

# RICHARD H. FRANKEL

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## ACADEMIC EXPERIENCE

### Drexel University Thomas R. Kline School of Law

<i>Professor of Law</i>	2020-present
<i>Associate Dean for Experiential Learning</i>	2021-present
<i>Director, Civil Litigation and Dispute Resolution Program</i>	2020-present
<i>Director, Federal Litigation and Appeals Clinic</i>	2009-2021
<i>Associate Professor of Law</i>	2008-2020
<i>University Provost Fellow</i>	Sept. 2017-June 2018

### Georgetown University Law Center

2006-2008

*Teaching Fellow and Supervising Attorney, Appellate Litigation Program*

Co-taught clinic and supervised students litigating appeals before the U.S. Courts of Appeals and the Board of Immigration Appeals. Provided detailed feedback on students' written work and prepared students for oral argument.

## EDUCATION

### Georgetown University Law Center, LL.M. (Advocacy) with distinction, 2009

*Teaching Fellow and Supervising Attorney, Appellate Litigation Program, 2006-2008*

### Yale Law School, J.D., 2001

*The Yale Law Journal*, Senior Editor

*Community Legal Services Clinic*, Student Director

*Yale Law & Policy Review*, Articles Editor

### Yale College, B.A., *summa cum laude* (Ethics, Politics and Economics), 1997

Phi Beta Kappa

## PUBLICATIONS

*Working with Waiver: Supreme Court To Review Law on when an Employer Drops and Reinstates Arbitration*, 40(3) ALTERNATIVES TO THE HIGH COST OF LITIGATION 43 (Mar. 2022)

*Deporting Chevron: Why the Attorney General's Immigration Decisions Should Not Get Chevron Deference*, 54 U.C DAVIS L. REV. 547 (2020)

*Hostility on Display: When and When Corporations Aren't Big Fans of Arbitration*, 38(9) ALTERNATIVES TO THE HIGH COST OF LITIGATION 135 (Oct. 2020)

*Corporate Hostility to Arbitration*, 50 SETON HALL L. REV. 707 (2020) (winner of the 2022 Pound Institute Civil Justice Scholarship Award)

*The Federal Arbitration Act and Independent Contractors*, 40 CARDOZO L. REV. DE NOVO 101 (2018)

*Prisoners and Pleading*, 94 WASH. U. L. REV. 899 (2017) (with the Hon. Alistair E. Newbern)

*“What We Lose in Sales, We Make Up in Volume:” The Faulty Logic of the Financial Services Industry’s Response to the Consumer Financial Protection Bureau’s Proposed Rule Prohibiting Class Action Bans in Arbitration Clauses*, 48 ST. MARY’S L.J. 101 (2016) (invited piece)

*Bootstraps on the Ground: A Response to Professor Leslie*, 94 TEX. L. REV. SEE ALSO 188 (2016)

*Concepcion and Mis-Concepcion: Why Unconscionability Survives the Supreme Court’s Arbitration Jurisprudence*, 2014 J. DISP. RESOL. 225

*The Arbitration Clause as Super Contract*, 91 WASH. U. L. REV. 531 (2014)

*Illegal Emigration: The Continuing Life of Invalid Deportation Orders*, 65 SMU L. REV. 503 (2012)

*The Disappearing Opt-Out Right in Punitive-Damages Class Actions*, 2011 WIS. L. REV. 563 (reprinted in 61 DEF. LAW JOURNAL 81(2012))

*The Failure of Analogy in Conceptualizing Private Entity Liability Under Section 1983*, 78 UMKC L. REV. 967 (2010) (invited symposium piece)

*Regulating Privatized Government through § 1983*, 76 U. CHI. L. REV. 1449 (2009).

CONSUMER ARBITRATION AGREEMENTS: ENFORCEABILITY AND OTHER TOPICS (National Consumer Law Center, 5th ed. 2007, 6th ed. 2011, and 7th ed. 2014) (with Leslie A. Bailey, F. Paul Bland, Jr., Michael J. Quirk, David Seligmann, and Jonathan Sheldon).

*Undue Deference*, TRIAL, Nov. 2006

*Illusory Arbitration Clauses*, THE EMPLOYEE ADVOCATE, Spring/Summer 2004 (with F. Paul Bland, Jr. and Michael J. Quirk)

Note, *Proposition 209: A New Civil Rights Revolution?*, 18 YALE L. & POL’Y REV. 431 (2000)

### **Works in Progress:**

*Risk Assessment and Immigration Court* (publication forthcoming)

*Restoring Civility to Immigration Proceedings*

## GOVERNMENT TESTIMONY

United States Consumer Financial Protection Bureau, Field Hearing on Mandatory Arbitration, Dallas, Tex. (Dec. 12, 2013)

Appeared as a panelist and presented testimony regarding the use of mandatory arbitration clauses in contracts for consumer financial services and products.

United States House of Representatives, Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary, Washington, D.C. (May 2009)

Appeared as a witness and presented testimony at hearing entitled: “The Federal Arbitration Act: Is the Credit Card Industry Using it to Quash Legal Claims?”

United States Judiciary, Committee on Rules on Practice and Procedure, Washington, D.C. (April 2004)

Presented Testimony regarding the proposal to adopt Federal Rule of Appellate Procedure 32.1

## SELECTED PRESENTATIONS AND *AMICUS* BRIEFS

Co-Author, Brief of Law Professors as *Amici Curiae* in Support of Petitioner, No. 21-328, *Morgan v. Sundance, Inc.*, (Jan. 6, 2022).

Presenter, *Teaching Anti-Racism*, AALS Section on Teaching Methodologies (Oct. 8, 2021)

Presenter, *Algorithms and Immigration Bond Hearings*, New England Clinical Conference (Mar. 26, 2021)

Presenter, *Deporting Chevron*, Mid-Atlantic Clinicians’ Writing Workshop (Nov. 22, 2019)

Presenter, *Strategies, Hiccups, Roadblocks, and Ideas for Bringing Clinical Pedagogies into Non-Clinical Courses*, Midwest Clinical Legal Education 2019 Conference, University of Michigan Law School (Oct. 19, 2019)

Presenter, *Deporting Chevron*, New York University Law School/Clinical Law Review Writers’ Workshop (Sept. 21, 2019)

Presenter, *Taking a LEAP [Learn, Engage, Apply, Perform] into Leadership Exploration – Drexel University’s Provost Fellows*, Drexel University’s Sixth Annual Conference on Assessment, Drexel University, Philadelphia, PA (Sept. 12, 2019)

Presenter, *How to Ensure You are Affirmed*, Pennsylvania Conference of State Trial Judges, Hershey, PA (July 25, 2019)

Presenter, *The Federal Arbitration Act and Independent Contractors*, Drexel University Kline School of Law Faculty Forum (Oct. 8, 2018)

Co-author, Brief of *Amici Curiae* Historians in Support of Respondent, No. 17-340, *New Prime, Inc. v. Oliveira* (U.S. 2018)

Presenter, *Corporate Hostility to Arbitration*, Center for Corporate Law and Governance, Workshop on Consumer Financial Protection Law, Rutgers Law School, Camden, NJ (Feb. 3, 2018)

Co-presenter (with Deborah Gordon and Emily Zimmerman), *Shifting Perspectives: Building Litigation Avoidance into Traditional Litigation-Focused Courses*, Sixth Biennial Conference on Applied Legal Storytelling, American University Law School (July 2017)

Presenter, *Boots on the Ground*, Yale/Quinnipiac Dispute Resolution Forum, Yale Law School (Mar. 23, 2017).

Presenter, Forum on the Executive Order Banning Travel, Drexel University (Feb. 8, 2017).

Panel Moderator, Twenty Years After the 1996 Immigration Laws: Revisiting an Experiment in Comprehensive Security, Drexel Law Review Symposium, Drexel University Kline School of Law (October 2016).

Author, Brief of *Amicus Curiae* in support of Plaintiff-Appellee, No. 15-2364, *Oliveira v. New Prime, Inc.* (1st Cir. 2016).

Presenter, *Bringing the Outside In: Creating Experiential and Hands-on Opportunities*, Teaching Consumer Law Conference, Santa Fe, N.M. (May 20, 2016).

Presenter and Panelist, *Consumer Financial Protection Bureau (CFPB), Consumer Contracts, and Arbitration*, 11th International Conference on Contracts (KCON), Texas St. Mary's University School of Law, San Antonio, Tex. (February 27, 2016).

Author, Brief of Arbitration and Contracts Scholars as *Amici Curiae* in Support of Respondents, No. 14-462, *DIRECTV, Inc. v. Imburgia*, (2015).

Presenter, *Prisoners and Pleading*, Delaware Valley Clinicians Roundtable (November 2014).

Presenter, *Prisoners and Pleading*, Mid-Atlantic Law and Society Association Conference, Philadelphia, Pa. (October 2014)

Presenter, *Prisoners of Pleading*, New York University Law School/Clinical Law Review Writers' Workshop (September 2014)

Panelist, Teaching Cross-Cultural Lawyering, Southeastern Association of Law Schools Annual Conference, Amelia Island, Fl. (Aug. 7, 2014)

Panelist, Mandatory Arbitration and Justice, Southeastern Association of Law Schools Annual Conference, Amelia Island, Fl. (Aug. 6, 2014)

Paper Presenter and Panelist, *Forced Arbitration and the Fate of the Seventh Amendment*, Roscoe Pound Civil Justice Institute, 22nd Annual Forum for State Court Appellate Judges, Baltimore, Md. (July 26, 2014)

Co-Presenter, Opportunities for Clinic-Legal Writing Collaborations, *Bringing Outside In: Social Justice Collaborations in the Legal Writing Curriculum*, 2014 Legal Writing Institute Conference, Philadelphia, Pa. (June 29, 2014)

Co-Presenter, Teaching Collaboration, Delaware Valley Clinicians Roundtable (April 11, 2014).

Co-Presenter, Teaching Collaboration, AALS Conference on Clinical Legal Education (April 30, 2013).

Panelist, *Free Speech and Social Media*, “Controlling Speech in 2013: Money, Politics and Power,” Pennsylvania Bar Association Law Policy Forum (April 8, 2013).

Presenter, *The Arbitration Clause as Super Contract*, St. John’s University School of Law (March 11, 2013).

Author, Brief of Professional Arbitrators and Arbitration Scholars as *Amici Curiae* in Support of Respondents, No. 12-133, *Am. Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013).

Panel Moderator, “Globalizing Experiential Education,” *Building Global Professionalism*, Drexel Law Review Symposium, Philadelphia, PA (Oct. 12, 2012).

Panelist, *Prison Privatization and the Rights of the Incarcerated*, Vermont Law Review Symposium: “Optimizing Private Prisons,” Vermont Law School (March 23, 2012)

Presenter, *The Disappearing Opt-Out Right in Punitive Damages Class Actions*, Cleveland-Marshall College of Law (April 18, 2011)

Presenter, *The Disappearing Opt-Out Right in Punitive Damages Class Actions*, UNLV William S. Boyd School of Law (February 25, 2011)

Presenter, *The Disappearing Opt-Out Right in Punitive Damages Class Actions*, New York University Law School/Clinical Law Review Writers’ Workshop (October 2, 2010)

Panelist, *Mandatory Arbitration*, Practising Law Institute, 15<sup>th</sup> Annual Consumer Financial Services Institute, New York NY, (February 19, 2010)

Panelist, *The Failure of Analogy in Conceptualizing Private Entity Liability Under Section 1983*, Edward Smith/Bryan Cave Symposium: “Enforcing Constitutional Rights in the 21st Century,” University of Missouri-Kansas City School of Law (October 23, 2009)

Panelist, *The Debate Over Mandatory Arbitration*, American Financial Services Association Conference, Tucson, AZ (Winter 2006)

Panelist, *The Debate Over Mandatory Arbitration*, American Financial Services Association & National Association of Consumer Credit Regulators, State Government Relations Forum, Los Angeles, CA (Fall 2005)

Panelist, *Alternative Dispute Resolution*, American Bar Association Annual Conference, Business Litigation Section, Chicago, IL (Summer 2005)

Presenter, *Fighting Mandatory Arbitration Agreements*, American Trial Lawyers Association Summer Convention, Toronto, Ontario (Summer 2005)

Presenter, *Challenging Enforcement of Mandatory Arbitration Agreements*, State Bar of Texas, Consumer Law Conference, Galveston, TX (Summer 2005)

### OTHER ACTIVITIES

Prisoner Advocate, Drexel University Institutional Review Board #3 (2017-2020).

Reviewed research proposals for human research relating to prison populations as a member of Drexel's IRB.

### LEGAL EXPERIENCE

**Trial Lawyers for Public Justice**, Washington, DC 2003-2006  
*Goldberg-Deitzler Fellow*. Litigated class action, consumer protection and civil rights cases for national public interest law firm.

**Hon. William C. Canby, Jr., U.S. Court of Appeals for the Ninth Circuit** 2002-2003  
*Law Clerk*

**Hon. Henry H. Kennedy, Jr., U.S. District Court for the District of Columbia** 2001-2002  
*Law Clerk*

### BAR ADMISSIONS

State: Pennsylvania  
District of Columbia (inactive)  
California (inactive)

Federal: U.S. Supreme Court  
U.S. Court of Appeals for the D.C. Circuit  
U.S. Court of Appeals for the First Circuit  
U.S. Court of Appeals for the Third Circuit  
U.S. Court of Appeals for the Fourth Circuit  
U.S. Court of Appeals for the Fifth Circuit  
U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Ninth Circuit  
U.S. Court of Appeals for the Armed Forces  
U.S. District Court for the Central District of California  
U.S. District Court for the Northern District of California  
U.S. District Court for the District of Colorado  
U.S. District Court for the Eastern District of Pennsylvania  
U.S. District Court for the Middle District of Pennsylvania