

Title: Power in the employment relationship: Why contract law should not govern at-will employment

Speaker: Dr. Julia TOMASSETTI

Date : 17 Nov 2020 (Tue)

Time : 3:00pm - 4:00pm (HKT)

Abstract:

It is common to hear laypersons and legal actors alike refer to employment as a “contract.” This is an incorrect classification for the most common kind of employment in the US—at-will employment, an employment relationship in which both the employer and employee have a right to walk away for any reason, at any time, and usually without notice. This paper argues that at-will employment should not be governed by contract law. At-will employment is not contractual and does not fit within a contractual model of governance. Delineating at-will employment as a “contractual” relationship is inaccurate as a matter of legal doctrine, fails to reflect the social organization of most at-will employment, and conflicts with the policy purposes of contract law. Worse of all, construing at-will-employment as a contractual relationship confirms the employee’s subordination to capital even as it conceals it. At-will employees are subject to the employer’s power, and the law both obscures and legitimates this power by treating at-will employment as a “contractual” relationship.

Bio:

Julia TOMASSETTI is an Assistant Professor at the City University of Hong Kong School of Law. She earned a JD from Harvard and a Sociology PhD from UCLA. She has been a fellow at the Baldy Center for Law and Social Policy at SUNY Buffalo, the Georgetown University Law Center, and the Center for Law, Society, & Culture at the Maurer School of Law. Before entering the academy, Dr. Tomassetti practiced campaign finance and employment law in New York City.



Dr. Tomassetti’s research integrates work law, economic sociology, and political economy. Much of her work focuses on disputes over the legal identity of work relationships, including how perceptions of the business enterprise, contract and property rights, and new technologies shape legal interpretations of work. She uses interdisciplinary methods to discover patterns and answer questions that doctrinal approaches alone cannot. Using this interdisciplinary lens, her scholarship has examined technology and work, nonmarket work, service work, and the gig economy.

Her current projects examine algorithmic management, neoliberalism in legal interpretations of precarious work, the ambiguity between employer authority and property rights, and sentencing decisions involving migrant domestic workers in Hong Kong. Recently, she received a substantial grant for a project on FedEx’s decades-long experimentation with the legal distinction between employment and independent contracting, including how this experimentation may have prefigured the practices of digital platforms.

Dr. Tomassetti’s teaching subjects include consumer law, contracts, environmental law, labour law, and legal methods.

This seminar will be conducted via Zoom. Please make an online reservation by clicking the registration link:

<https://cityu.zoom.us/meeting/register/tJUqd-utpzMoGtPCXD-9-M2Mnz6ZaTKR5jUV>

A Zoom meeting ID will be sent to registered participants via email.



Commentator:
Prof. Alexander Loke



Moderator:
Dr. Stephenson Chow