

2019

2019

Southern Methodist University, Dedman School of Law, Tsai Center for Law, Science and Innovation

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Tsai Today

EXPLORING HOW LAW AND POLICY AFFECT TECHNOLOGY AND SCIENTIFIC RESEARCH

AUGUST 2019

USPTO Director Offers Advice to SMU Law Students

THE HEAD of the U.S. Patent and Trademark Office has advice for law students hoping to land their dream jobs after graduation.

“First and foremost, study and get good grades. And love what you do. Always stay curious,” Andrei Iancu said in an Oct. 19, 2018, Leadership Lecture sponsored by the Tsai Center for Law, Science and Innovation.

“Take ownership of your work, your cases, and your career. Show a lot of interest.”

Lawyers who are passionate about what they do – who are “all-in,” as Iancu put it – are far more likely to enjoy career success and satisfaction; they produce better work and forge stronger client relationships.

His appearance at SMU Dedman School of Law was moderated by David Taylor, Co-Director of the Tsai Center, Associate Professor of Law, and a nationally

SEE USPTO DIRECTOR ON PAGE 4



Robo Fighter

AJIT PAI, Chairman of the Federal Communications Commission, already knows his wish for 2019: The death of the robocall.

Those automated, unsolicited, annoying phone calls are the one subject sure to come up wherever he goes – even home for the holidays.

“I get it every time I talk to mom or my mother-in-law,” he told an audience at the Dedman School of Law on Feb. 9.

“My seat at the Thanksgiving table is dependent on my taking action on this issue.”

Pai’s visit to SMU was part of the Leadership Lecture Series of the Tsai Center for Law, Science and Innovation.

For more than an hour, the FCC Chairman fielded questions from students, faculty members, lawyers, telecommunications industry representatives, and others. He touched on topics including net neutrality, 5G, protecting online privacy, and making the most of law school.

Of course, he was asked about robocalls.

“It’s a huge problem,” he said. “Technology makes it easy to unleash these things. All you really need is a broadband connection and a pre-recorded message.”

SEE ROBO FIGHTER ON PAGE 4



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David O. Taylor, Robert G. Storey Distinguished Faculty Fellow, Co-Director of the Tsai Center for Law, Science and Innovation, and Associate Professor of Law

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2018-2019

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Elizabeth Chung, Candidate for Juris Doctor 2020

Richard Cochrane '19

Jennifer Nguyen '19

Thomas Tassin, Special Projects, Candidate for Juris Doctor 2020

2019-2020

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Thomas Tassin, Special Projects, Candidate for Juris Doctor 2020

Morgan Mendicino, Candidate for Juris Doctor 2021

Nolan McQueen, Candidate for Juris Doctor 2021

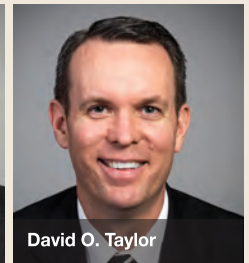
Jason Spotts, Candidate for Juris Doctor 2021

From the Co-Directors

THIS ACADEMIC YEAR, the Tsai Center for Law, Science and Innovation continued its mission of focusing on the intersection of law, science, and innovation by exploring how law and policy affect scientific research and discovery as well as the development and commercialization of new technologies. Through a wide range of programming, the Center also examined the law's central role in regulating scientific inquiry and innovation.



W. Keith Robinson



David O. Taylor

For example, the Center hosted several events featuring the leaders of a number of government agencies. Andrei Iancu, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, discussed his vision for the future of U.S. innovation policy. Ajit Pai, the Chairman of the Federal Communications Commission, talked to our students about the current regulatory challenges in the telecommunications industry. In addition, Commissioner for Trademarks, Mary Boney Denison and Director of the Texas Regional United States Patent and Trademark Office, Hope Shimabuku '05, discussed emerging IP issues affecting the growing fashion industry.

We invite you to explore our current newsletter. Inside you will find recaps of our programming during the 2018-19 academic year as well as details about the innovative class offerings and research that the Center is supporting. We hope that you enjoy reading about this year's accomplishments and will participate in our upcoming programs.

W. Keith Robinson and David O. Taylor

TSAI CENTER CO-DIRECTORS AND ASSOCIATE PROFESSORS OF LAW

CENTER UPDATE

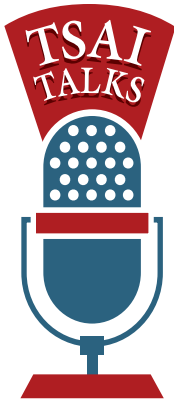
Tsai Center for Law, Science and Innovation Gift Amplifies Law Research



● A recent \$2 million gift expands the profile of SMU's Tsai Center for Law, Science and Innovation as a leading academic platform for multidisciplinary research and scholarly debate surrounding new technologies. The new gift was made by the same

anonymous Dedman Law alumnus who generously provided the \$3.125 million gift to establish the Center. It will be split between endowment and current operational funding, and provides additional resources for research grants, programs, and curricula.

"The Tsai Center has already sparked significant faculty scholarship on legal issues linked to emerging technologies," said SMU President R. Gerald Turner. "This additional support allows the center to strengthen collaborations across disciplines that result in these forces coming together in remarkable ways, facilitating deep study of important matters within the ever-changing legal, innovation, and discovery landscapes. This work further strengthens our reputation for addressing legal issues in technology development."



The Tsai Center hosts Tsai Talks, presentations and discussions focusing on real-world examples of the practice of law. Last year's Tsai Talks included:

● **AT&T: A Case Study of Technology, Lawyers, & the Law:** David Hunt Baker '13, Assistant Vice President and Senior Legal Counsel at AT&T, Inc., spoke to SMU students about the history of the telecommunications industry and historical developments in communications technology. Mr.

Baker also discussed the antitrust cases that created the telecommunications industry we see today. At the end of the hour, Mr. Baker fielded several questions about the history of the wireless phone and the recent smartphone wars between technology and telecommunications companies.

● **An Inside View of Startup Law:** Timothy Harris, Managing Partner of Morrison & Foerster LLP's Palo Alto office, specializes in representing startup companies and venture capital firms in corporate and securities matters. He discussed various areas of startup law, including intellectual property law, corporate finance, labor & employment, tax law, and regulatory law. He also spoke about what he called "ecosystems"—geographical and industrial pockets of technological and investment opportunity for startups and venture capital firms.

● **Wouldn't you LIKEtoKNOW.it? —How Advertising in Retail is Transitioning to Digital:** Ryan Parley '10, Director and Senior Counsel for The Neiman Marcus Group, and Brittany DeGan, General Counsel and Corporate Secretary for rewardStyle, discussed digital innovation in the retail industry. The speakers compared current digital engagement efforts at Dallas' very own longstanding brick-and-mortar retail company, Neiman Marcus, to a newer local-based company, rewardStyle. rewardStyle solely drives its advertising to internet users through their application, "LIKEtoKNOW.it."

● **A Talk with IBM: Unconscious Bias and Artificial Intelligence:** Emi Olssen, CTO and Distinguished Engineer of IBM Global Technology Services, and Michael Riep, Vice President of IBM Global Technology Services, discussed issues surrounding unconscious bias and artificial intelligence. The presentation focused on the general premise of unconscious bias and defended artificial intelligence against those who predict that its development will not only replace jobs but will also create an issue around privacy.



● **Hackers and Breaches and Threats, Oh My! Shifting the Risk in Cyber Space:** The Tsai Center welcomed Michelle Reed, Partner at Akin Gump and Co-leader of the firm's cybersecurity, privacy

and data protection practice, and Ernest Martin, Partner at Haynes and Boone, to discuss data privacy and cybersecurity. Ms. Reed discussed the current landscape of data privacy and cybersecurity law in the United States. Mr. Martin described the insurance products available to companies seeking to shift risk relating to cybersecurity and data privacy.



Tsai Center Hosts Symposium on Disruptive Ideas and Emerging Technology

● **From blockchain to artificial intelligence,** emerging technologies are changing our world in ways that can be unsettling and unpredictable.

Change, especially sudden, profound change, invites disruption. New products dazzle us, but doom older ones to obsolescence. New markets create new opportunities, but roil established markets. Technological breakthroughs raise unforeseen legal questions.

Understanding the challenges that come with innovation was the theme of SMU's 15th Annual Symposium on Intellectual Property Issues, hosted by the Tsai Center for Law, Science and Innovation on Sept. 21, 2018.

The daylong symposium, titled "Disruptive Ideas and Emerging Technologies," featured nearly two dozen prominent scholars, government officials, practicing lawyers, entrepreneurs, and industry executives. In panel discussions and keynote presentations, they explored current trends, controversies, and judicial decisions in intellectual property law.

David O. Taylor, Co-Director of the Tsai Center and Associate Professor of Law at SMU, said he hoped the symposium would provoke thoughtful conversations about encouraging "the use and development of new technology, not just because it's cool, but because it can help improve the world."

The symposium's topics touched on were varied and intriguing: how autonomous vehicles – driverless cars – may transform commuting and housing patterns, automobile sales, insurance coverage, and liability claims; how copyright and licensing of music and other artistic works can be best administered in a digital age, when anyone can download anything; how blockchain, the decentralized ledger technology underlying cryptocurrencies, may be applied to an array of transactions, and the mechanisms for regulating them.

James Smith, Chief Intellectual Property Counsel for Ecolab Inc., said for all that's changing, the bedrock principles of intellectual property law are rooted in America's earliest history.

In a keynote address titled "WWTJD?" – for "What Would Thomas Jefferson Do?" – Smith said the Founding Fathers had a "predisposition to accept innovation," even disruptive innovation. (They were, after all, revolutionaries.)

Jefferson, James Madison, and others of their day believed a spirit of creativity and inventiveness would favor the young republic. One of the first major acts of the first Congress, in 1790, was to pass the original U.S. patent law. It was intended, Smith said, "to help the United States become the greatest inventing nation in the world."

"The foresight of the Founders was remarkable," he said. "Centuries later, invention and innovation are ongoing."



Cover Stories



USPTO Director

CONTINUED FROM THE COVER

recognized expert on intellectual property law. The lecture drew students and faculty from the law school and other SMU colleges, as well as IP lawyers from throughout the Dallas area.

As Director of the U.S. Patent and Trademark Office – he also holds the title of Under Secretary of Commerce for Intellectual Property – Iancu oversees 13,000 employees, including 8,500 patent examiners, all of whom have technical backgrounds and many of whom are lawyers.

“This is the biggest collection of IP knowledge anywhere,” he said.

Nominated by President Donald Trump, Iancu was confirmed 94-0 by the Senate on Feb. 5, 2018. Previously, he was the Managing Partner and an IP litigator at Irell & Manella, a Los Angeles-based law firm.

A graduate of the UCLA School of Law, he also holds a master’s degree in mechanical engineering and a bachelor’s degree in aerospace engineering. To be an effective IP lawyer, he told his audience, “you have to be interested in technology. You have to not be afraid of it.”

His lecture touched on an array of issues at the U.S. Patent and Trademark Office, noting both the agency’s achievements and areas where there’s room for improvement:

- **Increasing diversity:** To help create a more inclusive workforce, the patent office established 17 “affinity groups” who advise hiring managers on recruiting “to make sure that we reach out and speak to the right audiences.” The office employs a “significantly higher percentage” of women than the average among technical companies in the private sector.
- **Serving those who served:** For the past few years, there’s been “a tremendously successful” push to hire more military veterans.
- **Retaining workers:** “Our attrition rate after the first couple of years is extremely small – in single figures.” He called this a sign of an attractive workplace environment.
- **Cutting backlogs:** On the trademark side, efforts to process applications more quickly are “going phenomenally well.” The average pendency period is down to about a year, despite a recent flood of overseas applications, notably from China. On the patent side, there’s been some progress, “but stakeholders would like to see more. We have a way to go.”

For more, please see smu.edu/USPTODirector

Robo Fighter

CONTINUED FROM THE COVER



The most grating robocalls employ a digital trick, called “spoofing,” to make it appear that they’re coming from the recipient’s home area code. That makes it more likely that the call will be answered. (In reality, Pai said, “the vast majority” of robocalls originate outside the United States.)

Robo-relief may be on the way, Pai said – and maybe in time to preserve harmony at his Thanksgiving dinner.

A new technology known as “caller ID authentication” is intended to thwart spoofer. Essentially, it’s a

digital fingerprint that attaches to a call at its origin. As the call travels through a labyrinth of interconnected cellular networks, each carrier along the way must re-validate the authentication. Otherwise, the call won’t reach your phone.

Last November, Pai directed the cellular industry to develop a uniform standard for caller ID authentication, and he gave them a year to do it.

“Once that’s in place,” he said, “those robocalls, hopefully, will end.”

For more, please see smu.edu/FCCChairman



Event Spotlight



Whac-A-Mole isn't just a registered trademark of Mattel, Inc.

It's also what federal regulators say they're playing as they try to control infringement of intellectual property rights in the fashion industry.

That was a chief conclusion of "The IP of Fashion," a panel discussion at SMU's Dedman School of Law sponsored by the Tsai Center for Law, Science and Innovation in February 2019.

The panelists at the event, which was free and open to the public, were Mary Boney Denison, Commissioner for Trademarks at the United States Patent and Trademark Office, and Hope Shimabuku '05, the Director of the Texas Regional United States Patent and Trademark Office. The discussion was moderated by Elise Selinger of Patterson + Sheridan LLP, a Houston-based law firm specializing in intellectual property matters.

The panelists said the internet, online commerce, social media, and the globalization of markets (legitimate and otherwise) are making it increasingly difficult for federal regulators to police infringements – like knockoff products –

THE IP FASHION POLICE

in fashion, a multibillion-dollar industry in Texas alone.

"It is a constant battle," Denison said. "I can't tell you how much time is spent chasing people doing bad things."

While acknowledging that problems involving fashion brand infringement "are rampant," Denison said law enforcement authorities, with finite resources, often have more pressing priorities.

Government agencies "only have so much money they can spend," she said.

The sheer inability of government to stop every infringement, the two officials said, is all the more reason why fashion designers, entrepreneurs, marketers, and merchants should take steps themselves to protect their creative product.

Patents provide the strongest form of protection, Shimabuku said, but the standards for what's a patentable creation are high, and the process of applying for and prosecuting a patent application can take years – and lots of money.

Trademark and copyright, Denison said, "are a cheaper form of protection." Shimabuku noted that many aspects of a fashion product or marketing concept can be trademarked. These include sounds, shapes, symbols – even colors. Hermes, for example, has trademarked the distinctive shade of orange used in many of its products and promotions. Tiffany & Co. has done the same with its special aqua blue.

Denison reminded those in the audience of two inexpensive, accessible resources that are right at their fingertips: the Patent Clinic and the Small Business and Trademark Clinic that are organized and administered through SMU Dedman School of Law. For a nominal fee, the clinics can assist would-be fashion entrepreneurs in safeguarding the market value of their creative properties.

Faculty Updates



● **Lackland H. Bloom, Jr., Professor of Law and Larry and Jane Harlan Senior Research Fellow**

Professor Bloom published an article as part of the SMU Law Review's Symposium on the 100th Anniversary of the Schenck and Abrams cases, which began the Supreme Court's First Amendment jurisprudence. The article is entitled "The Lessons of 1919." In April, he was invited to become a member of The Philadelphia Society. In the past year, Professor Bloom has attended conferences of the Texas Chapters of the Federalist Society (Ft. Worth), the Foundation for Individual Rights in Education (Chicago), and two conferences of the Philadelphia Society (Fort Worth and Chicago).



● **Chris Jenks, Director of the Criminal Clinic and Associate Professor of Law**

Professor Jenks co-authored an essay for the International Committee of the Red Cross on machine autonomy and the obligation under the laws of war to take constant care to spare the civilian population from harm. He presented on the legal ramifications of increased technological autonomy at SMU's Digital Transformation and AI conference, as well as presented on the national security aspects of artificial intelligence and intellectual property as part of SMU's IP symposium.



● **Thomas Wm. Mayo, Altshuler Distinguished Teaching Professor and Professor of Law**

Professor Mayo was named the 2019-20 Chair of SMU's Institutional Review Board, which oversees human research on campus. He was promoted to adjunct full professor in the Department of Internal Medicine at the

University of Texas – Southwestern Medical Center. He also completed a book chapter that will appear later this year on teaching professionalism in medical and law schools through the humanities.



● **Orly Mazur, Associate Professor of Law**

With support from the Tsai Center, Professor Mazur is continuing to explore the intersection between tax law and technology. The *Pepperdine Law Review* published her article "Taxing the Robots," which focuses on the role of tax policy in addressing the concerns raised by the latest automation era. The article argues that policymakers should not single out robots for taxation, but instead should tax capital and labor income more comparably and introduce targeted tax and non-tax measures to harness the benefits of technological innovations. Professor Mazur will also publish a co-authored article that considers the challenges that the digital economy creates for existing consumption tax systems and sets forth a range of policy options that seek to ensure the long-term success of consumption taxation in our digital world. Finally, this summer she is working on an article that considers the implications of blockchain technology on tax law and policy.



● **Keith Robinson, Altshuler Distinguished Teaching Professor, Tsai Center Co-Director, and Associate Professor of Law**

With support from the Tsai Center, Professor Robinson taught a course focusing on the development of legal apps. Students in the class developed apps to aid the SMU Patent Clinic with client intake, assist foster youth in Texas with finding valuable resources, and connect survivors of domestic violence with counseling and legal assistance. To learn more about his work in this area, please visit: smu.edu/AppClass2019. He also continues his work studying the impact of developments in patent law on emerging technologies such as the Internet of Things.



● **Meghan Ryan, Associate Dean for Research, Robert G. Storey Distinguished Faculty Fellow, Gerald J. Ford Research Fellow, Altshuler Distinguished Teaching Professor, and Professor of Law**

Professor Ryan teaches and writes at the intersection of criminal law and procedure, torts, and law & science. Her current research focuses on the impact of evolving science, technology, and cultural values on criminal convictions and punishment, as well as on civil remedies. With a grant from the Tsai Center, Professor Ryan continued her interdisciplinary work establishing a scientific basis for fingerprint evidence. She is currently examining the extent to which various forms of faulty forensic evidence are responsible for wrongful convictions.



● **David Taylor, Robert G. Storey Distinguished Faculty Fellow, Tsai Center Co-Director, and Associate Professor of Law**

Professor Taylor recently testified as a witness before the United States Senate Judiciary Committee, Subcommittee on Intellectual Property, to discuss his scholarship on the topic of patent eligibility. His most recent work on the topic is a survey of investors about the impact of changes in the law on investment decisions. He also recently co-authored two chapters on patent remedies that form part of a book to be published by Cambridge University Press, and he also authored a chapter on patent utility that will be published as part of a forthcoming case book. The law school recently named him a Robert G. Storey Distinguished Faculty Fellow, and he continues to serve on the Advisory Council of the U.S. Court of Appeals for the Federal Circuit.



● **Jenia Turner, Robert G. Storey Distinguished Faculty Fellow and Amy Abboud Ware Centennial Professor in Criminal Law**

Professor Turner has conducted Tsai Center-sponsored research examining the explosive growth of digital evidence in criminal cases and how courts and attorneys have attempted to manage the unique challenges of criminal e-discovery. This research included extensive interviews of prosecutors and defense attorneys who handle digital evidence.

Alumni Spotlight

TI's Sr. VP Talks about Law, Life and Lessons Learned

I N HER 26 YEARS at Texas Instruments, **Cynthia Hoff Trochu '88** has risen to the top echelon of one of the world's leading, and most enduring, technology corporations. She currently serves as Senior Vice President, Secretary, General Counsel, and Chief Compliance Officer.

Before joining TI, she was a commercial litigator with Jones Day in Dallas. In a wide-ranging interview, Trochu, a Michigan native, talked about her decision to attend SMU Dedman School of Law, what's kept her in Dallas ever since, the responsibility of successful corporations to their communities, and the need for lawyers to think entrepreneurially.

The following excerpts were edited for brevity and clarity.

Q: You were born in Michigan and grew up in Indiana. How did you wind up at SMU?

A: When I was applying to law schools, I'd decided that I wanted to be an international lawyer. So I looked at all these different law schools and applied where you might expect: Columbia and George Washington and NYU and SMU, because of its international LL.M. program. I remember standing at the mailbox getting the letter saying I'd been accepted to SMU – and that I would get a full scholarship. I called my dad, and he said, "None of us have ever been to Texas, but we're sure you're going to love it." And he was right. Because of the fantastic business community here, this is a great place to go to law school and to be a lawyer.

Q: And at TI, you've gotten your chance to be an international lawyer.

A: I have. Among other things, I had the opportunity to support the business side as Assistant General Counsel overseeing TI's operations in Europe, then our wireless business in Asia.



You're also director of the TI Foundation. What does the foundation's work say about the role of corporations in giving back to the community?

TI has a long history of community involvement. We recognized long ago the need to make Dallas a great place to live in order to attract top-level talent.

We've funded a lot of research into early-childhood education. That's sort of morphed into a focus on STEM (science, technology, engineering, and math) and making sure we've got strong programs in middle school and high school for students interested in becoming engineers. We're also big supporters of the arts. If you look at any of the largest arts institutions around Dallas, we're usually one of the top donors. So that's been really neat to be a part of. TI has a very active matching gift program. If an employee wants to give to a food bank, an arts group, a university, or some other community group, TI will match that up to \$30,000.

Q: That must impress young people coming to TI to start their careers.

A: It does. Young professionals today really want to make the world a better place. They're attracted to TI because that's such an ingrained part of our culture.

Q: There's also a great emphasis in today's corporate workplace on

work-life balance. How does TI express that? And how does it work out in your own life?

A: I think that mainly happens through modeling, and not formal policies – although we have those as well. There are leaders in our corporation who coach their kids' soccer teams, who take off to go to school events. When people in your organization see that you carve out time for family, they realize that it's OK for them to do it as well.

I've told my team that I won't send them emails on the weekend or after work hours unless it's absolutely necessary. Because, again, they're going to model their behavior on yours. People need their time away from work to rest and recharge. And they don't need me interrupting that.

Q: What do you wish they'd taught you in law school that they didn't?

A: Oh, that is easy. As a corporate lawyer, what I wish they would teach in law school is that legal considerations are just one aspect of a well-considered business decision. Lawyers are experts at minimizing risk. We sometimes forget that there's a whole slew of other considerations, like potential lost opportunity, that we overlook if we're overly conservative and only focused on risk.

The legal aspect of a business decision is one element. Obviously, we're not going to violate the law. That's clear. But there's usually a range of options in front of you. And there's usually a level of litigation risk that you can take. We can say, "Here are three options. Here are the pros and cons of each option and here's my recommendation," as opposed to just saying, "Here's the law."

Law schools should encourage their students, especially those who may want to end up in-house, to think more broadly about business strategy. It would be ideal if every law student interested in the corporate environment could get three hours' credit for taking a class on entrepreneurship in the business school – and at SMU, they've got a fantastic resource in the Cox School of Business.

Of course, young lawyers need to understand the law. They need to understand it thoroughly. But to succeed in the corporate world, they should also know how to think as innovators and entrepreneurs.

Tsai Center

for Law, Science
and Innovation

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Federal Circuit to Hear Arguments at SMU Dedman School of Law



The Tsai Center for Law, Science and Innovation and SMU Dedman School of Law are proud to host the United States Court of Appeals for the Federal Circuit as part of its October 2019 session in Dallas.

On October 1, the Court will hear arguments, which will be followed by a question and answer session and reception.

SMU Dedman School of Law students, faculty, alumni, staff, and the general public are welcome to attend. Registration is required.

Tuesday, October 1, 2019

Doors open: 1:30 p.m.
Oral Arguments: 2:00 – 4:00 p.m..
Q&A and Reception: 4:15 – 6:00 p.m.

Location

SMU Dedman School of Law
Hillcrest Classroom
6550 Hillcrest Ave., Dallas, TX

To register or for more information, please visit smu.edu/law/tsaicenter

Tsai Events

Fall 2019

October 1

- United States Court of Appeals for the Federal Circuit Arguments at SMU Dedman School of Law

October 25

- SMU Science and Technology Law Review Symposium, “CRISPR-Cas9: Legal Implications of Gene Editing”

Spring 2020

February 28

- 16th Annual Symposium on Emerging Intellectual Property Issues

Fall 2019–Spring 2020

- Leadership Lecture Series
- Tsai Talks: Lunch hour presentations on topics at the intersection of law, science and innovation

For more info, visit smu.edu/law/tsaicenter and follow us on Twitter @SMUTsaiCenter