Boilerplate The Fine Print Vanishing Rights And The Rule Of Law

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Why the increasing use of boilerplate is eroding our rights Boilerplate—the fine-print terms and conditions that we become subject to when we click "I agree" online, rent an apartment, enter an employment contract, sign up for a cellphone carrier, or buy travel tickets—pervades all aspects of our modern lives. On a daily basis, most of us accept boilerplate provisions without realizing that should a dispute arise about a purchased good or service, the nonnegotiable boilerplate terms can deprive us of our right to jury trial and relieve providers of responsibility for harm. Boilerplate is the first comprehensive treatment of the problems posed by the increasing use of these terms, demonstrating how their use has degraded traditional notions of consent, agreement, and contract, and sacrificed core rights whose loss threatens the democratic order. Margaret Jane Radin examines attempts to justify the use of boilerplate provisions by claiming either that recipients freely consent to them or that economic efficiency demands them, and she finds these justifications wanting. She argues, moreover, that our courts, legislatures, and regulatory agencies have fallen short in their evaluation and oversight of the use of boilerplate clauses. To improve legal evaluation of boilerplate, Radin offers a new analytical framework, one that takes into account the nature of the rights affected, the quality of the recipient's consent, and the extent of the use of these terms. Radin goes on to offer possibilities for new methods of boilerplate evaluation and control, among them the bold suggestion that tort law rather than contract law provides a preferable analysis for some boilerplate schemes. She concludes by discussing positive steps that NGOs, legislators, regulators, courts, and scholars could take to bring about better practices.

During its classical period, American contract law had three prominent characteristics: nearly unlimited freedom to choose the contents of a contract, a clear separation from the law of tort (the law of civil wrongs), and the power to make contracts without regard to the other party's ability to understand them. Combining incisive historical analysis with a keen sense of judicial politics, W. David Slawson shows how judges brought the classical period to an end about 1960 with a period of reform that continues to this day. American contract law no longer possesses any of the prominent characteristics of its classical period. For instance, courts now refuse to enforce standard contracts according to their terms; they implement the consumer's reasonable expectations instead. Businesses can no longer count on making the contracts they want: laws for certain industries or for businesses generally set many business obligations regardless of what the contracts say. A person who knowingly breaches a contract and then tries to avoid liability is subject to heavy penalties. As Slawson demonstrates, judges accomplished all these reforms, although with some help from scholars. Legislation contributed very little despite its presence in massive amounts and despite the efforts of modern institutions of law reform such as the Conference of Commissioners on Uniform State Laws. Slawson argues persuasively that this comparison demonstrates the superiority of judge-made law to legislation for reforming private law of any kind.

This essay reviews Margaret Jane Radin's Boilerplate: The Fine Print, Vanishing Rights, And The Rule Of Law (Princeton Press, 2013). It responds to two of the book's principal complaints against boilerplate consumer contracts: that they modify people's rights without true agreement to, or even minimal knowledge of, their terms; and that the provisions they unilaterally enact are substantively intolerable. I argue, counter-intuitively, that contracts with long fine prints are no more complex and baffling to consumers than any alternative boilerplate-free templates of contracting. Therefore, there is no alternative universe in which consumers enter simpler contracts better informed of the legal terms. In addition, I argue that any policy that mandates consumer-friendlier arrangements (such as ones that eliminate boilerplate arbitration clauses, warranty disclaimers, or data collection) would hurt consumers in an unintended but potentially costly way.

Offers accounts of over four hundred cases argued before the Supreme Court, including Marbury v. Madison, Scott v. Sandford, and Brown v. Board of Education.

This book comprehensively examines the entire legal process of the international sale of goods, beginning with the creation of the contract and continuing through to either the fulfilment of the sale, or the termination of the contract. Every day goods are globally traded between sellers and buyers in different countries and different jurisdictions. The distances between the parties involved in such transactions, and the relative risks related to that, are a key issue in international commercial sales. Sales of goods carried by sea, thus, differ quite drastically from domestic sales; the goods will be normally shipped at a port very distant from the buyer, preventing his physical presence at the port of loading. Further, the goods will travel in the custody of a carrier, a party normally quite independent from either trader. Finally, transactions concluded on shipment terms are normally irreversible, in the sense that shipping the goods back to the seller represents an unlikely option for the buyer. Traders around the world very frequently choose English law to govern their contracts, with disputes to be resolved through London arbitration or litigation. The basis of that law is to be found in the English Sale of Goods Act 1979, and the book consequently also includes an examination of the fundamental principles of that Act, as well as considering use of the Vienna Convention on the International Sale of Goods. This book will be an invaluable reference point for legal practitioners specialising in the sale of goods, as well as postgraduate students and academic researchers working in sales of goods and the international trade sector.

This collection of essays by one of the country's leading property theorists revitalizes the liberal personality theory of property. Departing from traditional libertarian and economic theories of property, Margaret Jane Radin argues that the law should take into account nonmonetary personal value attached to property—and that some things, such as bodily integrity, are so personal they should not be considered property at all. Gathered here are pieces ranging from Radin's classic early essay on property and personhood to her recent works on governmental "taking" of private property. Margaret Jane Radin is professor of law at Stanford University. She is the author of over twenty-five articles on legal and political theory.

This pioneering book is the first to identify the methods, strategies, and personal traits of law professors whose students achieve exceptional learning. Modeling good behavior through clear, exacting standards and meticulous preparation, these instructors know that little things also count--starting on time, learning names, responding to emails.

Perhaps no kind of regulation is more common or less useful than mandated disclosure—requiring one party to a transaction to give the other information. It is the iTunes terms you assent to, the doctor's consent form you sign, the pile of papers you get with your mortgage. Reading the terms, the form, and the papers is supposed to equip you to choose your purchase, your treatment, and your loan well. More Than You Wanted to Know surveys the evidence and finds that mandated disclosure rarely works. But how could it? Who reads these disclosures? Who understands them? Who uses them to make better choices? Omri Ben-Shahar and Carl Schneider put the regulatory problem in human terms. Most people find disclosures complex, obscure, and dull. Most people make choices by stripping information away, not layering it on. Most people find they can safely ignore most disclosures and that they lack the literacy to analyze them anyway. And so many disclosures are mandated that nobody could heed them all. Nor can all this be changed by simpler forms in plainer English, since complex things cannot be made simple by better writing. Furthermore, disclosure is a lawmakers' panacea, so they keep issuing new mandates and expanding old ones, often instead of taking on the hard work of writing regulations with bite. Timely and provocative, More Than You Wanted to Know takes on the form of regulation we encounter daily and asks why we must encounter it at all.

"Rich detail and vivid anecdotes of adventure....A treasure trove of exotic fact and hard thinking."—The New York Times Book Review, front page For millennia, lions, tigers, and their man-eating kin have kept our dark, scary forests dark and scary, and their predatory majesty has been the stuff of folklore. But by the year 2150 big predators may only exist on the other side of glass barriers and chain-link fences. Their gradual disappearance is changing the very nature of our existence. We no longer occupy an intermediate position on the food chain; instead we survey it invulnerably from above—so far above that we are in danger of forgetting that we even belong to an ecosystem. Casting his expert eye over the rapidly diminishing areas of wilderness where predators still reign, the award-winning author of The Song of the Dodo examines the fate of lions in India's Gir forest, of saltwater crocodiles in northern Australia, of brown bears in the mountains of Romania, and of Siberian tigers in the Russian Far East. In the poignant and troublesome ferocity of these embattled creatures, we recognize something primeval deep within us, something in danger of vanishing forever.