

Daniel B. Kelly

3166 Eck Hall of Law
University of Notre Dame
Notre Dame, IN 46556
(574) 631-7690
daniel.kelly@nd.edu

ACADEMIC EXPERIENCE

NOTRE DAME LAW SCHOOL, Notre Dame, IN

Professor of Law, 2014-present; Associate Professor of Law, 2009-2014

Courses: *Property, Remedies, Trusts and Estates, Law and Economics Seminar*

Director, Fitzgerald Institute for Real Estate, 2019-present; Acting Director, 2017-2019

Director, Law and Economics Program, 2019-present; Co-Director, 2010-2019

Robert and Marion Short Scholar, 2010-2013

HARVARD LAW SCHOOL, Cambridge, MA

Visiting Professor of Law, fall 2020

Courses: *Property, Real Estate*

UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL

Visiting Professor of Law, spring 2016 (teaching visit)

Course: *Trusts and Estates*

ACADEMIC FELLOWSHIPS

NORTHWESTERN LAW SCHOOL, Chicago, IL

Searle-Kauffman Fellow on Law, Innovation & Growth, 2009-2010 (non-residential)

HARVARD LAW SCHOOL, Cambridge, MA

Terence M. Considine Research Fellow in Law and Economics, 2008-2009

Lecturer in Law, spring 2009

YALE LAW SCHOOL, New Haven, CT

John M. Olin Research Fellow, 2007-2008

PROFESSIONAL EXPERIENCE

CRAVATH, SWAINE & MOORE LLP, New York, NY

Litigation Associate, 2006-2007

Summer Associate, 2004

U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, Geneseo, NY

Judicial Clerk to the Honorable Richard C. Wesley, 2005-2006

EDUCATION

HARVARD LAW SCHOOL, J.D., *cum laude*, June 2005

Executive Editor, *Harvard Journal of Law & Public Policy*

John M. Olin Fellow in Law and Economics

Research Assistant, Professor Steven Shavell

Teaching Assistant, Professor Charles Fried (“Contracts”)

Teaching Fellow, Professor Michael Sandel (“Justice: Moral Reasoning”)

John M. Olin Law and Economics Prize (for best paper in law and economics)

University of Notre Dame, B.A. in economics and history, *summa cum laude*, May 2002

Phi Beta Kappa

Omicron Delta Epsilon (economics); Phi Alpha Theta (history)

Concentration in Philosophy, Politics, and Economics (PPE)

Research Assistant, Professor Vai-Lam Mui

John Sheehan Honors Essay Award (for best senior thesis in economics)

PUBLICATIONS

BOOK (EDITOR)

Oxford Handbook on New Private Law (with co-editors Andrew S. Gold, John C.P. Goldberg, Emily L. Sherwin, & Henry E. Smith, Oxford University Press 2020).

ARTICLES & BOOK CHAPTERS

Double Deterrence: Restitution and Punitive Damages in Trust and Fiduciary Law, 106 *Iowa Law Review* __ (2021)

Law and Economics, in *Oxford Handbook on New Private Law* (Andrew S. Gold, John C.P. Goldberg, Daniel B. Kelly, Emily L. Sherwin, & Henry E. Smith eds., Oxford University Press 2020).

Fiduciary Principles in Fact-Based Fiduciary Relationships, in [*Oxford Handbook of Fiduciary Law*](#) (Evan J. Criddle, Paul B. Miller, & Robert H. Sitkoff eds., Oxford University Press 2019).

Dividing Possessory Rights, in [*Law and Economics of Possession*](#) 175-206 (Yun-Chien Chang ed., Cambridge University Press 2015).

Trust Term Extension: An Economic Analysis, 67 *Florida Law Review Forum* 85-104 (2015),
➤ Responding to Reid Weisbord, *Trust Term Extension*, 67 *Florida Law Review* 73 (2015).

[The Right to Include](#), 63 Emory Law Journal 857-924 (2014).

- Accepted at the Harvard-Stanford-Yale Junior Faculty Forum
- [Reviewed](#) by Donald Kochan in *JOTWELL (The Journal of Things We Like (Lots))*

[Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications](#), 82 Fordham Law Review 1125-1185 (2013).

- [Reviewed](#) by Gerry W. Beyer in *JOTWELL (The Journal of Things We Like (Lots))*

[Toward Economic Analysis of the Uniform Probate Code](#), 45 University of Michigan Journal of Law Reform 855-898 (2012) (symposium).

- [Reviewed](#) by Paula Monopoli in *JOTWELL (The Journal of Things We Like (Lots))*

[Strategic Spillovers](#), 111 Columbia Law Review 1641-1721 (2011).

- Accepted at the Stanford-Yale Junior Faculty Forum

[Acquiring Land Through Eminent Domain: Justifications, Limitations, and Alternatives](#), in [Research Handbook on the Economics of Property Law](#) 344-371 (Kenneth Ayotte & Henry E. Smith eds., Edward Elgar Press 2011).

[Pretextual Takings: Of Private Developers, Local Governments, and Impermissible Favoritism](#), 17 Supreme Court Economic Review 173-235 (2009) (symposium).

[The Limitations of Majoritarian Land Assembly](#), 122 Harvard Law Review Forum 7-17 (2009).

- Responding to Michael Heller & Rick Hills, *Land Assembly Districts*, 121 Harvard Law Review 1465 (2008).

[The “Public Use” Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence](#), 92 Cornell Law Review 1-65 (2006).

WORKING PAPERS

“Diversification and Specialization in Real Estate Investment Law: The Rise of REITs”

“How Real Estate Developers Assemble Land: Circumventing the Holdout Problem”

“Nationwide Regulatory Takings”

“Physical Takings of Personal Property”

“An Economic Theory of Trust Modification”

COURSES TAUGHT

Notre Dame Law School (2009-present)

Property (spring 2010, 2011, 2013, 2014, 2015, 2017, 2018, 2019)

Property Theory Seminar (fall 2009)

Remedies (spring 2015)

Trusts and Estates (fall 2010, fall 2011 (in London), spring 2012, 2014, 2017, 2021)

Law and Economics Seminar (fall 2010, spring 2012, spring 2013, fall 2013, 2014, 2015, 2016, 2017, 2018, 2019, spring 2021)

Law and Economics Colloquium (College of Arts & Letters, fall 2014)

Law, Economics, and Justice Colloquium (College of Arts & Letters, spring 2017)

Harvard Law School

Property (fall 2020)

Real Estate Reading Group (fall 2020)

Land Use, Natural Resources Seminar (spring 2009)

University of Chicago Law School

Trusts and Estates (spring 2016)

LAW REFORM & LEGAL EDUCATION (selected)

American Law Institute (ALI)

Associate Reporter, Restatement (Fourth) of Property, 2015-present

Member, 2015-present

Association of American Law Schools (AALS)

Chair, Section on Trusts and Estates, 2019

Executive Committee, Section on Trusts and Estates, 2016-present

Executive Committee, Section on Property Law, 2014-2015

Casebook Connect Study Center, Wolters Kluwer

Subject Matter Expert, Wills, Trusts, and Estates, 2015-2016

New Private Law Blog, Harvard Law School

Contributor, 2015-present

Sponsors for Educational Opportunity (SEO) Law Institute, NYU School of Law

Lecturer, Property (for incoming law students), summer 2011, 2012, 2014-present

Workshop on Preparing for the Legal Academy, Notre Dame Law School

Co-organizer, Workshop (for aspiring legal scholars), 2017

REFEREE ACTIVITY

Journals

American Journal of Jurisprudence
American Law & Economics Review
International Review of Law & Economics
Journal of Law, Economics, & Organization
Journal of Legal Analysis
Journal of Legal Studies
Modern Law Review
Review of Law & Economics

Law Reviews

Harvard Law Review
Notre Dame Law Review
University of Chicago Law Review
Yale Law Journal

Conferences, Foundations, and University Presses

Academia Sinica
American Law & Economics Association
European Association of Law & Economics
Israel Science Foundation
Society for Institutional & Organizational Economics
University of Chicago Press
Yale University Press

INVITED TALKS AND PRESENTATIONS

PROPERTY LAW: EMINENT DOMAIN AND TAKINGS

The “Public Use” Requirement in Eminent Domain Law: A Rationale Based on Secret Purchases and Private Influence

- Stanford Law and Economics Workshop (February 2006)
- Harvard Law and Economics Workshop (November 2004)

How Real Estate Developers Assemble Land (and other titles)

- Yale Law School, Young Scholar Workshop Series (October 2015)
- Society for Environmental Law and Economics, Chicago, IL (May 2014)
- Arizona State University Legal Scholars Conference (March 2013)
- Notre Dame Law School Summer Workshop (July 2013)
- Notre Dame Law and Economics Workshop (January 2013)
- Brigham-Kanner Property Rights Conference, William & Mary Law School (October 2012)

Physical Takings of Personal Property

- Emory University School of Law Faculty Colloquium (March 2016)
- Notre Dame Law School Faculty Colloquium (March 2016)

Other Presentations on Eminent Domain and Takings

- Yale Law School, “Who Took My Raisins? *Horne v. USDA* and Personal Property Takings” (October 2015)
- Illinois College of Law Faculty Workshop, “Acquiring Land Through Eminent Domain: Justifications, Limitations, and Alternatives” (February 2011)
- Harvard Law and Economics Workshop, “Strategic Holdouts, Secret Agents, and The Land Assembly Problem” (October 2008)
- *Supreme Court Economic Review*, Symposium on Post-*Kelo* Reform, New York, NY, “A Jurisprudence of Pretext” (January 2008)

PROPERTY LAW: EXTERNALITIES

Strategic Spillovers

- International Society for New Institutional Economics, Stanford University (June 2011)
- Canadian Law and Economics Association, Toronto Law School (October 2010)
- Notre Dame Law and Economics Workshop (August 2010)
- University of Illinois College of Law Faculty Workshop (April 2010)
- Society for Environmental Law and Economics, Emory Law School (March 2010)
- Notre Dame Law School Faculty Colloquium (February 2010)
- Midwestern Law and Economics Association, Notre Dame Law School (October 2009)
- Stanford-Yale Junior Faculty Forum, Stanford Law School (May 2009)
- American Law and Economics Association, San Diego School of Law (May 2009)
- Association of American Law Schools, Junior Property Scholars Panel (January 2009)

Tradable Environmental Allowances

- American Law and Economics Association, Princeton University (May 2010)
- Society for Environmental Law & Economics, British Columbia Law School (March 2009)

PROPERTY LAW: DIVIDED AND SHARED OWNERSHIP

The Right to Include (and other titles)

- Harvard/Stanford/Yale Junior Faculty Forum, Yale Law School (June 2013)
- International Society for New Institutional Economics, University of Florence (June 2013)
- Association for Law, Property, and Society, Minnesota Law School (April 2013)
- Toledo College of Law Faculty Workshop (April 2013)
- Washington University Regional Junior Faculty Workshop, St. Louis, MO (April 2013)
- Harvard Law School Private Law Workshop (February 2013)
- Young Legal Scholars Paper Competition, New Orleans, LA (January 2013)
- Canadian Law and Economics Association, Toronto Law School (September 2012)
- Property Works-in-Progress Conference, Fordham Law School (June 2012)

- Notre Dame Law School Faculty Colloquium (April 2012)

Dividing Possessory Rights (and other titles)

- Notre Dame Law School Faculty Colloquium (February 2014)
- North American Workshop on Private Law Theory, McGill University (October 2013)
- Taiwan Law and Economic Analysis Conference, Academia Sinica, Taipei (August 2013)
- New York University School of Law Workshop on Property Law and Theory (May 2013)
- American Law and Economics Association, Vanderbilt University (May 2013)

TRUSTS AND ESTATES & FIDUCIARY LAW

Toward Economic Analysis of the Uniform Probate Code

- American College of Trust & Estate Counsel Symposium, Michigan Law (October 2011)

Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications

- Georgetown Law and Economics Workshop (October 2013)
- Maryland School of Law, Legal Theory Workshop (September 2013)
- Washington University School of Law Faculty Workshop (September 2013)
- National Taiwan University College of Law (August 2013)
- Harvard Law and Economics Workshop (April 2013)
- Midwestern Law & Economics Association, Washington U. School of Law (October 2012)
- American Law and Economics Association, Stanford Law School (May 2012)
- Arizona State University Legal Scholars Conference (March 2012)
- Notre Dame Law and Economics Workshop (February 2012)
- Notre Dame Law School Faculty Colloquium (January 2011)

Anti-Opportunism Rules in Wills, Trusts, and Other Donative Transfers (and other titles)

- Notre Dame Law and Economics Workshop (October 2013)
- European Association of Law and Economics, University of Warsaw (September 2013)
- Taiwan Law and Economic Analysis Conference, Academia Sinica, Taipei (August 2013)
- Notre Dame Law School Faculty Workshop (April 2013)

Rules Versus Standards in Wills, Trusts, and Estates

- Association of American Law Schools, Panel on “The Next Generation of Trusts and Estates Scholarship,” New York, NY (January 2014)

An Economic Theory of Trust Modification (and other titles)

- Michigan Law and Economics Workshop (November 2015)
- Notre Dame Law and Economics Workshop (August 2015)

Categorical Versus Ad Hoc Fiduciaries and the Domain of Fiduciary Duties (and other titles)

- International Society for New Institutional Economics, Harvard Law School (June 2015)
- Law and Society Association, Panel on Fiduciary Theory, Minneapolis, MN (May 2014)

Double Deterrence (and other titles)

- Arizona State Sandra Day O'Connor College of Law Faculty Colloquium (March 2019)
- American Law and Economics Association, Yale Law School (May 2017)
- Notre Dame Law School Faculty Colloquium (March 2017)
- Canadian Law and Economics Association, Toronto Law School (September 2016)
- Notre Dame Law and Economics Workshop (September 2016)
- University of Chicago Law School, Work-in-Progress Workshop (June 2016)
- Society for Institutional & Organizational Economics, Sciences Po, Paris, France (June 2016)

Fiduciary Principles in Fact-Based Fiduciary Relationships

- Notre Dame Law and Economics Workshop (October 2018)
- Conference on "Fiduciary Law: Charting the Field," Harvard Law School (November 2017)

SERVICE

UNIVERSITY

Fitzgerald Institute for Real Estate

Director, 2019-present; Acting Director, 2017-2019

Ad Hoc Committee on Real Estate Minor, 2018-2019 (Chair)

Faculty Advisory Committee, 2017-present (Chair)

Interdisciplinary Search Committee for Real Estate Faculty Hires, 2018-present (Chair)

COVID-19 Economic and Social Science Research Task Force

Member, 2020-present

Philosophy, Politics, and Economics (PPE) Program

Faculty Advisor, 2010-present

Notre Dame Institute for Advanced Study (NDIAS)

Law/Legal Topics Review Committee, 2013-2019

Faculty Board on Athletics

Member, 2013-2019

Academic Integrity Subcommittee, 2013-2019 (Chair, 2015-2019)

Faculty Liaison, Men's Basketball and Men's Tennis, 2013-2019

LAW SCHOOL

Law and Economics Program

Director and Co-Founder (with Margaret Brinig), 2010-present

Co-Organizer, Law and Economics Symposium, 2010-present

Co-Organizer, Midwestern Law and Economics Association, fall 2009

Program of Study in Real Estate Law

Faculty Advisor, 2017-present

Research Program on Law and Market Behavior

Faculty Fellow, 2012-present

Edward J. Kelly Memorial Lecture in Elder Law

Faculty Organizer, 2013-present

Law School Committees

Appointments Committee, 2014-2016 (Vice Chair, 2014-2015)

Clerkship Committee, 2009-2011, 2012-2014

Colloquium Committee, 2009-2010, 2011-2012

Curriculum Committee, 2010-2011

Dean's Search Committee, 2018-2019

Elder Law Committee, 2012-present (Chair)

Faculty Development Committee, 2011-2012, 2014-2016

Graduate Admissions Committee (LLM & SJD), 2019-present

Library Director Search Committee, 2016-2017

Promotions Committee, 2016-2018

Public Interest Fellowship Committee, 2018-2019

OTHER CONFERENCES, PANELS, AND MISCELLANEOUS SERVICE (selected)

Society for Institutional and Organizational Economics, Massachusetts Institute for Technology
Program Committee, June 2020

"Real Estate Finance and Housing Economics," Notre Dame Fitzgerald Institute for Real Estate
Organizer and Moderator (Chicago, IL), May 2019

"Landscape of Private Law" (conference for Oxford UP Handbook), Harvard Law School
Moderator, March 2019

Association of American Law Schools Annual Meeting, New Orleans, Louisiana
Organizer and Moderator, Panel for Trusts and Estates Section on "Business Trusts:
Facilitating Market Transactions and Building Bridges Between Legal Systems," January 2019

"Housing and Mortgage Markets," Notre Dame Fitzgerald Institute for Real Estate
Organizer and Moderator, November 2018

American Law and Economics Association Meeting, Boston University School of Law
External Reviewer of Submissions, May 2018

"Land, Resources, and Environmental Agencies," Notre Dame Law and Economics Symposium
Co-organizer, October 2017

The Future of Law & Economics and the Contributions of Guido Calabresi
Commentator, Alain Marciano & Giovanni B. Ramello, "Amplified Economic Analysis of
Law and the Future of Law and Economics," Boston University School of Law, June 2017

Society for Institutional and Organizational Economics, Sciences Po, Paris, France
Program Committee and Panel Organizer, "Law, Equity, and Opportunism," June 2016

"*Horne v. USDA*, Takings Law, and Regulating Commodities," Notre Dame L&E Symposium
Co-organizer, December 2015

International Society for New Institutional Economics, Harvard Law School
 Panel Organizer, “Agency and Fiduciary Law,” June 2015
 American Law and Economics Association Annual Meeting, Columbia Law School
 Commentator, Victor Goldberg (Columbia), Contracts and Bargaining Panel, May 2015
 “Antitrust, Patent, and Innovation Economics,” Notre Dame Law and Economics Symposium
 Co-organizer, November 2014
 “Ronald Coase and The Future of Property Rights,” Notre Dame Law and Economics Symposium
 Co-organizer (Chicago, IL), May 2014
 Robinson Community Learning Center, Lunch & Learn Lecture Series (for seniors),
 “Estates and Trusts: The Benefits of Estate Planning,” April 2014
 “Reimagining Homeownership: A Working Conference,” Notre Dame Law School
 Co-Organizer and Moderator, October 2013
 European Association of Law and Economics, Warsaw, Poland
 Commentator, Yun-Chien Chang (Academia Sinica), “An Economic and Comparative
 Analysis of the Accession Doctrine,” September 2013
 Taiwan Law and Economics Conference, Taipei, Taiwan
 Commentator, Daphna Lewinsohn-Zamir (Hebrew University), “What Behavioral Studies
 Can Teach Jurists about Possession and Vice Versa,” August 2013
 New York University School of Law Workshop on Property Law and Theory,
 Commentator, Leif Wenar (King’s College London), “The Concert of Law,” May 2013
 “The Tragedy of the Anticommons,” Notre Dame Law and Economics Symposium
 Co-organizer, January 2013
 University of Chicago Law School Teaching Conference (workshop for aspiring law profs),
 Commentator with Douglas Baird, Lisa Bernstein, and Brian Leiter, August 2012
 “Markets and Regulation in the 21st Century,” Notre Dame Law and Economics Symposium
 Co-organizer, April 2012
 “Housing: Law and Policy,” Notre Dame Law and Economics Symposium
 Co-organizer, September 2010

PROFESSIONAL ASSOCIATIONS

American Economic Association (AEA)
 American Law and Economics Association (ALEA)
 American Law Institute (ALI)
 Canadian Law and Economics Association (CLEA)
 European Association of Law and Economics (EALE)
 Philosophy, Politics, and Economics Society (PPE)
 Society for Institutional and Organizational Economics (SIOE)
 Urban Land Institute (ULI)

*New York State Bar (active)