

# Joshua David Heller Karton 孔家希

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## LEGAL AND ACADEMIC EMPLOYMENT

### **Queen's University Faculty of Law**, Kingston, ON, Canada

Associate Professor (with tenure), 2015-

Assistant Professor, 2009-2015

Instructor, Queen's Global Law Programs, Herstmonceux, UK, 2008-

### **Pembroke College, University of Cambridge**, Cambridge, UK

Supervisor (Conflict of Laws), 2007-2009

### **Cleary Gottlieb Steen & Hamilton LLP**, New York, NY and Hong Kong

Associate, 2005-2006;

Summer Associate, 2004

### **Columbia Law School**, New York, USA

Teaching Assistant to Clinical Prof Carol M Liebman (Mediation Clinic), 2004

Research Assistant to Asst Prof Catherine Sharkey, 2003

## VISITING POSITIONS

National Taiwan University College of Law, Taipei, Visiting Professor, 2015-2016, Fall 2013

Chinese University of Hong Kong, Visiting Professor, March 2016

Wuhan University School of Law, Wuhan, China, Visiting Professor, November 2013

## EDUCATION

### **University of Cambridge, Pembroke College**, Cambridge, UK, *PhD 2011*

Thesis: "The Culture of International Arbitration and the Evolution of Contract Law"

Supervisors: Prof James Crawford, Ms Louise Merrett

Examiners: Prof Loukas Mistelis (Queen Mary); Prof John Bell (Cambridge)

Honors: Cambridge Overseas Trust Scholarship

Fellow of the Cambridge Overseas Society, 2006-

### **Columbia University School of Law**, New York, NY, *JD 2005*

Honors: Harlan Fiske Stone Scholar, 2003-2005

Greer Public Service Fellowship; Public Interest Law Foundation Fellowship

Activities: Solicitations Editor, Columbia Journal of Transnational Law

Willem C Vis Commercial Arbitration Moot (2<sup>nd</sup> place memorandum, 2004)

### **Yale University**, New Haven, CT, *BA in Political Science and Humanities 2001*

Honors: Departmental honors in Political Science

## PUBLICATIONS

### Books

*The Culture of International Arbitration and the Evolution of Contract Law* (Oxford University Press 2013) 312pp.  
Reviewed in: (2013) 29(3) *Arbitration International* 539; (2013) 8(6) *Global Arbitration Review*; (2013) 20 *Australian International Law Journal* 207; (2013) 14(4) *Juridisk Tidskrift* 931 (in Swedish); (2015) 81(1) *Arbitration* 109

### Book Chapters (invited submissions unless otherwise noted)

“Contractual Governance and Sectoral Fragmentation of Transnational Commercial Law” in Claire Cutler and Thomas Dietz (eds), *The Politics of Private Transnational Governance by Contract* (Routledge, forthcoming 2016)

“Beyond the ‘Harmonious Confucian’: International Commercial Arbitration and the Impact of Chinese Cultural Values” in Chang-fa Lo and Nigel Li (eds), *Festschrift in Honor of Herbert Han-pao Ma* (Springer, forthcoming 2016)

“New Wine in Old Bottles: Corrupt Contracts in Canadian Private Law” (with Jenna-Dawn Shervill) in Michael Joachim Bonell and Olaf Meyer (eds), *The Civil Law Consequences of Corruption in International Commercial Contracts* 37-75 (Springer 2015)

“International Arbitration Culture and Global Governance” in Walter Mattli and Thomas Dietz (eds), *International Arbitration and Global Governance: Contending Theories and Evidence* 74-116 (Oxford University Press 2014)

### Articles (peer-reviewed unless otherwise noted)

“The Arbitral Role in Contractual Interpretation” *Journal of International Dispute Settlement* (2015) 6(1) 1-38  
(Awarded the 2015 *JIDS* James Crawford Prize for best article of the year)

“The Structure of International Arbitration Law and the Exercise of Arbitral Authority (2015) 8(2) *Contemporary Asia Arbitration Journal* 229-266

“Reform of Investor-State Dispute Settlement: Lessons from International Uniform Law” (2014) 11(1) *Transnational Dispute Management*  
Reprinted as “Lessons from International Uniform Law” in Jean E Kalicki and Anna Joubin-Bret (eds), *Reform of Investor-State Dispute Settlement: In Search of a Roadmap* (Brill | Nijhoff 2015)

“Canadian Courts and Uniform Interpretation: An Empirical Reality Check” (with Samantha Wynne) (2013) 18(2) *Uniform Law Review* 281-312

“A Conflict of Interests: Seeking a Way Forward on Publication of International Arbitral Awards” (2012) 28(3) *Arbitration International* 447-486

“International Commercial Arbitrators’ Approaches to Contractual Interpretation” [2012] 4 *International Business Law Journal* 383-404 (invited)

“Global Law: The Spontaneous, Gradual Emergence of a New Legal Order” (2012) 17(2) *Tilburg Law Review* 276-284 (invited)

“Party Autonomy and Choice of Law: Is International Arbitration Leading the Way or Marching to the Beat of its own Drummer?” (2010) 60 *University of New Brunswick Law Journal* 32-59 (invited)

“Contract Law in International Commercial Arbitration: the Case of Suspension of Performance” (2009) 58(4) *International and Comparative Law Quarterly* 863-896 (Awarded the 2009 *ICLQ* Young Scholar Prize)

“Can the CISG Advisory Council Affect the Homeward Trend?” (with Lorraine de Germiny) (2009) 13(1) *Vindobona Journal of International Commercial Law and Arbitration* 71-90

“Has the CISG Advisory Council Come of Age?” (with Lorraine de Germiny) (2009) 27(3) *Berkeley Journal of International Law* 448-495 (US student-run law review)

“Lost in Translation: International Criminal Courts and the Legal Implications of Interpreted Testimony” (2008) 41(1) *Vanderbilt Journal of Transnational Law* 1-54 (US student-run law review)

“Quaternity, the Elements, and the Hero’s Journey” (Dec. 1999) *British Columbia Psychoanalytic Psychotherapy Review* (high school paper accepted for publication via blind peer review)

## **Reports**

“National Report for Canada: The Civil Law Consequences of Corruption in International Commercial Contracts” (2013), prepared for the 2014 Congress of the International Academy of Comparative Law

## **WORKS IN PROGRESS**

“Sectoral Fragmentation of Transnational Commercial Law” (working draft)

“Translation of Live Witness Testimony in International Arbitration Hearings (working draft)

“Taking Choice of Law Seriously in Investor-State Arbitration” (working draft)

“The Nature and Sources of the International Arbitrator’s Duties to Apply the Law” (working draft)

“Transnational Precedent” (early stages)

“International Uniform Law in Canadian Courts” (working draft)

“Recognizing a Contractual Right to Suspend Performance” (working draft)

## PAPER PRESENTATIONS AND OTHER CONFERENCE ACTIVITIES

### 2016

- “Sectoral Fragmentation of Transnational Commercial Law”, Sixth Annual American Society of International Law Research Forum (Seattle, Washington, USA, November 11-12, 2016) (peer-reviewed)
- “Sectoral Fragmentation of Transnational Commercial Law”, American Society of Comparative Law Annual Conference, (Seattle, Washington, USA, November 11-12, 2016) (peer-reviewed)
- “Simultaneous Translation of Witness Testimony in International Arbitration Hearings”, Taipei International Conference on Arbitration and Mediation (Taipei, Taiwan, August 29-30, 2016) (invited)
- “The Fragmented Future of Transnational Commercial Law”, Hong Kong University Faculty Seminar Series (Hong Kong, March 18, 2016) (invited)
- “Taking Choice of Law Seriously in International Investment Disputes”, Chinese University of Hong Kong Centre for Financial Regulation and Economic Development, 13<sup>th</sup> Commercial Seminar (Hong Kong, March 17, 2016) (invited)
- “The Authority of International Arbitrators”, Chinese University of Hong Kong Faculty Seminar Series (Hong Kong, March 16, 2016) (invited)

### 2015

- “Whether and How to Arbitrate International Technology Disputes: A Socio-Legal Perspective” (presented in Chinese under the title 以法社會學觀點探討如何仲裁國際科技糾紛), 19<sup>th</sup> Annual National Taiwan Technology Law Conference (Hsinchu, Taiwan, November 20, 2015) (invited)
- “Fragmentation of International Commercial Law”, Taipei International Conference on Arbitration and Mediation (Taipei, Taiwan, September 7, 2015) (invited)
- “The Arbitral Role in Contractual Interpretation”, Dentons LLP International Arbitration Practice Group (London, UK, May 29, 2015) (invited)
- “Taking Choice of Law Seriously in International Investment Disputes”, ILA-ASIL Asia-Pacific Research Forum (Taipei, Taiwan, May 26, 2015) (peer-reviewed)
- “The Applicable Law in Investment Arbitrations: Rationalizing the Expectations of States and Investors”, 12<sup>th</sup> Asian Law Institute Annual Conference (Taipei, Taiwan, May 21, 2015) (peer-reviewed)

### 2014

- “Lex Petrolea in Investor-State Arbitration: Rationalizing Energy Industry Practices and Human Rights / Environmental Protection”, Canadian Council on International Law 43<sup>rd</sup> Annual Conference (with co-author Dilton Ribeiro, Ottawa, ON, November 13, 2014) (peer-reviewed)
- “Arbitrators’ Role and Duties Related to Application of the Governing Law” ICC Canada International Arbitration Conference (Montreal, QC, November 7, 2014) (invited)
- “Movements under the Surface”, Stockholm Arbitration Summit, Stockholm University and the Arbitration Institute of the Stockholm Chamber of Commerce (Stockholm, Sweden, May 22 2014) (invited)
- “How Should International Arbitrators Interpret Commercial Contracts?”, New Voices in Commercial Law Seminar Series, Queen Mary, University of London Centre for Commercial Law Studies (Paris, France, May 20 2014) (invited)
- “How Should International Arbitrators Interpret Commercial Contracts?”, American Society of Comparative Law Younger Comparativists Committee Third Annual Conference (Lewis & Clark Law School, Portland, OR, USA, April 4-5 2014) (peer-reviewed)
- Eighth Annual International Investment Treaty Arbitration Conference (Juris Conferences, Washington DC, USA, March 28 2014) (invited panelist; no paper presented)

“The International Arbitrator’s Duty to Apply the Law”, Junior International Law Scholars Association Annual Meeting (Berkeley Law School, Berkeley, CA, USA, January 31 2014) (peer-reviewed)  
Discussant, “The Three Facets of Litigation Funding”, Junior International Law Scholars Association Annual Meeting (Berkeley Law School, Berkeley, CA, USA, January 31 2014)

## **2013**

“On the Nature and Sources of The International Arbitrator’s Duty to Apply the Law”, Taipei International Conference on Arbitration and Mediation (Taipei, Taiwan, August 2013) (peer-reviewed)  
“Contractual Governance, International Arbitration, and Fragmentation of Private Law”, Workshop on the Legitimacy of Private Transnational Governance by Contract (University of Victoria, Victoria, BC, Canada, August 2013) (invited)  
“The Competitive Market for International Arbitration Services” (International Arbitration Club of New York, New York, NY, USA, June 2013) (invited)  
Evolution of Arbitration Law and Practice (Queen Mary, University of London, London, UK, May 2013) (invited panelist; no paper presented)  
“International Commercial Arbitrators as Service Providers”, The Roles of Psychology in International Arbitration (Brunel University, Uxbridge, UK, May 2013) (peer-reviewed)  
“Recognizing a Contractual Right to Suspend Performance”, American Society of Comparative Law Younger Comparativists Committee Second Annual Conference (Indiana University Robert H. McKinney School of Law, Indianapolis, IN, USA, April 2013) (peer-reviewed)  
“Recognizing a Contractual Right to Suspend Performance”, American Society of Comparative Law Eighth Annual Works in Progress Workshop (University of Illinois, Urbana-Champaign, IL, USA, March 2013) (peer-reviewed)

## **2012**

“On the Nature and Sources of the International Arbitrator’s Duty to Apply the Law”, What Does the Future Hold for International Investment Law? (McGill University, Montreal, QC, Canada, November 2012) (invited)  
“Canadian Courts in the Global Jurisconsultorium”, Harvard-Stanford International Junior Faculty Forum (Stanford, CA, USA, October 2012) (peer-reviewed)  
“Recognizing a Contractual Right to Suspend Performance”, Sixth Biennial Conference on the Law of Obligations (“Obligations VI”) (Western University, London, ON, Canada, July 2012)  
“Canadian Courts in the Global Jurisconsultorium”, Osgoode-Toronto Junior Faculty Forum (Toronto, ON, Canada, June 2012) (peer-reviewed)  
“The Interpretation of International Uniform Law Instruments: Empirical Insights into the Role of National Judiciaries”, Agents of Change: The Individual as a Participant in the Legal Process (Cambridge University, Cambridge, UK, May 2012) (peer-reviewed)

## **2009-2011**

“The Emerging Culture of International Arbitration”, Canadian Council on International Law 40<sup>th</sup> Annual Conference (Ottawa, ON, Canada, November 2011) (peer-reviewed)  
“Elements of an International Arbitration Culture”, 5th International Conference on Interdisciplinary Social Sciences (Cambridge, UK, August 2010) (peer-reviewed)  
“Can the CISG-AC Affect the Homeward Trend?”, Issues on the CISG Horizon (with co-presenter Lorraine de Germiny, Vienna, Austria, April 2009) (invited)

## **PRIZES AND RECOGNITION**

James Crawford Prize of the Journal of International Dispute Settlement (best article of the year), for “The Arbitral Role in Contractual Interpretation” (2015)

Queen’s Law Student Society Teaching Award (2012)

Selected for the Harvard-Stanford International Junior Faculty Forum (2012)

International and Comparative Law Quarterly Young Scholar Prize (best article of the year by a younger author), for “Contract Law in International Commercial Arbitration: the Case of Suspension of Performance” (2009)

## **RESEARCH FUNDING**

Social Sciences and Humanities Research Council of Canada Insight Development Grant, for project entitled “An Exploration of the International Arbitrator’s Duty to Apply the Law” (2013-2015) \$54,300

Queen’s University Senate Advisory Research Committee Grant, for project entitled “An Exploration of the International Arbitrator’s Duty to Apply the Law” (2013) \$8,000

Borden Ladner Gervais LLP Research Fellowship, for project entitled “Canadian Courts in the Global Jurisconsultorium” (2011) \$12,000

## **TEACHING**

### **At Queen’s**

Contracts, 2009-

Commercial Law, 2009-2015, 2017-

International Commercial Arbitration (including at the Queen’s Global Law Summer Program, Herstmonceux, UK), 2009-

Legal Research Methods & Perspectives, 2016-

### **At the National Taiwan University**

International Commercial Arbitration, 2015

Comparative Contract Law (co-instructor), 2013, 2015

International Dispute Settlement (co-instructor), 2013

### **At Cambridge**

Conflict of Laws, 2007-2009 (undergraduate supervisions)

### **Other**

International Commercial Arbitration (guest lecturer, LLM program), Chinese University of Hong Kong, Hong Kong, March 2016

International Commercial Arbitration (sole instructor, two-week intensive course), Wuhan University, Wuhan, China, November 2013

## STUDENT RESEARCH SUPERVISION AND ASSESSMENT

### PhD Supervision

Ksenia Polonskaya, “The Viability of Intellectual Property Claims in Investor-State Arbitration” (2015-)

### LLM Thesis Supervision

Maria Montplaisir Bazan, “Private International Law in the Virtual Age” (2014)

### JD Student Research Supervision

Julian Yang, “Implementation of the 2008 Chinese Anti-Monopoly Law (2014)

Brittany Rabinovitch, “Human Rights in International Investment: The Need for Redirection” (2014)

Ashok Menen, “Canadian Anti-Bribery Legislation and Enforcement: Current Landscapes and Future Horizons” (2014)

Aarondeep Bains, “Third Party Funding and Arbitrator Disclosure” (2013)

Jeremy D’Souza, “Counterclaims by States in Investment Treaty Arbitrations” (2012)

Tyson McNeil-Hay, “A New Framework for *Error in Substantialibus*” (2011)

Chetan Phull, “US Anti-Suit Injunctions in Support of International Arbitration: Six Questions American Courts Ask” (2010)

Published, (2011) 28(1) Journal of International Arbitration 21

### PhD Qualifying Examinations

Gillian MacNeil, “Crimes Against Humanity, the ‘Residual Clause’ and Legality: Reconciling the Demands of Justice and Fairness” (2016)

### LLM Thesis Examinations

Jie Tang, “What Can China Learn from Thailand? Compulsory Licensing under TRIPS and China’s Universal Health Care Program” (2013)

Stephane Pierre-Noel, “The Application of Human Rights in Armed Conflicts” (2011)

Babak Hendizadeh, “Enforcement of International Arbitration Awards in Islamic Countries” (2011)

Marie-Noël Rochon, “Dialogue of the Deaf: The Interaction Between Corporate Law and Securities Law in Canada” (2010)

Philippe Dumaine, “Arbitration Agreements, Class Actions, and Access to Justice” (2010)

## UNIVERSITY SERVICE

### At Queen’s

Queen’s University Committee on the Academic Plan, Member, 2016-

Law Faculty Moot Court Committee, Member 2016-

Law Faculty Curriculum Committee, Chair, 2013-2014; Member 2010-2015

Deans’ Council on the Campus Master Plan, Law Faculty Representative, 2012-

Queen’s University Major Undergraduate Scholarships Selection Committee, Member 2011-2012

Law Faculty Admissions Committee, Chair, Access-Disadvantaged Subcommittee 2012-2013; Chair, Access-Mature Subcommittee 2009-2010  
“Law 201: Introduction to Canadian Law” undergraduate lecture course, founding Academic Director, 2012-2013  
B.Comm./J.D. Combined Degree Program, founding Co-Director, 2012-  
Law Faculty Renewal, Tenure, and Promotions Committee, Member 2010-2011  
Law Faculty Lounge Renovation Ad Hoc Committee, Member 2011

## **Other**

Willem C. Vis International Commercial Arbitration Moot, Coach or Co-Coach for:  
Queen’s University, 2009-2015, 2016-  
National Taiwan University, 2015-2016  
Wuhan University, 2013-2014  
Columbia Law School, 2005-2009  
Graduate Representative, University of Cambridge Faculty Board of Law, 2007-2008  
Judge in numerous moots and practice moots

## **PROFESSIONAL ACTIVITIES AND SERVICE**

Peer Reviewer of article and book manuscripts:

Alberta Law Review  
Asper Review of International Business and Trade Law  
University of British Columbia Law Review (multiple reviews)  
Canadian Bar Review  
Contemporary Asia Arbitration Journal (multiple reviews)  
Journal of International Dispute Settlement  
Journal of International Law and International Relations  
Ottawa Law Review (multiple reviews)  
Oxford University Commonwealth Law Journal  
Oxford University Press (multiple reviews for the law and political science divisions)  
Queen’s Law Journal (multiple reviews)  
Vindobona Journal of International Commercial Law and Arbitration  
Windsor Review of Legal and Social Issues (multiple reviews)  
Windsor Review of Access to Justice

Peer Reviewer of grant and funded chair applications:

Nomination for a Tier 2 Canada Research Chair (2014)  
Leverhulme Trust Major Research Project Grant (2014)

Member, International Chamber of Commerce Task Force on Improving the Probative Value of Witness Testimony in International Arbitrations, 2016-  
Chair, American Society of Comparative Law, Younger Comparativists Committee, Affiliates Advisory Group, 2014-2016; Member, 2013-2014  
Guest Moderator, OGEMID Forum, March 2013, March 2015  
Member, Advisory Committee, Contemporary Asia Arbitration Journal, 2014-  
Program Committee Member, 3rd Annual Younger Comparativists Committee Global Conference in Comparative Law, April 4-5, 2014, Lewis & Clark Law School, Oregon, USA



Arbitrator and Judge of Written Memoranda, Willem C. Vis International Commercial Arbitration Moot, 2007-  
Coach, Canadian National High School Debate Team, 1997-1999

## **PROFESSIONAL QUALIFICATIONS AND AFFILIATIONS**

New York Bar, admitted December 2006

Canadian Association of Comparative Law, 2012-  
American Society of Comparative Law, Younger Comparativists Committee, 2012-  
Toronto Commercial Arbitration Society, 2012-  
Young Canadian Arbitration Practitioners, 2012-  
Young and International associate, American Arbitration Association International Center for Dispute Resolution, 2012-  
Canadian Council on International Law, 2011-  
American Bar Association, 2006-  
Young and International Group, London Court of International Arbitration, 2005-

## **LANGUAGES**

English (native), Mandarin Chinese (proficient), French (proficient)