(1) ***On Religion and Money*** *(Michael Helfand, co-authored with Barak Richman)*

Abstract: This Article addresses the rise of "co-religionist commerce" in the United States – that is, the explosion of commercial dealings that take place between co-religionists who intend their commercial dealings to adhere to a particular religious doctrine. To remain viable, this co-religionist commerce requires all the legal support – enforcement of contracts, protection against torts, adjudication of disputes – that is required to sustain any other type of commercial arrangements.

However, two legal trends threaten to undermine the viability of co-religionist commerce in the United States. The first is Establishment Clause creep, which refers to the increasing judicial refusal to adjudicate commercial claims arising between co-religionists; this judicial reluctance is grounded in a belief that adjudicating the underlying claims would require imposing an objective interpretation of religious doctrine in violation of the Establishment Clause. The second is the New Formalism, which rejects the notion that courts should look to customary norms and relational principles when interpreting commercial instruments. Thus, courts resist resolving disputes through inquiries into the subjective intent of parties, focusing exclusively on formal and textual inquiries when interpreting legal instruments. Together, Establishment Clause creep and the New Formalism undermine the ability of courts to provide co-religionist commerce with the necessary legal infrastructure by foreclosing both objective and subjective methods for resolving disputes over co-religionist commerce.

In response, this Article proposes that courts adopt two tactics in order to avoid slamming the courthouse doors in the face of co-religionist commerce. First, courts should place increasing emphasis on the "neutral principles of law" doctrine, which authorizes courts to resolve disputes based "on objective, well-established concepts of [] law familiar to lawyers and judges." Rigorous emphasis on this doctrine would prevent courts from conflating religious context with religious doctrine, thereby avoiding unnecessary dismissal of cases that do not actually require interrogation of religious doctrine. Second, courts should employ anti-formalist techniques to resolve claims of co-religionist commerce – leveraging the subjective intent of the parties, aids of interpretation and parol evidence – so as to adjudicate such claims without imposing an objective interpretation of religious doctrine in violation of the Establishment Clause.

(2) ***Between Law and Religion: Procedural Challenges to Religious Arbitration Awards***

Abstract: This Article explores the unique status of religious law as a hybrid concept that simultaneously retains the characteristics of both law and religion. To do so, the Article considers how courts should evaluate procedural challenges to religious arbitration awards, examining instances where religious arbitration tribunals refuse to accept the testimony of a female witness because religious law prevents women from serving as witnesses.

In general, religious arbitration tribunals and civil courts maintain a symbiotic relationship. Parties submit disputes to religious arbitration tribunals for resolution in accordance with religious law and courts enforce those decisions pursuant to arbitration doctrine. While courts cannot review a tribunal's application of religious law, they generally have no need for such

inquiries in the context of reviewing religious arbitration awards; like for any other arbitration award, courts do not review the substantive merits.

However, the procedures employed by arbitrators must comply with various mandatory statutory requirements and parties can challenge an arbitration award for failure to do so. But such challenges become far more complex in the context of religious arbitration because religious arbitration agreements require religious tribunals to resolve disputes not only in accordance with religious substantive law, but also in accordance with religious procedural rules. Thus, in addressing such procedural challenges, courts must, on the one hand, treat religious law as law when it comes to defining the contractually adopted religious procedural rules and reviewing precisely what the religious procedural rules require.

Yet on the other hand, when courts address claims that a religious tribunal failed to follow contractually adopted religious procedural rules, they are typically thrust into debates over the application and enforcement of religious doctrine – questions which courts are general understood to be constitutionally prohibited from resolving. On this count, courts are asked to treat religious law as religion and therefore not susceptible to judicial analysis and interrogation, undermining the ability of courts to evaluate whether a religious arbitration award met the legally mandated procedural standards required of all other arbitration awards.

This conundrum raises important questions not only about judicial review of procedural challenges to religious arbitration awards, but also broader questions about the way in which U.S. law conceptualizes and engages religious law. As exemplified by procedural challenges to religious arbitration awards, U.S. law treats religious law as a hybrid concept standing between law and religion, complicating the ability of co-religionists to enter agreements and resolve disputes in accordance with mutually shared religious principles.

In response to this conundrum, this Article considers three approaches to navigating the relationship between U.S. law and religious law: (1) rejection, (2) deference/autonomy, and (3) de-mystification. In so doing, the Article advances an argument in favor of de-mystifying religious law so as to conceptualize it as more like law than religion. Such an approach opens the possibility that courts can better enforce contractually selected forms of religious law to ensure that judicial outcomes more adequately protect parties to religious agreements from various forms of procedural misconduct.