

The Decline of Legality in Consumer Contract Law

“First year teachers of common law subjects describe the common law system with a little bit of romanticism,” post Samuel Issacharoff & Florencia Marotta-Wurgler, in *Contracts Jotwell’s blog*.

“Through the aggregation of many court opinions, and through learning from variant approaches in different states’ jurisdictions, a process of reflective equilibrium finds legal rules that make sense as applied to diverse fact patterns and that reflect ongoing changes in technology and social mores. The status of each state’s supreme court as the final arbiter of questions of common law features keenly in Louis Brandeis’s oft-quoted characterization of the states as ‘laboratories of democracy.’ Writing with Samuel Warren, Louis Brandeis famously declared that ‘the common law, in its eternal youth, grows to meet the new demands of society.’”

Read the post.