

PROMOTION RECOMMENDATION
The University of Michigan
Law School

Scott A. Hershovitz, assistant professor of law, Law School, is recommended for promotion to professor of law, with tenure, Law School.

Academic degrees:

J.D.	2004	Yale Law School
D.Phil. (Law)	2001	University of Oxford
M.A. (Philosophy)	1998	University of Georgia
A.B.	1998	University of Georgia

Professional Record:

2007-present	Assistant Professor of Law, Law School
2006-2007	Clerk, Justice Ruth Bader Ginsburg, Supreme Court of the United States
2005-2006	Department of Justice, Attorney, Civil Appellate Staff
2004-2005	Clerk, Hon. William Fletcher, U.S. Court of Appeals (9th Cir.)

Summary of Evaluation:

Teaching - Professor Hershovitz is an excellent teacher, in both Torts (a basic first-year course) and Jurisprudence. His goals in Torts include both introducing students to the substance of tort law and “orient[ing] students to law and lawyering.” Teaching Jurisprudence is a specially challenging project, since most members of the class lack philosophical background. Professor Hershovitz describes in his teaching statement a clever approach to drawing students into the subject, which obviously works. Members of the Law School Tenure Committee, who visited both Torts and Jurisprudence classes, were impressed with both the classroom atmosphere and the substantive content. Both the CRLT evaluations and interviews with students by members of the Tenure Committee confirm that the students rank Hershovitz in the upper ranks of law school professors.

Research - Professor Hershovitz is already an important voice in discussions about both tort theory and the philosophy of law. Journal editors seek out his contributions; Cambridge University Press approached him about writing a book on authority, a commitment Professor Hershovitz is not yet ready to undertake; he is giving an endowed lecture on tort theory at Valparaiso Law School this term. His published work demonstrates a fertile philosophical imagination, meticulous argumentation, scrupulous fairness to views he is criticizing, and, not least, a very engaging writing style.

In two articles about tort theory, Professor Hershovitz points out that the two dominant, and competing, models for thinking about tort theory – the economic approach and the corrective justice approach – share a common defect. They analyze tort law as if the point were solely to shift money from losing defendants to winning plaintiffs (whether in pursuit of economic efficiency or of re-establishing a pre-existing balance between the parties). Professor Hershovitz argues that the tort system as a whole arguably has many other goals, such as allowing injured parties to seek explanation and apology, generating information for possible regulatory

intervention, and so on. This critical thesis is already much praised by outside reviewers. As to constructive ideas, although Professor Hershovitz leans toward the corrective justice approach, he suggests that even corrective justice should be understood as being not about “making the plaintiff whole,” which is impossible more often than not, but about allowing the plaintiff to “get even.”

In his two articles about the nature of authority, Professor Hershovitz first gives what many reviewers see as the most complete demonstration of the inadequacy of Joseph Raz’s extremely influential “normal justification thesis,” relying on others’ previous criticisms, which he elaborates, as well as his own contributions. He then suggests, *contra* Raz, that authority has no standard function, but rather different functions in different contexts; and that authority is justified not by its ability to serve some particular function, but rather by its place in particular, but varying, social practices, including the “practice” of political organization. Finally, in “A Puzzle for Positivists” (technically still work in progress, but very far advanced), Professor Hershovitz suggests how we might not so much resolve as transcend many decades of debate between legal positivists and legal moralists about whether there is a necessary connection between law and morality. He suggests that we should dispense entirely with the belief that there is a distinctive normative realm of legal obligation. In his view, it is morality “all the way down.” This article sets out the program for what is likely to become a major research project, very likely with far-reaching influence.

Recent and Significant Publications

- “Corrective Justice for Civil Recourse Theorists,” *Florida State Law Review*, 39 (forthcoming 2012, in symposium on civil recourse theory).
- “The Authority of Law,” in *Routledge Companion to Legal Philosophy* (Andrei Marmor, ed., forthcoming 2012).
- “Harry Potter and the Trouble with Tort Theory,” *Stanford Law Review*, 63: 67-114 (2011).
- “The Role of Authority,” *Philosophers’ Imprint*, 11: 1-19 (2011).

Service -- Professor Hershovitz has a laudable record of service to the Law School, the University, and the wider philosophical community. He has of course done the usual service on various Law School committees. Beyond that, in 2009, he organized a very successful conference at the Law School on legal philosophy. He is on the editorial board of *Legal Theory*, and he has reviewed articles for many philosophical journals. Within the University, Professor Hershovitz is working to establish a formal J.D.-Ph.D. program between law and philosophy. Six members of the University’s exceptionally well-regarded philosophy department sent the Tenure Committee an unsolicited letter saying how much they valued Professor Hershovitz’s presence here, and expressing the hope that he would be granted tenure. For most of his time at Michigan, Professor Hershovitz has served on the Provost’s Council for Student Honors, which identifies and assists candidates for Rhodes, Marshall, and Mitchell Scholarships. He now co-chairs that Council.

External Reviewers:

Reviewer (A)

“You should be very keen to give him tenure. ... Hershovitz has published five truly outstanding papers over the tenure review period. (I am assuming, without much risk of being wrong, that

the article now under review will also soon be published.) They are models of clear thinking on important problems at the centre of legal theory generally and tort theory more specifically. ... I was very impressed and look forward to even greater achievements down the road.”

Reviewer (B)

“Hershovitz has broad but related interests. He has a command of his subjects that far exceeds that of most scholars at a comparable stage of their careers. He has a good feel for the soft spots in the leading theories. He strikes at the core and is largely persuasive in his objections. He has a positive agenda that is invariably lurking in the background of every paper but does not as yet come to the fore. In this kind of work that is not a shortcoming. ... I don’t know who would count as being in his peer group. By any accounting, however, he is at the top of the class.”

Reviewer (C)

“[Professor Hershovitz] has quickly established himself as a serious and original contributor to the literature of legal philosophy and to the community of legal philosophers, both in the US and more widely. His reputation rides high. ... [As to his place in his peer group] he is the most judicious, the most original, and the most mature of the seven very good people for whom I have written tenure review reports this year, all of them at leading law schools, four in the US, two in Canada, and one in the UK.”

Reviewer (D)

“Hershovitz is a first-rate scholar whose work in tort theory ‘demonstrates the high intelligence, care, and perception one would expect of a person on the way to becoming a leading scholar’ [quoting from the Michigan Law School tenure standards]. ... It should not go without mention that Hershovitz’s work is extraordinarily well-written. This is not a point about aesthetics; it is a point about substance, and about quality of mind. [In this area] to write well is to think well. ... [Professor Hershovitz] readily meets your standards for promotion as I understand them. Indeed, I think the body of his work clearly meets the tenure standards of almost any law school, and very likely all of them.”

Reviewer (E)

“This is a very easy case. ...it would be more than a bit crazy not to promote [Professor Hershovitz]. ... His writing is clear and engaging and sometimes funny. He takes on large and important topics. His work is always intelligent and thought-provoking. He is extremely good at offering a new way of looking at the familiar. ... Scott is now the most promising legal philosophy scholar at the pre-tenure stage that I am aware of.”

Reviewer (F)

“[Hershovitz’s] work is ... remarkably original, penetrating, and frequently brilliant. ... He ought to be tenured by any law school in the United States. ... I fully expect him to be one of the most important tort scholars, and one of the most important legal philosophers, of his generation. Indeed, I expect that there will be no one more important.”

Reviewer (G)

“[Hershovitz’s work] engaged me, challenged me, and opened for me some new lines of thought. The work itself is of very high scholarly quality and the promise in it of a bright future of

sustained, important, and discipline-advancing scholarship is manifest. His work is among the very best done by his generation of [junior] scholars. I don't know of anyone who is doing better, more interesting work. [You should] move quickly and decisively to give him a secure place on your faculty."

Reviewer (H)

"My overall assessment is positive, indeed, extremely so. Hershovitz works in two areas of legal philosophy: tort theory and analytical jurisprudence. In each area the work meets a very high standard of originality and rigor, and compares favorably with the work of prominent scholars in the field."

Reviewer (I)

"The 'word on the street' is that Hershovitz is one of the most promising of the most junior crop of legal philosophers. ... I am inclined to think that the word on the street is correct. Hershovitz's intelligence, argumentative skill, and philosophical acuity will serve him well, and he likely has a very promising future. Were he a candidate for tenure here, or at some number of other national law schools I know reasonably well, I suspect there would be some anguish about the level of productivity, and possibly some concern about the degree of non-reference to the work of others, but he would nonetheless be granted tenure and promoted, and indeed with considerable enthusiasm."

Reviewer (J)

"Hershovitz easily meets the tenure standard set out in your letter. He has clearly demonstrated significant achievement as a scholar and shows promise of future achievement. His publications are of very high quality and they make significant contributions to several areas of legal philosophy. In my opinion, Scott is well on his way to becoming a leading legal theorist."

Summary of Recommendation:

Professor Hershovitz is a valuable teacher in Torts, which is a basic first-year course in the Law School, and in Jurisprudence. His scholarly work has already made him an important voice in both of these fields. It is with the full support of the Law School's Tenure Committee and the tenured faculty that I recommend Scott A. Hershovitz for promotion to professor of law, with tenure, Law School.



Evan Caminker
Dean and Branch Rickey Collegiate Professor
Law School

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