

## **DAVE FAGUNDES**

4104 ML King Blvd., Room 431J, Houston, TX 77204-6060  
tel. (713) 743-1431 · fax (713) 743-2238 · dfagunde@central.uh.edu · @Dave\_Fagundes  
<http://papers.ssrn.com/author=522757>

### **ACADEMIC APPOINTMENTS**

<b>University of Houston Law Center</b> Baker Botts LLP Professor of Law Assistant Dean for Faculty Development Professor of Law Visiting Professor of Law	Houston, TX September 2018 – present October 2016 – present August 2016 – September 2018 July 2014 – July 2016
<b>Southwestern Law School</b> Professor of Law Associate Professor of Law	Los Angeles, CA July 2011 – May 2016 June 2007 – June 2011
<b>University of Miami School of Law</b> Visiting Professor of Law	Coral Gables, FL August 2012 – December 2012
<b>Zurich ETH (Federal Technical Institute)</b> Visiting Scholar	Zurich, Switzerland June 2010 – July 2010
<b>University of Chicago Law School</b> Bigelow Fellow and Lecturer in Law	Chicago, IL June 2005 – May 2007
<b>Georgetown University Law Center</b> Visiting Research Fellow	Washington, DC January – April 2004

### **ARTICLES**

- Private Ownership of Public Facts: Docudramas, Deals, and Life Story Facts*, 57 U.C. DAVIS L. REV. 743 (with Jorge Contreras)
- The Life Story Rights Puzzle*, 14 HARV. SPORTS & ENTMT. L.J. 153 (2023) (with Jorge Contreras)
- The Coming Copyright Judge Crisis*, 98 N.Y.U. L. REV. ONLINE 1 (2023) (with Saurabh Vishnubhakat)
- Copyright's Administrative Law*, 68 J. COPYRIGHT SOC'Y U.S.A. 417 (2022) (with Saurabh Vishnubhakat)
- The City's Second Amendment*, 105 CORNELL L. REV. 101 (2021) (with Darrell Miller)
- Abandoning Copyright*, 62 WM. & MARY L. REV. 487 (2020) (with Aaron Perzanowski)
- Law & Neighborhood Names*, 72 VAND. L. REV. 757 (2019) (with Nestor Davidson)
- Reviewed by Rashmi Dyal-Chand in the *Journal of Things We Like Lots (JOTWELL)*, June 24, 2019, <https://property.jotwell.com/whats-in-a-name/>

## ARTICLES (CONT'D)

*Housing, Healthism, and the HUD Smoke-Free Policy*, 113 NW. U. L. REV. 917 (2019) (with Jessica L. Roberts) (selected for print journal from online edition)

*Clown Eggs*, 94 NOTRE DAME L. REV. 1313 (2019) (with Aaron Perzanowski)

*Why Less Property Is More*, 103 IOWA L. REV. 1361 (2018)

- Reviewed by Shelby D. Green in the *Journal of Things We Like Lots (JOTWELL)*, Dec. 4, 2018, <https://property.jotwell.com/giving-and-including-for-happiness/>

*Buying Happiness*, 58 WM. & MARY L. REV. 1851 (2017)

- Winner, 2016 Southeastern Association of Law Schools (SEALS) Call for Papers Competition

*The Social Norms of Waiting in Line*, 41 L. & SOC. INQUIRY 1179 (2017) (peer reviewed)

*The Moral Psychology of Copyright Infringement*, 100 MINN. L. REV. 2434 (2016) (with Christopher Buccafusco)

*Market Harm, Market Help, and Fair Use*, 17 STAN. TECH. L. REV. 359 (2014)

*Efficient Copyright Infringement*, 98 IOWA L. REV. 1791 (2013)

*Talk Derby to Me: Emergent Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. 1093 (2012)

- Reviewed by Chris Sprigman in the *Journal of Things We Like Lots (JOTWELL)*, May 16, 2011, <http://ip.jotwell.com/what-can-roller-derby-girls-teach-us-about-ip-law-answer-more-than-you-think/>

*Costly Intellectual Property*, 64 VAND. L. REV. 677 (2012) (with Jonathan Masur)

*Property Rhetoric and the Public Domain*, 94 MINN. L. REV. 652 (2010)

- Selected for 2009 Stanford/Yale Junior Faculty Forum
- Reviewed by Michael Carroll in the *Journal of Things We Like Lots (JOTWELL)*, March 7, 2011, <http://ip.jotwell.com/the-public-domain-through-property-s-lens/>

*Crystals in the Public Domain*, 50 B.C. L. REV. 139 (2009)

*State Actors as First Amendment Speakers*, 100 NW. U. L. REV. 1637 (2006)

- Reprinted in THE FIRST AMENDMENT HANDBOOK 2007-08 (Rodney Smolla, ed.)
- Cited in *Citizens United v. Federal Elec. Comm'n*, 558 U.S. 310, 392 n.7 (2010) (Scalia, J., concurring), 428 n.55 (Stevens, J., dissenting)

## BOOK CHAPTERS

*Toponymy and Law: Neighborhood Names in Legal Perspective*, in NAMES, NAMING, AND THE LAW: ONOMASTICS, IDENTITY, POWER, AND POLICY (I.M. Nick ed., 2023) (with Nestor Davidson)

## **BOOK CHAPTERS (CONT'D)**

*Revisiting Roller Derby's Master Roster*, in CREATIVITY WITHOUT LAW (Kate Darling & Adam Perzanowski eds., NYU Press, 2016)

*Labor and/as Love: Roller Derby's Knowledge Commons*, in GOVERNING KNOWLEDGE COMMONS (Brett Frischmann, Michael Madison & Katherine Strandburg eds., Oxford Univ. Press 2014)

*Explaining the Persistent Myth of Property Absolutism*, in THE PUBLIC NATURE OF PRIVATE PROPERTY (Robin Malloy & Michael Diamond eds., Ashgate Press 2011)

## **OTHER PUBLICATIONS**

Essay, *Who Is the Bad Art Judge? Aesthetic Nondiscrimination in Andy Warhol Foundation v. Goldsmith*, N.Y.U. L. REV. F., Dec. 28, 2023

Introduction, *Twenty-Sixth Annual Frankel Lecture*, 59 HOUS. L. REV. 771 (2022)

Essay, *Peter Gerhart and Contemporary Property Theory*, 72 CASE W. RES. L. REV. 301 (2021)

Introduction, *Twenty-Fourth Annual Frankel Lecture*, 57 HOUS. L. REV. 773 (2020)

Introduction, *What's Real? IP Through the Lens of Property Theory*, 57 HOUS. L. REV. 261 (2019)

Commentary, *Recent Cases on Verbatim Fair Use*, TEXAS ADVOCATE, Spring 2019

Book Review, 57 AM. J. LEGAL HIST. 256 (reviewing Mark Rose, *Authors in Court: Scenes From the Theater of Copyright*) (2017)

Essay, *The Tragedy of the Neutral Ground*, 90 TUL. L. REV. ONLINE 17 (2016)

Commentary, *Property, Morality, and Moral Psychology*, 2 TEX. A&M J. REAL PROPERTY L. 301 (2015)

Commentary, *Contextualizing Fan Action Committees*, 6 HARV. J. SPORTS & ENTM'T L. 169 (2015)

Reply, *The Varieties of Motivation and the Problem of Supply*, 90 TEX. L. REV. SEE ALSO 311 (2012)

- Responding to Robert Ellickson, *How Norm Entrepreneurs and Membership Associations Contribute to Private Ordering*, 90 TEX. L. REV. SEE ALSO 247 (2012)

Book Review, *The Knockoff Economy: How Imitation Sparks Innovation* (K. Raustiala and C. Sprigman; Oxford University Press, 2012), 3 IP LAW BOOK REV. 51 (April 2013)

## WORKS IN PROGRESS

*Automating Trust(s)*

*Ending Intellectual Property* (with Aaron Perzanowski)

*Truth, Lies & Copyright*

## SELECTED PRESENTATIONS

*The Life Rights Puzzle*

- Workshop on Trademark & Unfair Competition, University of Pennsylvania Law School, Philadelphia, PA, Oct. 7, 2023 (selected from call for papers)
- Intellectual Scholars Property Conference (IPSC), Stanford Law School, Stanford, CA, Aug. 11, 2022
- Southeast Association of Law Schools (SEALS) Conference, Destin, FL, Aug. 1, 2022
- Association for Law, Property & Society (ALPS) Annual Meeting, Tulane Law School, May 13, 2021 (virtual)

*Copyright's Administrative Law*

- Intellectual Property Scholars Conference, Stanford Law School, July 17, 2020 (virtual)
- Faculty Workshop, Case Western Reserve University School of Law, Nov. 12, 2020 (virtual)
- Works in Progress Workshop, University of Houston Law Center, Feb. 12, 2021 (virtual)

*Abandoning Copyright*

- Association for Law, Property & Society (ALPS) Annual Meeting, Syracuse University School of Law, Syracuse, NY, May 18, 2019
- Intellectual Property Scholars Conference (IPSC), DePaul University School of Law, Chicago, IL, Aug. 8, 2019
- M3 Workshop, University of Houston Law Center, Houston, TX, Jan. 24, 2020

*The City's Second Amendment*

- Guns & Localism Workshop, Duke Law School, April 24, 2020 (virtual)
- State & Local Government Workshop, University of Virginia School of Law, Charlottesville, VA, Sept. 20, 2019
- Faculty Workshop, South Texas College of Law, Houston, TX, Oct. 11, 2019

*Law & Neighborhood Names*

- ABA Real Property, Trusts & Estates Section, "Professor's Corner," Mar. 12, 2019
- Association for Law, Property & Society (ALPS) Annual Meeting, University of Maastricht, Maastricht, NL, May 31, 2018

*Clown Eggs*

- Chapman Distinguished Lecture, University of Tulsa Law School, Tulsa, OK, Oct. 14, 2018
- Association for Law, Property & Society (ALPS) Annual Meeting, University of Maastricht, Maastricht, NL, June 1, 2018
- Intellectual Scholars' Property Conference, Cardozo Law School, New York, NY, Aug. 8, 2017 (plenary session)

## SELECTED PRESENTATIONS, CONT'D

### *Against "IP"*

- American Legal Fictions, Savannah Law School, Savannah, GA, Sept. 16, 2016
- Intellectual Property Scholars' Conference, Stanford Law School, Stanford, CA, Aug. 11, 2016

### *Why Less Property Is More*

- Property "Schmooze" Workshop, Texas A&M Law School, Ft. Worth, TX, Feb. 4, 2017
- Faculty Workshop, University of Kentucky College of Law, Lexington, KY, Nov. 20, 2016
- Faculty Workshop, South Texas College of Law, Houston, TX, Sept. 23, 2016
- Texas Legal Scholars Conference, SMU School of Law, Dallas, TX, Aug. 27, 2016

### *Buying Happiness*

- Call for Papers Awards Luncheon, SEALS Annual Meeting, Amelia Island, FL, Aug. 4, 2016
- Association for Law, Property, and Society (ALPS) Annual Meeting, Queens University School of Law, Belfast, Northern Ireland, May 20, 2016
- Texas Legal Scholars Conference, University of Houston Law Center, Houston, TX, August 28, 2015
- Faculty Workshop, South Texas College of Law, Houston, TX, Sept. 18, 2015

### *Waiting in Line: Norms, Markets & the Law*

- Central States Law School Association Scholarship Conference, Louisiana State Law School, New Orleans, LA, Oct. 11, 2014
- Faculty Workshop, University of Houston Law Center, Houston, TX, January 26, 2015
- Faculty Workshop, Tulane Law School, New Orleans, LA, March 9, 2015

### *The Decline and Fall of the Master Roster*

- Creativity Without Law Conference, Case Western Reserve University Law School, Cleveland, OH, Nov. 7, 2014
- Association of Law, Property & Society (ALPS) Annual Meeting, University of Georgia Law School, Athens, GA, May 3, 2015

### *Toward a Moral Psychology of Property*

- Review Symposium: Peter Gerhart's *Property Law & Social Morality*, Texas A&M Law School, Fort Worth, TX, Oct. 24, 2014

### *The Moral Psychology of Copyright Infringement*

- Works in Progress—Intellectual Property Conference, Santa Clara Law School, Santa Clara, CA, Feb. 7, 2014
- Workshop on Intellectual Property & Entertainment Law, UCLA Law School, Los Angeles, CA, Nov. 8, 2015

## SELECTED PRESENTATIONS, CONT'D

### *The End of Copies*

- Michigan State University Law School 2013 Conference on Communications and Information Law (CICL '13), Traverse City, MI, May 15, 2013
- Association of Law, Property, and Society (ALPS) Conference, University of Minnesota Law School, Minneapolis, MN, April 26, 2013
- ASU Legal Scholars Conference, Arizona State University Sandra Day O'Connor College of Law, Tempe, AZ, March 9, 2013

### *Efficient Copyright Infringement*

- Faculty Workshop, University of Miami Law School, Coral Gables, FL, November 7, 2012
- IP Scholarship Symposium, Berkeley Law School, Berkeley, CA, September 17, 2012
- Panel: "Property: With, For and Against Others," Law & Society Association Annual Meeting, Honolulu, HI, June 5, 2012

### *Copyright and Accession*

- Association of Law, Property, and Society (ALPS) Conference, Georgetown Law Center, Washington, DC, March 2, 2012
- Works in Progress—Intellectual Property (WIPIP) Conference, University of Houston Law Center, Houston, TX, February 10, 2012
- PrawfsFest! IX Workshop, Loyola Law School, Los Angeles, CA, Dec. 7, 2012

*Labor and/as Love: Roller Derby as Cultural Commons*, Workshop on Convening Cultural Commons, New York University School of Law, New York, NY, Sept. 23, 2011

### *Talk Derby to Me: Emergent Intellectual Property Norms Governing Roller Derby Pseudonyms*

- Faculty Workshop, University of Miami Law School, Miami, FL, Jan. 17, 2012
- Faculty Workshop, Rogers College of Law, University of Arizona, Tucson, AZ, Dec. 5, 2011
- Faculty Workshop, University of San Diego Law School, San Diego, CA, Oct. 21, 2011
- Faculty Workshop, Sandra Day O'Connor College of Law, Arizona State University, Tempe, AZ, Sept. 26, 2011
- Junior Scholars in Intellectual Property Workshop, Michigan State University College of Law, East Lansing, MI, April 15, 2011 (competitive, blind peer-reviewed submission)
- Southwestern Law School Faculty Workshop, Southwestern Law School, Los Angeles, CA, March 22, 2011
- Boston IP Colloquium, Boston College Law School, Newton, MA, Oct. 18, 2010
- IP Scholars Conference, Berkeley Law School, Berkeley, CA, Aug. 12, 2010
- ETH-Zurich Works-in-Progress Seminar, Zurich, Switzerland, July 1, 2010
- Southern California Junior Law Faculty Workshop, Southwestern Law School, Los Angeles, CA, May 8, 2010
- West/Southwest Junior Faculty Works-in-Progress Conference, Arizona State University Law School, Tempe, AZ, Mar. 15, 2010
- PrawfsFest! IV Workshop on Public Law and Legal Theory, University of Miami Law School, Miami, FL, Dec. 9, 2008
- Workshop on the Public Nature of Private Property, Georgetown University Law Center, Washington, DC, Nov. 14, 2008

## SELECTED PRESENTATIONS, CONT'D

### *Costly Intellectual Property*

- Workshop for Junior Scholars on the Law and Economics of Intellectual Property and Competition, co-organized by the International Max Planck Research School for Competition and Innovation in Munich, and ETH-Zurich, Wildbad-Kreuth, Germany, June 21, 2010 (competitive, peer-reviewed submission)
- Junior Scholars in IP Workshop, Michigan State University College of Law, East Lansing, MI, Apr. 3, 2010 (competitive, blind peer-reviewed submission)
- Intellectual Property Scholars' Conference, Cardozo Law School, New York, NY, Aug. 6, 2009 (selected for conference plenary session)

### *Explaining the Persistent Myth of Property Absolutism*

- Faculty Presentation, Southwestern Law School, Los Angeles, April 20, 2010
- Junior Property Scholars Works-in-Progress Panel, AALS Annual Meeting, New Orleans, LA, Jan. 10, 2010 (selected from call for papers)

### *Explaining the Persistent Myth of Property Absolutism*

- PrawfsFest! V Workshop on Public Law and Legal Theory, Florida State University College of Law, Tallahassee, FL, May 1, 2009

### *Property Rhetoric and the Public Domain*

- Stanford/Yale Junior Faculty Forum, Stanford Law School, Stanford, CA, May 30, 2009 (competitive, blind peer-reviewed submission)
- Southern California Junior Law Faculty Workshop, California Western School of Law, San Diego, CA, Oct. 4, 2008
- Workshop on Property Transactions and Transitions in an Age of Globalization, Chapman Law School, Orange, CA, Feb. 16, 2008

### *Crystals in the Public Domain*

- Faculty Presentation, Southwestern Law School, Los Angeles, CA, Jan. 24, 2008
- PrawfsFest! II Workshop on Public Law and Legal Theory, Loyola Law School, Los Angeles, CA, Dec. 6, 2007

## SELECTED PANELS AND COMMENTARY

Moderator, "Academic Freedom and Discrimination in a Polarizing Time," Houston Law Review Frankel Lecture (Keynote by Jeannie Suk Gersen, Harvard Law School), Houston, TX, Nov. 19, 2021 (virtual)

Keynote Speaker, "How Much Is Your Life Story Worth?," University of Houston RED Talk, Houston, TX, Nov. 10, 2021

Invited presenter, "Who Owns Your Zoom Class?," Galveston College Faculty Enrichment Series, Jan. 8, 2021 (virtual)

Moderator, "Academic Freedom and Discrimination in a Polarizing Time," Houston Law Review Frankel Lecture (Keynote by Orly Lobel, University of San Diego Law School), Houston, TX, Oct. 25, 2019

## SELECTED PANELS AND COMMENTARY (CONT'D)

Commentator, Copyright Scholars Round Table, University of Pennsylvania School of Law, Philadelphia, PA, June 21-22, 2019 (commenting on Justin Hughes, “Rules, Standards, and Fair Use”)

Organizer and Moderator, “What’s Real? IP Through the Lens of Contemporary Property Theory,” IPIL National Conference, Santa Fe, NM, May 31-June 1, 2019

Panel moderator, “Property and New Technology,” Association for Law, Property & Society (ALPS) Annual Meeting, University of Maastricht, Maastricht, NL, June 1, 2018

Discussion Leader, “What Can We Learn from IP-Free Zones?,” Workshop on the Psychology and Sociology of Intellectual Property, Stanford Law School, Sept. 9-10, 2016

Senior Commentator, Junior Scholars in Intellectual Property (JSIP) workshop, Michigan State University School of Law, May 2016

Discussion Leader, Workshop on Termination of Copyright Transfers, Berkeley Law School, Berkeley, CA, Oct. 30, 2015

Panel moderator, “The Nexus of Physical and Intellectual Property,” Association of Law, Property & Society Annual Meeting, University of British Columbia, Vancouver, BC, May 2, 2014

Commentator, UCLA Entertainment/IP Professors’ Workshop, UCLA School of Law, Los Angeles, CA, November 10, 2013 (commenting on Ariel Katz, “E-Books, P-Books, and the Durapolist Puzzle”)

Invited speaker, “Copyright Year in Review,” HIPLA/IPIL Annual IP Institute, Galveston, TX, September 28, 2013

Panelist, *University of Miami Law Review* Symposium on Social Media & Law, University of Miami School of Law, Coral Gables, FL, February 16, 2013

Commentator, Roundtable on Raustiala & Sprigman’s *The Knockoff Economy*, Notre Dame Law School, South Bend, IN, Jan. 18, 2013

Panel chair/discussant, “Media and the Judicial Political System,” Law & Society Association Annual Meeting, Honolulu, HI, June 8, 2012

Panel chair, “Teaching Law: Contents and Methods in Different Contexts,” Law & Society Association Annual Meeting, Honolulu, HI, June 7, 2012

Organizer/host, PrawfsFest! IX Workshop, Loyola Law School, Los Angeles, CA, Dec. 7-8, 2011

Presenter, “Extralegal Governance of Property: Norms, Commons, and Roller Derby,” IP Innovations Student Seminar, University of Washington Law School, Seattle, WA, Oct. 11, 2011



## SELECTED PANELS AND COMMENTARY (CONT'D)

Panel moderator, “(How) Can Law Blogs Build Community in the Legal Academy?” Southeast Association of Law Schools (SEALS) Annual Conference, Hilton Head, SC, July 2011

Lead panelist, “Candidate Forums in the YouTube Era,” League of Women Voters of California Annual Convention, Ventura, CA, May 13, 2011

Panel moderator, “Concussions, Law, and Amateur Sports: Implications of Emerging Medical Science for the Regulation of Student Athlete Safety,” Collegiate Sports Law Symposium: The Business of Amateur Sports, Southwestern Law School, Los Angeles, CA, April 8, 2011

Panelist, “New Empirical and Theoretical Work on Judging and the Judicial Process”, Southeast Association of Law Schools (SEALS) 2010 Annual Conference, Palm Beach, FL, Aug. 4, 2010

Commentator, Workshop for Junior Scholars on the Law and Economics of Intellectual Property and Competition, co-organized by the International Max Planck Research School for Competition and Innovation, and ETH-Zurich, Wildbad-Kreuth, Germany, June 20, 2010 (commenting on Kate Darling, “Copyright and Uncharted Media: A Law and Economics Approach to Restricting Unknown-Use Licenses”)

Junior fellow, IPIL Conference: Celebrating Copyright’s TriCentennial, organized by University of Houston Law Center, Santa Fe, NM, June 5, 2010

## EDUCATION

**Harvard Law School**, Cambridge, MA

- J.D. *cum laude*, 2001
- Articles Editor, *Harvard Law Review*

**Harvard College**, Cambridge, MA

- A.B. in History *summa cum laude*, 1996
- Phi Beta Kappa
- Department of History Award for outstanding senior history student
- Philip Washburn Prize for best senior history thesis
- William Scott Ferguson Award for best sophomore history essay

## OTHER EMPLOYMENT

**Jenner & Block LLP**

Associate

Washington, DC

October 2002 – May 2005

**Judge David S. Tatel**, D.C. Circuit

Law Clerk

Washington, DC

August 2001 – August 2002

## RESEARCH AND TEACHING INTERESTS

Primary interests: Real and chattel property; copyright; real estate transactions; wills & trusts

Secondary interests: Moral and hedonic psychology; behavioral law & economics; animal law

## AWARDS, MEMBERSHIPS, ETC.

Contributing editor, JOTWELL (Journal of Things We Like (Lots)), 2012 – present

Peer reviewer

- *Yale Law Journal*; *Columbia Law Review*; *Stanford Journal of Law & Technology* (article submissions)
- Wolters-Kluwer; LexisNexis (proposed property law casebooks)
- Israel Science Foundation; Netherlands Organization for Scientific Research (grant applications)

Member, California Bar (admitted 2003)

Member, American Law Institute (elected 2020)

University of Houston Teaching Excellence Award, 2022-2023

UHLC Order of the Barons Professor of the Year, 2019-2020

Faculty Advisor

- *Houston Law Review*
- First-Gen Law Students