincinnati School of Law, Cincinnati, Ohio (March 11, 1999)
- “Team Production in Venture Capital Contracting,” Sloan Conference on Team Production in Business Associations, Georgetown Law Center, Washington, D.C. (March 4-5, 1999)
- “The Limits of Fiduciary Duty in Corporate Law,” Washington University School of Law, St. Louis, Missouri (December 1, 1998)
- “The Virtual Chancery Court,” Workshop on Business Associations, Association of American Law Schools, Washington, D.C. (May 1, 1998)
- “Venture Capital in the Information Age,” J. Reuben Clark Law School, Brigham Young University, Provo, Utah (January 30, 1998)
- “Venture Capital in the Information Age,” 1997 Lewis & Clark Law Forum, Lewis & Clark Law School, Portland, Oregon (September 26, 1997)
- “The Virtual Chancery Court,” Computer Assisted Legal Instruction (CALI) Annual Meeting, Chicago, Illinois (June 27, 1997)

- “Three Modern Myths About Shareholder Primacy in Corporate Law,” The University of Iowa Law School (January 27, 1997)
- “God, Mammon & Corporate Law,” Alumni and Friends of Lewis & Clark Law School, San Francisco, California (February 23, 1996)
- “Kmart and Corporate Governance,” Board of Visitors of Lewis & Clark Law School, Portland, Oregon (September 22, 1995)

Selected Media Mentions

- Editorial Board, *Judging Disney*, WALL STREET JOURNAL, August 11, 2005 (discussing the *Disney* decision by the Delaware Court of Chancery)
- Susan Strother Clarke, *Ovitz Ruling Shortchanges Shareholders*, ORLANDO SENTINEL, August 10, 2005 (discussing the *Disney* decision by the Delaware Court of Chancery)
- *Disney is still the happiest place on earth*, Marketplace Radio (American Public Media), August 9, 2005 (discussing the *Disney* decision by the Delaware Court of Chancery)
- Andrew Countryman, *Deadline in SEC's review of governance: Most heat centers on nominations by shareholders*, CHICAGO TRIBUNE, June 6, 2003 (commenting on reform proposals by the SEC)
- Ariana Eunjung Cha, “*Johnny Appleseed*” for a risky field; *Doerr’s ambition paid off*, WASHINGTON POST, November 13, 2002 (arguing that venture capitalists were not manipulating the stock market during the internet bubble)
- Cynthia Cotts, *Delaware Attorneys Turn Profs, Bring Corporate Law to the Web*, THE NATIONAL LAW JOURNAL, February 2, 1998 (describing the Virtual Chancery Court)
- Charlotte Mulhern, *It's The Law . . . and small business is on the docket*, ENTREPRENEUR MAGAZINE, January 1, 1998 (discussing course on the law of entrepreneurial finance)