

## *Curriculum Vitae*

### **James Ernest Penner**

B.Sc 1985 Hons. Genetics (University of Western Ontario), LL.B 1988 (Toronto), D.Phil 1992 (Oxon.), Barrister (Lincoln's Inn)

Kwa Geok Choo Professor of Property Law  
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#### **ACADEMIC POSITIONS**

**From July 31<sup>st</sup> 2017** Kwa Geok Choo Professor of Property Law, National University of Singapore (equivalent at NUS to what is called a 'University Chair' in the US and Canada)

**From 15<sup>th</sup> September, 2013 to July 31<sup>st</sup> 2017:** Professor of Law, National University of Singapore

**From September 1<sup>st</sup> 2008 to 31<sup>st</sup> October 2013:** Professor of Property Law, University College London.

**September 2005 to September 2008:** Professor of Law, King's College London.

**January 1998 to September, 2005:** Reader in Law (Senior Lecturer, 2001 to 2003; Lecturer, 1998 to 2001), London School of Economics.

**September 1992 to December, 1997:** Lecturer, Department of Law, Brunel University.

#### **PROFESSIONAL POSITIONS**

**2007 to 2011:** Door Tenant, New Square Chambers, 12 New Square, Lincoln's Inn WC2A 3SW (I gave up my door tenancy upon taking on the role of Head of Law at University College London in September, 2011)

**August 1988 to July 1989:** Articles of clerkship at Riches, McKenzie and Herbert, Toronto, a law firm specialising in intellectual property law.)

#### **SENIOR ADMINISTRATIVE POSITIONS**

**1<sup>st</sup> January, 2015 to 31<sup>st</sup> December, 2018:** Vice Dean for Research, Faculty of Law, National University of Singapore

**September 2013 to July 2019:** Member of the NUS Faculty of Law Faculty Promotion and Tenure Committee

**August 2011 to September 2013:** Head of Law/Vice-Dean (Staffing), Faculty of Laws, University College London

**August 2009 to September 2012:** Chair, Exams Panel, University of London International (formerly 'External') LL.B Programme

**August 2009 to September 2011** Chairman, Undergraduate Laws Examinations Board, Faculty of Laws, University College London

## **SUBJECTS TAUGHT**

National University of Singapore: LL.B Equity and Trusts; LLB/LL.M Property Theory; LL.B/LL.M Legal Reasoning; LL.B/LL.M Law of Agency

University College London: LL.B Property I and Property II; LL.B Jurisprudence and Legal Theory; LL.M International and Commercial Trusts Law; LL.M International and Comparative Law of Restitution; LL.M Jurisprudence and Legal Theory

King's College London: LL.B Trusts; LL.B Jurisprudence; LL.M International and Comparative Trusts Law

London School of Economics: LL.B Jurisprudence; LL.B Property II (land law, law of trusts); LL.M Jurisprudence and Legal Theory

Brunel University: Jurisprudence; Introduction to Property; Trusts; Land Law

## **EXTERNAL EXAMINERSHIPS**

**2011 to 2015:** External Examiner, LSE, Law Department Summer School

**2009 to 2012:** External Examiner, University of East Anglia, LL.B Law of Trusts, Restitution

**2003 to 2005:** External Examiner, King's College London, LL.M International and Comparative Trusts Law

**2001 to 2004:** External Examiner, University of Wales at Cardiff, LL.B degree for Land Law, Jurisprudence, IP.

**2000 to 2003:** External Examiner, Portobello College Dublin (LL.B degree moderated by the University of Wales), for Land Law, Equity and Trusts Law, Company Law

## **FELLOWSHIPS/VISITING PROFESSORSHIPS/EDITORSHIPS/PROFESSIONAL ACTIVITIES/REF Panel/INTERNATIONAL ADVISORY PANEL**

**Autumn Semester 2019:** Visiting Professor, Harvard Law School, teaching an upper year elective, 'Property Theory'

**October/November 2017:** Visiting Professor, Faculty of Law, University of Toronto, giving a one credit intensive course, 'Property Theory'

**June 2017:** Member, International Advisory Panel Conducting the 5-year review of the Faculty of Law, University of Alberta, Edmonton, Canada

**2015 to present:** Member, International Advisory Panel to the American Law Institute on the Restatement of Law Fourth Property

**2014 to present:** Member, Law Society of Singapore Inquiry Panel

**2012 to 2013:** Member, UK Research Excellence Framework Panel for Law; I attended the first year meetings, but had to give up my membership when I took up the post in Singapore

**2010 to 2012** Visiting Professor, KUL (Catholic University of Leuven), Kortrijk, Belgium, (teaching Introduction to the Common Law)

**2009 to 2019:** Member, College of Reviewers, Arts and Humanities Research Council

**November 2006:** Called to the Bar, Lincoln's Inn; (2007-11) Door Tenant, New Square Chambers, Lincoln's Inn

**April/May 2006:** Visiting Professor, School of Law, Jilin University, Changchun, China

**March/April 2006:** Visiting Professor, TC Beirne School of Law, University of Queensland, Brisbane, Australia, teaching two intensive courses: 'International & Comparative Trusts Law'; 'Property Theory'

**January 2006:** Principal's Fund International Visitor, Faculty of Law, Queen's University, Kingston, Canada

**2005 to present:** Member, Society of Trust and Estate Practitioners

**2004 to 2011:** Editor, Trusts Law International

**Autumn Semester, 1998:** WF Bowker Visiting Professorship, Faculty of Law, University of Alberta, Edmonton, Alberta, Canada; Teaching: LL.B Law of Trusts, one of two sections.

## GRANTS

**January 2019** (With co-investigators Lisa Austin, David Lie, Benjamin Wong & Jeremiah Lau) NUS-University of Toronto Research Partnership Grant of \$20,000 to fund research on 'Public Data Trusts'

**December 2018** (with co-principal investigator Associate Professor Mark McBride of NUS) Singapore Ministry of Law Academic Research Fund Tier 1 grant of \$47,681 to hold a workshop and produce an edited volume on 'New Essays on the Nature of Legal Reasoning'.

**December 2015** Singapore Ministry of Law Academic Research Fund Tier 1 grant of \$47,373, to hold a workshop on property theory. That took place in July, 2016, and the resulting collection of essays is published as James Penner & Michael Otsuka (eds.) *Property Theory: Legal and Political Perspectives* (Cambridge: Cambridge University Press, 2018).

**April 2015** Grant from the NUS Centre for Law and Business of \$39,000 to host the 'Equity, Trusts, and Commerce' conference co-convened by Oxford and CLB, held at NUS in May 2016. That grant was successfully concluded with the publication of the essay collection Paul S Davies & James Penner (eds), *Equity, Trusts and Commerce*, (Oxford: Hart, 2017).

**April 2014 to April 2018** NUS Start-Up Grant of \$40,000. My funding was raised by the Provost from \$30k to \$40k because of the fact that my grant was extended by one year owing to my taking on the Vice Dean for Research role for four years.

**2012-2013** Grant of approximately £20,000 from the Society of Legal Scholars to host the Society of Legal Scholars Annual Seminar on ‘The Philosophical Foundations of Property Law’, which led to the publication of the same name edited by Henry Smith and me.

**January 1998** Nuffield Foundation Social Science Research Fellowship (£18,415); project on cognitive science, philosophy of mind, and legal theory.

**December 1995** Economic and Social Research Council Grant to conduct research into philosophy of cognitive science and legal categorisation at Rutgers University, March to May, 1996.

## **PRIZES, AWARDS**

**September, 1997** Society of Public Teachers of Law First Prize for Outstanding Scholarship by a Younger Scholar (now the Society of Legal Scholars Peter Birks Prize), for *The Idea of Property in Law*.

**1991** G.A. Paul Memorial Scholarship, University College, Oxford.

## **PUBLICATIONS**

### **Monographs**

*Property Rights: A Re-Examination* (Oxford: Oxford University Press, 2020)

*The Idea of Property in Law* (Oxford University Press, 1997)

### **Texts**

*The Law of Trusts 12<sup>th</sup> Ed.* (Oxford: Oxford University Press, 2022); 11<sup>th</sup> ed. 2019, 10<sup>th</sup> ed. 2016, 9<sup>th</sup> ed. 2014, 8<sup>th</sup> ed. 2012, 7<sup>th</sup> ed. 2010, 6<sup>th</sup> ed. 2008, 5<sup>th</sup> ed. 2006; formerly published by London: Butterworths, 2004, 2002, 2000, 1998)

*McCoubrey & White’s Textbook on Jurisprudence 8<sup>th</sup> Edition* (Oxford: OUP, 2012 (with E. Mellissaris); 7<sup>th</sup> ed. 2009)

*Jurisprudence and Legal Theory: Commentary and Materials* (Co-edited with David Schiff and Richard Nobles); (London, Butterworths, 2002) This book is a compilation of original commentaries and selections of materials by 10 members of the LSE Law Department on their specialties in jurisprudence. Besides co-editing the book, I contributed 5 of the 20 chapters: ch.8 ‘Law and Adjudication: Dworkin’s Critique of Positivism’; ch. 9 ‘Law As Integrity: Dworkin’s Interpretive Turn’; ch. 10 ‘The Current Debate: The Semantic Sting, Soft Positivism, and the Authority of Law According to Raz’; ch. 12 ‘Punishment’; and Ch. 14 ‘Legal Reasoning’.

### **Edited Books**

Mark McBride & James Penner (eds) *New Essays on the Nature of Legal Reasoning* (Oxford: Hart, 2022)

James Penner & Michael Otsuka (eds.) *Property Theory: Legal and Political Perspectives* (Cambridge, CUP, 2018)

Paul S Davies & James Penner (eds), *Equity, Trusts and Commerce*, (Oxford: Hart, 2017)

James Penner and Henry E Smith (eds) *Philosophical Foundations of Property Law* (Oxford: OUP, 2013)

Robert Chambers, Charles Mitchell, and James Penner (eds) *Philosophical Foundations of the Law of Unjust Enrichment* (Oxford: OUP, 2009)

### Articles and Book Chapters

‘Hohfeld’s Equity’ in Shyamkrishna Balganesh, Ted M. Sichelman & Henry E. Smith (eds.), *Wesley Hohfeld A Century Later: Edited Works, Select Personal Papers, and Original Commentaries* (Cambridge: Cambridge University Press, 2022), 295-311

‘Property and Self-Determination: Critical notice of Hanoch Dagan, *A Liberal Theory of Property* (Cambridge University Press, 2021)’ (2022) 35 *Canadian Journal of Law and Jurisprudence* 537-558

‘Taking Raz Seriously: On the Value of Autonomy and its Relation to Private Law’ in Paul Miller and John Oberdiek (eds), *Oxford Studies in Private Law Theory Volume 2* (Oxford: Oxford University Press, in press)

‘Working with a Body of Rules: On the Nature of Doctrinal Legal Disagreement in Judge-made Law’ in Mark McBride & James Penner (eds) *New Essays on the Nature of Legal Reasoning* (Oxford: Hart, 2022), 175-198

‘Justifying (or Not) the Office of Trusteeship With Particular Reference to Massively Discretionary Trusts’ (2021) 34 *Canadian Journal of Law and Jurisprudence* 365-390

‘Punishments and Penalties in Private Law, with Particular Reference to the Law Governing Fiduciaries’ in Elise Bant, Wayne Courtney, James Goudkamp, and Jeannie Marie Paterson (eds) *Punishment and Private Law* (Oxford: Hart, 2021), 105-130

‘Justifying Private Law: “Reasons Fundamentalism” Instrumentalism and the Kantian Account’ in Simone Degeling, Michael JR Crawford & Nicholas A Tiverios (eds) *Justifying Private Rights* (Oxford: Hart, 2020), 45-62

‘Property’ in Andrew Gold, John Goldberg, Daniel Kelly, Emily Sherwin & Henry Smith (eds), *Oxford Handbook of New Private Law* (Oxford: Oxford University Press, 2020), 277-292

‘Trustees and Agents Behaving Badly: When and How is ‘Bad Faith’ Relevant?’ in Matthew Harding & Paul B. Miller (eds.), *Fiduciaries and Trust: Ethics, Politics, Economics and Law*, (Cambridge: Cambridge University Press, 2020), 128-148

with Jeremiah Lau and Benjamin Wong, ‘The Basics of Private and Public Data Trusts’, [2020] *Singapore Journal of Legal Studies* 90-114

‘Don’t Crash into Mick Jagger when He is Driving his Rolls Royce: Liability in Damages for Economic Loss Consequent upon a Personal Injury’ in Paul B. Miller & John Oberdiek (eds.), *Civil Wrongs and Justice in Private Law* (Oxford: Oxford University Press, 2020), 253-271

‘Equity, Justice, and Conscience: Suitors Behaving Badly?’ in Dennis Klimchuk, Irit Samet & Henry E. Smith (eds.), *Philosophical Foundations of the Law of Equity* (Oxford: Oxford University Press, 2020), 52-71

‘Fiduciary Law and Moral Norms’ in Evan J. Criddle, Paul B. Miller & Robert H. Sitkoff (eds.),

*Oxford Handbook of Fiduciary Law* (Oxford: Oxford University Press, 2019), 781-796

‘Private law, *Potentia* and the Ethical: On what justification does the state coercively tax its subjects in order to build bridges, fund the BBC, and subsidise charities?’ in Michael A. Wilkinson & Michael W. Dowdle (eds.), *Questioning the Foundations of Public Law* (Oxford: Hart, 2018) 99-113

‘The Beneficiary’s Performance Interest in a Trust, *AIB v. Redler*, and the March of the Compensatory Principle’ in Kelvin Low, Richard Nolan, and Tang Hang Wu (eds.) *Trusts and Modern Wealth Management* (Cambridge: Cambridge University Press, 2018) 277-306

‘Rights, distributed and undistributed: on the distributive justice implications of Lockean property rights, especially in land’ in James Penner & Michael Otsuka (eds.) *Property Theory: Legal and Political Perspectives* (Cambridge: Cambridge University Press, 2018)

‘We All Make Mistakes: A ‘Duty of Virtue’ Theory of Restitutionary Liability for Mistaken Payments’ (2018) 81 *Modern Law Review* 222-246

‘Legal Powers and the Will and Interest Theories of Rights’ in Mark McBride (ed.) *New Essays on the Nature of Rights* (Oxford: Hart, 2017), 99-125

‘Autonomy, Religion and Politics: Reflections on Matthew Harding’s Charity Law and the Liberal State’ (2016, this is the nominal year, but published in 2017) 41 *Australian Journal of Legal Philosophy* 126-38

‘“Sort of” Backwards Tracing’ in Paul S Davies & James Penner (eds.), *Equity, Trusts and Commerce*, (Oxford: Hart, 2017), 123-49

‘Falsifying the Trust Account and Compensatory Equitable Compensation’ in Simone Degeling and Jason NE Varuhas (eds.) *Equitable Compensation and Disgorgement of Profit* (Oxford: Hart, 2017) 143-57

(with KarLuis Quek) ‘The Law’s Remedial Norms’, (2016) 28 *Singapore Academy of Law Journal* 768-94

"Purposes and Rights in the Common Law of Trusts" (2014) 48 *Revue Juridique Themis de l'Universite de Montreal* 579- 597

‘Distinguishing Fiduciary, Trust, and Accounting Relationships’ (2014) 8 *Journal of Equity* 202-234

‘Promises, Agreements, and Contracts’ in G Klass, G Letsas, & P Saprai (eds.), *Philosophical Foundations of Contract Law* (Oxford: OUP, 2014), 116-134

‘Aristotle, Arendt, and the Gentleman: How the Conception of Remuneration Figures in our Understanding of a Right to Work and Be Paid’ in V. Mantouvalou (ed.), *The Right to Work: Legal and Philosophical Perspectives* (Oxford: Hart, 2014), 87-97

‘Intergenerational Justice and the “Hereditary Principle”’ (2014) 8 *Law & Ethics of Human Rights* 195–217

‘Is Loyalty a Virtue, and Even If It Is, Does It Really Help Explain Fiduciary Liability?’, in Andrew S Gold & Paul B Miller (eds.) *Philosophical Foundations of Fiduciary Law* (Oxford: OUP, 2014), 159-175

‘The (True) Nature of a Beneficiary’s Equitable Proprietary Interest Under a Trust’, (2014) XXVII *Canadian Journal of Law and Jurisprudence* 473-500

‘On the Very Idea of Transmissible Rights’ in James Penner & Henry E Smith (eds) *Philosophical Foundations of Property Law* (Oxford: OUP, 2013), 244-71

(With Henry E Smith) ‘Introduction’ in James Penner & Henry E Smith (eds) *Philosophical Foundations of Property Law* (Oxford: OUP, 2013), xv-xxvii

‘The difficult doctrinal basis for the fiduciary’s proprietary liability to account for bribes’ (2012) 18 *Trusts and Trustees* 1000-07

‘The Concept of Property and the Concept of Slavery’ in Jean Allain (ed.) *The Legal Understanding of Slavery: The Historical to the Contemporary* (Oxford: Oxford University Press, 2012), 242-52

‘An Untheory of the Law of Trusts, or Some Notes Towards Understanding the Structure of Trusts Law Doctrine’, (2010) 63 *Current Legal Problems* 653-675

‘Resulting Trusts and Unjust Enrichment: Three Controversies’ in Charles Mitchell (ed.) *Constructive and Resulting Trusts* (Oxford: Hart, 2010), 237-66

‘The State Duty to Support the Poor in Kant’s *Doctrine of Right*’ (2010) 12 *British Journal of Politics and International Relations* 88-110

‘Value, Property, and Unjust Enrichment: Trusts of Traceable Proceeds’ in Robert Chambers, Charles Mitchell, and James Penner (eds.) *Philosophical Foundations of the Law of Unjust Enrichment* (Oxford: OUP, 2009), 306-334

(with Robert Chambers and Charles Mitchell) ‘Introduction’ in Robert Chambers, Charles Mitchell, and James Penner (eds.) *Philosophical Foundations of the Law of Unjust Enrichment* (Oxford: OUP, 2009), 3-27

‘Property, Community, and the Problem of Distributive Justice’, (2009) 10 *Theoretical Inquiries in Law* 193-216

(with Robert Chambers) ‘Ignorance’ in J Edelman & S. Degeling (eds.) *Equity and Commercial Law* (Sydney: Lawbook Co., 2008) 253-74

‘The Common Law Controversy over the Nature of the Trust’ in S Nassare Asnar & M.Garrido Melero (eds.), *Los Patrimonios Fiduciarios y el Trust*, (Madrid: College Notarial de Cataluna, 2006)

‘Ownership, Co-ownership, and the Justification of Property Rights’, in T Endicott, J Getzler, and E Peel (eds.), *Properties of Law: Essays in Honour of Jim Harris* (Oxford: OUP, 2006), 166-188

‘Duty and Liability in Respect of Funds’ in J Lowry and L Mistelis (eds.), *Commercial Law: Perspectives and Practice* (London: LexisNexis Butterworths, 2006), 207-225

‘Decent Burials for Dead Concepts’ (2005) 58 *Current Legal Problems* 313-42

‘Misled by “Property”’ (2005) XVIII *Canadian Journal of Law and Jurisprudence*, Special Issue on the Philosophy of Taxation, 75-93

‘Lord Millett’s Analysis’ in W J Swadling (ed.), *The Quistclose Trust: Critical Essays* (Oxford: Hart, 2004), 41-66

‘Legal Reasoning and the Authority of Law’ in Paulson, S., Pogge, T. & Meyer, L. (eds.), *Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz* (Oxford: Oxford University Press, 2003), 71-97

‘Exemptions’ in P.B.H. Birks and A. Pretto, (eds.), *Breach of Trust* (Oxford: Hart, 2002), 241-68

‘Common Law Cognition and Judicial Appointment’ (2000) 38 *Alberta Law Review* 683-707

‘Nuisance, the Morality of Neighbourliness, and Environmental Protection’ in Lowry, J and Edmonds, R (eds), *Environmental Protection and the Common Law* (Oxford: Hart, 2000), 27-49

‘Cognitive Science, Legal Theory, and the Possibility of an Observation/Theory distinction in Morality and Law’ (1998) 1 *Current Legal Issues: Law and Science* 1-34

‘Hohfeldian Use-Rights in Property’ in J.W.Harris (ed.) , *Property Problems: From Genes to Pension Funds* (London: Kluwer, 1997), 164-74

‘Basic Obligations’ in P.B.H. Birks (ed.) *The Classification of Obligations* (Oxford University Press, 1997), 91-122

‘The Analysis of Rights’ (1997) 10 *Ratio Juris* 300-15

‘Voluntary Obligations and the Scope of the Law of Contract’ (1996) 2 *Legal Theory* 325-57

‘The ‘Bundle of Rights’ Picture of Property’ (1996) 43 *UCLA Law Review* 711-820

‘Nuisance and the character of the neighbourhood’ (1993) 5 *Journal of Environmental Law* 1-29

#### **Reviews/Comments/Shorter Articles**

Review of Geoffrey Samuel’s *Rethinking Legal Reasoning* [2019] *Cambridge Law Journal* 450-453

Review of John Gardner’s *From Personal Life to Private Law* (2019) 10 *Jurisprudence* 300-312

‘Potentiality, Actuality and “Stick”-Theory’, in Symposium: Property: A Bundle of Rights? (2011) 8 (3) *Econ Journal Watch* September 2011: 274-278, an online journal, available at <http://econjwatch.org/articles/potentiality-actuality-and-stick-theory>

‘Stephen Munzer’s Pluralist Moral Theory’ (2009) 8 *American Philosophical Society Newsletter*, *Newsletter on Philosophy of Law*, 2-6

‘Legal positivism since 1970’ and ‘Philosophical analysis of legal concepts’ in Peter Cane & Joanne Conaglen (eds), *New Oxford Companion to Law* (Oxford: OUP, 2008), at 700-01, 889-91

Review of McFarlane, Ben *The Law of Property* (Oxford: OUP, 2008) [2009] *Restitution Law Review* 250-258

Case Comment “Dishonest Assistance Revisited – *Barlow Clowes v Eurotrust International*” (2006) 20 *Trust Law International* 122

Case Comment “Contribution Between Wrongdoers – *Alexander v Perpetual Trustees*” (2005) 19 *Trust Law International* 105

Review Article on Coleman and Shapiro (eds) *The Oxford Handbook of Jurisprudence and Philosophy of Law* (2004) 67 *MLR* 863-88

Review of Mobray et al, *Lewin on Trusts, 17<sup>th</sup> Ed.* (2002) 16 *Trust Law International* 70.



Case Comment *Twinsectra v. Yardley* (2002, HofL) (2002) 16 Trust Law International 165.

Review of Jackson, ed. *Contemporary Property Law*; Jackson and Wilde eds. *Property Law: Current Issues and Debates* [2001] Restitution Law Review 250

Review of Spence, *Protecting Reliance*, (2000) 64 The Conveyancer, 360.

Review of Baxendale-Walker, *Purpose Trusts* (2000) 14 Trust Law International 118

Review of Vogt, ed. *Disputes Involving Trusts* (2000) 14 Trust Law International 186

Review of McLean (ed.) *Property and the Constitution* [2000] Public Law 336

Case Comment *BCCI v. Akindele* (2000, CA) (2000) 14 Trust Law International 236

Review of Alexander, *Commodity and Propriety* (1999) 22 Journal of Consumer Policy 370.

Review of Hayton, Kortmann, and Verhagen eds, *Principles of European Trust Law* (1999) 13 Trust Law International 199

Review of Mashaw, *Greed, Chaos and Governance* (1998) XVIII Philosophy in Review 125

Review of Jones and Goodhart, *Specific Performance*, [1997] Restitution Law Review

Review of Boyle, *Shamans, Software, and Spleens: Law and the Construction of the Information Society* (1997) 6 Social and Legal Studies 449

Review of Stavropoulos, *Objectivity in Law*, (1997) 60 Modern Law Review 747

Review of Radin, *Contested Commodities*, (1997) XVII Philosophy in Review 206

Review of Harris, *Property and Justice*, (1997) SPTL Reporter

Review of Radin, *Reinterpreting Property*, (1995) 4 Social and Legal Studies 426