

## **D. GORDON SMITH**

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Associate Dean for Faculty and Curriculum  
Glen L. Farr Professor of Law  
J. Reuben Clark Law School  
Brigham Young University  
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### ***Academic Appointments***

#### *J. Reuben Clark Law School – Brigham Young University, Provo, Utah*

- Associate Dean for Faculty and Curriculum, 2009-Present
- Glen L. Farr Professor of Law, 2007-Present
- BYU Honors Program, Late Summer Honors Faculty, 2010
- Advisory Board, Rollins Center for Entrepreneurship and Technology, 2008-Present
- Steering Committee, Center for the Study of Europe, 2009-Present

#### *University of Wisconsin Law School, Madison, Wisconsin*

- Professor of Law, 2002-2007
- Associate Director, Initiative for Studies in Technology Entrepreneurship, 2002-2007
- Faculty, Master of Science in Biotechnology, 2004-2007
- Faculty, Global Legal Studies Initiative, 2004-2007
- Institute for Legal Studies Distinguish Scholar, 2009-Present

#### *Lewis & Clark Law School, Portland, Oregon*

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

### ***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 & Grants***

### **Casebook**

- BUSINESS ORGANIZATIONS: CASES, PROBLEMS & CASE STUDIES (2<sup>nd</sup> ed. Aspen 2008) (with Cynthia A. Williams)

### **General Articles**

- *Private Ordering with Shareholder Bylaws*, 80 FORDHAM L. REV. 125 (2011) (with Matthew Wright and Marcus Kai Hintze)
- *Contracts as Organizations*, 51 ARIZ. L. REV. 1 (2009) (with Brayden King) (published with commentary by Robert P. Bartlett, III and Anna Gelpern)
- *The Dystopian Potential of Corporate Law*, 57 EMORY L. J. 985 (2008) (published with a companion piece: Kent Greenfield, *Saving the World With Corporate Law*, 57 EMORY L. J. 948 (2008))
- *The Exit Structure of Venture Capital*, 53 UCLA L. REV. 315 (2005) (selected as one of the Best Corporate & Securities Articles of 2006 in a poll of corporate and securities law professors)
- *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)
- *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)
- *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
- *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)

## Symposium Articles and Book Chapters

- *The Social Dimension of Opportunism*, for “Empirical and Lyrical: Revisiting the Contracts Scholarship of Stewart Macaulay,” sponsored by the University of Wisconsin Law School, Madison, Wisconsin on October 21, 2011
- *The Role of Shareholders in the Modern American Corporation*, in THE RESEARCH HANDBOOK ON THE ECONOMICS OF CORPORATION LAW (Brett McDonnell and Claire Hill eds, forthcoming 2011)
- *Commons, Hurst, Macaulay, and the Wisconsin Legal Tradition*, in THE ELGAR COMPANION TO TRANSACTION COST ECONOMICS (Peter Klein, ed., 2010)
- *Unpacking Adaptability*, 2009 BYU L. REV. 1553 (with Andreas Engert), for “BYU Law Review Symposium on Evaluating Legal Origins Theory,” sponsored by J. Reuben Clark Law School, Brigham Young University, Provo, Utah on February 6, 2009
- *Entrepreneurs on Horseback: Reflections on the Organization of Law*, 50 ARIZ. L. REV. 71 (2008) (with Darian Ibrahim)
- *The “Branding Effect” of Contracts*, 12 HARV. NEGOT. L. REV. 189 (2007), for “Conference on Case Studies and Negotiations,” sponsored by Harvard Law School, Cambridge, Massachusetts on April 26, 2006
- *Bit by Bit: A Case Study of Bloggership*, 84 WASH. U. L. Q. 1135 (2006) for “Bloggership: How Blogs are Transforming Legal Scholarship,” sponsored by Harvard Law School, Cambridge, Massachusetts on April 28, 2006
- *Law & Entrepreneurship: Do Courts Matter?*, 1 ENTREPRENEURIAL BUS. L. J. 353 (2006), for “Location, Luck, or the Law: Why Some Venture Capital Communities Flourish,” sponsored by The Ohio State University Michael E. Moritz College of Law, Columbus, Ohio on March 17, 2006
- *The Exit Structure of Strategic Alliances*, 2005 ILL. L. REV. 303 (2005), for “Uncorporation: A New Age?,” sponsored by the University of Illinois College of Law, 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,” sponsored by Willamette University College of Law, Portland, Oregon on March 5, 2004
- *Team Production in Venture Capital Investing*, 24 J. CORP. L. 949 (1999), for “Sloan Conference on Team Production in Business Associations,” sponsored by Georgetown Law Center, Washington, D.C. on March 4-5, 1999
- *A Proposal to Eliminate Director Standards From the Model Business Corporations Act*, 68 U. CIN. L. REV. 1201 (1999), for “Twelfth Annual Conference on Corporate Law,” sponsored by University of Cincinnati School of Law, Cincinnati, Ohio on March 11, 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,” sponsored by 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”

### **Blog**

- *Conglomerate* (<http://www.theconglomerate.org/>). *Conglomerate* has received multiple awards and is one of the most popular blogs authored by law professors. The blog focuses on issues relating to business, law, economics, and society.

### **Grants**

- University of Wisconsin Center for Cooperatives Program on Research on the Economic Impact of Cooperatives for project entitled “The Use of Cooperatives by Wisconsin Cheesemakers” (with Brayden King and Marc Schneiberg), 2008
- Brigham Young University, Office of Research and Creative Activities, Mentoring Grant for project on “Law and Entrepreneurship,” 2008-2009
- 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

## ***Teaching***

### **Current Courses**

- Business Associations
- Contracts
- Corporate Finance
- Law & Entrepreneurship
- Securities Regulation

### **Visiting Appointments**

*Brown University, Providence, Rhode Island*

- Visiting Faculty, Brown International Advanced Research Institute (BIARI) on Technology Entrepreneurship and Management

*Widener University School of Law, Wilmington, Delaware,*

- Corporate Law Scholar in Residence, April 2005

*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

### **International Programs**

*Georgetown University Law Center, London, England*

- Summer Program, July-August 2010 and 2011 (“Corporations: U.S. & Transnational Perspectives”)

*Hong Kong Polytechnic University, Hong Kong, China*

- Summer Program on Corporate Governance, June 2008

*Fulbright German Studies Seminar, Brussels, Belgium & Berlin, Germany*

- German-American Fulbright Commission, June 2007

*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 (“Current Issues in Corporate Governance”)

### **Teaching Honors**

- BYU Law School Alumni Association, Teacher of the Year, J. Reuben Clark Law School – Brigham Young University (voted by students in three most recent graduating classes), August 25, 2011
- Student Bar Association First Year Professor of the Year Award, J. Reuben Clark Law School – Brigham Young University (voted by students), March 14, 2008
- Faculty Graduation Speaker, University of Wisconsin Law School, May 12, 2006 (elected by graduating class)

### ***Selected Speeches & Presentations***

Professor Smith has delivered scores of speeches and academic presentations at law schools and other institutions throughout the United States and internationally. Significant speeches and presentations during the past five years appear below.

- “The Social Dimension of Opportunism,” Empirical and Lyrical: Revisiting the Contracts Scholarship of Stewart Macaulay, University of Wisconsin Law School, Madison, Wisconsin (October 21, 2011)
- “Shareholders, Stockholders, and the Evolution of Equity Ownership,” University of North Carolina School of Law (October 6, 2011)
- “Stability and Adaptability,” Law & Economics Workshop, Boston University School of Law, Boston, Massachusetts (March 22, 2011)
- “Private Ordering Through Shareholder Bylaws,” University of Colorado Law School, Boulder, Colorado (February 24, 2011)
- “Private Ordering Through Shareholder Bylaws,” Indiana University Maurer School of Law, Bloomington, Indiana (February 23, 2011)
- Stability and Adaptability,” INSITE Seminar, University of Wisconsin School of Business, Madison, Wisconsin (February 22, 2011)
- “The Release of Energy,” Brown International Advanced Research Institute (BIARI) on Technology Entrepreneurship and Management (June 21, 2010)

- “The Release of Energy,” Law & Society Association Annual Meeting, Chicago, Illinois (May 28, 2010)
- “The Other Case Method,” AALS Standing Committee on Curriculum Issues Program: Teaching Beyond the Appellate Opinion, New Orleans, Louisiana (January 9, 2010)
- “Faith and Corporate Law,” AALS Section on Socio-Economics, New Orleans, Louisiana (January 7, 2010)
- “Teaching and Learning in the Same Classroom,” 2009-2010 Herbert V. Kelly, Sr. Teaching Program, William & Mary Law School, Williamsburg, Virginia (November 13, 2009)
- “The Separation Of Ownership And Control As A Solution To Illiquidity,” In Berle's Footsteps: A Symposium Celebrating the Launch of the Adolf A. Berle, Jr. Center on Corporations, Law and Society, Seattle University School of Law, Seattle, Washington (November 6, 2009)
- “Transactional Law: What’s the Big Idea,” Moderator, Workshop on Transactional Law, Plenary Session, AALS Mid-Year Meeting, Long Beach, California (June 11, 2009)
- “Corporate Purpose: Evolution, Creation, Isomorphism,” Conference on Business Associations, Plenary Session, AALS Mid-Year Meeting, Long Beach, California (June 9, 2009)
- Research Roundtable on Corporate Governance, Northwestern University School of Law, Chicago, Illinois (April 30 – May 1, 2009)
- Roundtable Discussion on Religion and Corporate Law, University of St. Thomas School of Law, Minneapolis, Minnesota (April 17, 2009)
- “Unlimited Shareholder Power,” Notre Dame Law School Symposium on The Future of Fiduciary Duties in Corporate Law, South Bend, Indiana (March 27, 2009)
- “Are Civil Law Courts More Formalist? An Exploration of the Adaptability Hypothesis,” BYU Law Review Symposium on Evaluating Legal Origins Theory, Provo, Utah (February 6, 2009)
- “Say Cheese: New Molds for ‘Old’ Cooperative Forms? The Case of Wisconsin Specialty Cheesemaking,” Wisconsin Cooperatives Conference, Madison, Wisconsin (September 19, 2008)
- “Law and Entrepreneurial Opportunities,” Kauffman Summer Legal Institute, Laguna Beach, California (July 11, 2008)
- “Law and Entrepreneurial Opportunities,” Faculty Workshop, Hong Kong Polytechnic University, Hong Kong, China (June 27, 2008)

- “Law and Entrepreneurial Opportunities,” The Economics and Law of the Entrepreneur, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, Illinois (June 18, 2008)
- “Corporate Governance and Financial Regulation,” American Constitution Society National Convention, Washington D.C. (June 13, 2008) (panelist)
- “Law and Entrepreneurial Opportunities,” Technology Entrepreneurship and Institutions: Contemporary and International Research, University of Wisconsin, Madison, Wisconsin (June 10, 2008)
- “Thinking About Contracts: Organizational Perspectives,” Conference on Teaching Drafting and Transactional Skills: The Basics and Beyond, Emory Law School, Atlanta, Georgia (May 31, 2008)
- “Law and Entrepreneurial Opportunities,” Law & Society Association Annual Meeting, Montreal, Canada (May 29, 2008)
- “Form, Function & Fiduciary Law,” The Future of the Global Law Firm, Georgetown Law Center, Washington, D.C. (April 17, 2008)
- “The Self-Employed in Bankruptcy: A Comment on the Consumer Bankruptcy Project,” Law & Entrepreneurship Retreat, The University of Arizona James E. Rogers College of Law (March 7, 2008)
- “Contracts as Organizations,” International Contracts Conference, McGeorge School of Law, University of the Pacific, Sacramento, California (February 9, 2008)
- “Cooperatives and Innovation,” Law & Society Association Annual Meeting, Berlin, Germany (July 28, 2007)
- “Stories About Contracts,” Corporate Governance Colloquium, UCLA School of Law, Los Angeles, California (February 12, 2007)
- “The Dystopian Potential of Corporate Law,” Debate with Professor Kent Greenfield, Boston College Law School, Boston, Massachusetts (January 26, 2007)
- “What Does *Law* Have To Do With *Entrepreneurship*?” Western New England College, School of Law, Law and Business Center for Advancing Entrepreneurship, Springfield, Massachusetts (January 25, 2007)
- “The Dystopian Potential of Corporate Law,” Debate with Professor Kent Greenfield, The University of Chicago Law School (January 17, 2007)
- “Wal-Mart: Organizations as Unit of Analysis,” Association of American Law Schools Annual Meeting, Washington D.C. (January 5, 2007)
- “Teaching *Disney*,” Section on Business Associations, Association of American Law Schools Annual Meeting, Washington D.C. (January 3, 2007)

## ***Other Activities***

### **Associations**

- Member, American Law Institute
- Member, Delaware Bar
- Member, European Corporate Governance Institute

### **Selected Law School Service**

- Substantial service on faculty committees, including Academic Planning Committee, Tenure and Promotion Committee, Appointments Committee (Chair), Building Committee, Curriculum Committee (Chair), Judicial Clerkship Committee (Chair), Strategic Planning Committee, and numerous ad hoc committees
- Organized the Transactional Law Workshop (with Afra Afsharipour), a virtual workshop focusing on transactional law scholarship
- Organized conferences
  - Rocky Mountain Junior Scholars Forum, Brigham Young University, Provo, Utah (September 29-30, 2011)
  - J. Reuben Clark Law Society Annual Faculty Conference, held in conjunction with Association of American Law Schools Annual Meeting (2009-2012)
  - Inaugural Business Associations Teaching Conference, Brigham Young University, Provo, Utah (February 11-12, 2010)
  - Inaugural Rocky Mountain Junior Scholars Forum, Brigham Young University, Provo, Utah (September 24-25, 2009)
  - Evaluating Legal Origins Theory, Brigham Young University, Provo, Utah (February 6, 2009) (to be published in *BYU LAW REVIEW*)
  - Economic Globalization and Corporate Governance, University of Wisconsin Law School, Madison, Wisconsin (March 11-12, 2005) (published in the *WISCONSIN INTERNATIONAL LAW JOURNAL* 367-551)
  - Latter-day Saint Perspectives on Law, Brigham Young University, Provo, Utah (October 19, 2001) (published in 2003 *BYU LAW REVIEW* 829-1095)
  - Law & Entrepreneurship Research Conference, Lewis & Clark Law School, Portland, Oregon (October 20, 2000)
  - Financing Innovation: The Future of Capital Formation for Small and Emerging Businesses, 1997 Lewis & Clark Law Forum, Lewis & Clark Law School, Portland, Oregon (September 26, 1997) (published in 2 *J. SMALL & EMERGING BUS. L.* 1-298 (1998))

- Organized Law & Entrepreneurship Retreats
  - Gainesville, Florida (February 17-18, 2011)
  - Provo, Utah (February 18-19, 2010)
  - Philadelphia, Pennsylvania (October 24, 2008)
  - Tucson, Arizona (March 7, 2008)
  - Madison, Wisconsin (May 20, 2007)
- Organized panels at Law & Society Association Annual Meetings
  - Law & Entrepreneurship Panels, San Francisco, California (2011)
  - Law & Entrepreneurship Panels, Chicago, Illinois (2010)
  - Law & Entrepreneurship Panels, Denver, Colorado (2009)
  - Law & Entrepreneurship Panels, Montreal, Canada (2008)
  - Comparative Corporate Governance Panels, Berlin, Germany (2007)
  - Empirical Study of Contracts, Baltimore, Maryland (2006)
  - Fiduciary Duties, Pittsburgh, Pennsylvania (2003)
- Planning Committee, Workshop on Transactional Law, Association of American Law Schools, 2008-2009
- Chair & Chair-elect, Section on Business Associations, Association of American Law Schools, 2006-2008 (organized 2008 Section Meeting on “Corporate Law in Global Markets”)
- Faculty Adviser, BYU Law School National Team, Annual Transactional Lawyering Meet, Earle Mack School of Law at Drexel University (2010-2011)
  - Organized BYU Law School Transactional Lawyering Meets (2010-2011)
- Editor, University of Wisconsin Legal Studies Research Paper Series, Social Science Research Network, 2005-2008
- Organized faculty working paper series, University of Wisconsin Law School, 2003-04
- Founding Faculty Advisor, *The Journal of Small and Emerging Business Law*