



UNIVERSITY OF TORONTO  
FACULTY OF LAW

## LAW & ECONOMICS WORKSHOP

presents

**Tess Wilkinson-Ryan**  
University of Pennsylvania Law School

### *The Common Sense of Contract Formation*

**Tuesday, March 31, 2015**

**4:10 – 5:45**

**Solarium (room FA2), Falconer Hall  
84 Queen's Park**

Unlike torts or civil procedure or any area of public law, the rules of promissory exchange apply exclusively to parties who have manifested their assent to be bound. What parties know, and what parties think they know, about contract law affects their contract behavior and in some cases the legal status of their agreements. Drawing on a series of new experimental questionnaire studies, this paper does two things. First, it lays out what information and beliefs ordinary individuals have about how to form contracts with one another. These studies suggest that the colloquial understanding of contract law is almost entirely focused on formalization rather than actual assent, though the modern doctrine of contract formation takes the opposite stance. The second part of the paper tries to get at whether this misunderstanding matters. Whether and when do beliefs and misunderstandings about the nature of legal rules affect parties' interactions with each other and with the legal system? We find that indeed information that a contract has been legally formed has behavioral effects, enhancing parties' commitments to a deal even when there are no associated formal sanctions. However, we also document a series of situations in which misunderstandings have limited practical repercussions, because even parties who believe that legal obligation is about formalities take seriously the moral obligations associated with informal expectations, promises and exchanges. We conclude with brief speculations about the implications of these results for consumer contracts.

**Tess Wilkinson-Ryan** studies the psychology of legal decision-making. Her research addresses the role of moral judgment in legal decision making, with a particular focus on private contracts and negotiations. She uses experimental methods from psychology and behavioral economics to ask how people draw on their moral intuitions to motivate or inform legal choices. Recent research topics include mortgage borrowing and default, retirement planning, contract precautions, and the cognitive and emotional response to breach of contract. In 2012 she was awarded the A. Leo Levin Award for Excellence in an Introductory Course.

For more workshop information, please contact Nadia Gulezko at [n.gulezko@utoronto.ca](mailto:n.gulezko@utoronto.ca).