




# ONLINE PLATFORMS AND THE SHADOW CONTRACT LAW

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*in understanding new technologies, the central question is not what is novel, for we can almost always find analogies in the past. The question is what technological change makes newly salient*

*Jack M. Balkin*

- secluded contracting ecosystems
- global private regulation across jurisdictions
- autonomous governance schemes
- epistemic power and privatized knowledge



CREATED BEYOND CONTRACT  
LAW, BUT MIMICKING IT

FOSTERING USER'S TRUST IN THE  
TRANSACTION ENVIRONMENT

“SHADOW”  
CONTRACT LAW

(SELF-)REGULATORY  
COMPETITION

OWN ENFORCEMENT  
INFRASTRUCTURE

**VERTICAL**  
(PLATFORM-USER)

**BARRIERS TO  
MARKET ENTRY**

**ACCOUNT  
CONTROL**

**INTERNAL  
COMPETITION**

## *Uber v. Heller (2020)*



Uber's arbitration clause is unconscionable.

Imbalance of bargaining power between Uber and its drivers.

Drivers denied access to justice.

**HORIZONTAL**

**(USER-USER)**

**BRINGING  
PARTIES  
TOGETHER**

**CONCLUSION  
AND  
PERFORMANCE**

**PRICE  
REGULATION**

## *Quoine Pte Ltd v B2C2 Ltd (2020)*



No unilateral mistake: Quoine's algorithms acted exactly as they were programmed.

No evidence that B2C2 ought to have known that the extreme prices resulted from a system malfunction.

# CONTRACT LAW FOR THE PLATFORM ECONOMY

CLASSICAL  
CONTRACT LAW

“META”  
CONTRACT LAW

SOFT LAW

PRIVATE  
INTERNATIONAL  
LAW