

**Professor Tomer Stein's Comments on Professor Baker's
Presentation**

Hi everyone. I'm Tomer Stein and I'm a professor here at Tennessee University College of Law as of a few days ago, a few months ago. I'm particularly excited to be here today because not only do I love this project, I'm also a regular reader of the blog and direct beneficiary of the blog for quite some time. So, it's exciting for me to be here and talk to you all. So, thank you for the invitation. I want to highlight and pick up on a specific point in this project, which I think is very important, which is this is a unique market that ought to be studied and hasn't been studied. And why do we need to study it? In what way are derivatives and derivatives in the metal market so important? Why are they different from other transactions, such as the market for laptops?

And they are different for two reasons. They pull in different directions, which makes it a complex and important market. If you remember, some of you may remember the cartoon CatDog. You remember this? Imagine one creature that is half cat, half dog, yet it's one entity. And this is what we have here on the cat side. If you talk about what we're trading, we're trading metals. These are not widgets, these are whatsits. They are difficult. Why do we have energy law as a class? It's not just a contracts class. It's not just a property class. It's a regulated industry that involves both contract principles and property principles.

When we look at metals, are we talking about currencies? Are we talking about goods? Are we talking about commodities? Those are difficult questions. On the other side of CatDog, I guess that'll be the dog side, we're talking about derivatives. Sometimes derivatives maybe are more simple to imagine. If you remember from your contracts class, I guess your first exposure to a derivative would have been when you thought about crossing

the Brooklyn Bridge, because you talked about option contracts and how that makes something potentially irrevocable. That is a sort of derivative, if you think about where the bridge would land you into an underlying “other” promise. And when we’re talking about derivatives in financial markets, we’re talking about more complex varieties of contracts that are meta-contracts, right? The structure of them is complicated.

It behooves us to understand contracts, and contracts to contract. And when you combine that together with the questions of what we are contracting for—metals—that becomes a very complex market. It’s something that requires experts to understand the setting of it makes it even more complex. We’re talking about financial intermediaries that are difficult to comprehend if you’re not an expert. What are those clearing houses? Who are those broker-dealers that facilitate these exchanges? Those are sophisticated entities with particular interests.

And then add the overlay of the government and the international market for energy and commodities and the politics that are involved in doing those plannings for derivative markets, particularly in metal industries. That means that this is a focal point of so many important business law and financial law issues that should give us a pause and make us think, is this something we want to leave to private ordering in the free market? Are there more regulations that ought to be taking place? Because maybe people are not quite sophisticated enough to do it in a way that doesn’t have first externalities on other people. Are we going to, as a result of this contract, make it so that regular people who are not party to these contracts are going to suffer? And secondly, even without externalities, are people even capable of doing these sorts of exchanges in a way that’s beneficial for themselves?

In other words, is this a sort of market in which we need to interfere because it's for those people, the very transacting parties own good and benefit? Together, I think this is. I absolutely heed the call that this is an extremely important topic. I agree. I think not studied properly and involves extremely important questions and I'm really excited to read the project in full. Thank you.

