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1. **How a Duck Walks: An Exploration of the Legal Meaning of Franchising**
   Elizabeth Crawford Spencer, Bond University (Australia)

There is no settled definition of franchising. Its meaning is interpreted differently depending on geography, discipline, and the particular application or structure of the franchise arrangement in any given context. An accepted taxonomy of franchising is needed, but has yet to be developed. The general definition can encompass and perhaps harmonise the different meanings of franchising across disciplines such as marketing, management and the law. This article surveys the elements of general definitions of franchising in the law of jurisdictions that have enacted franchise specific legislation, which commonly include the grant of a right or a licence; the use of intellectual property; a payment; and qualities of control, assistance or a system provided by a franchisor. Under this umbrella there is scope for more detail in specific definitions for diverse modes of franchising such as direct franchising; unit franchising; master franchising; area representation; area development; multi-unit franchising and co-branding. The focus of this article, however, is on the fact that in franchising there exists a significant element of dependency on the franchisor's business, system, management, policies and operations such that a franchisee is also investing in a franchisor's business. This relationship of the franchisee's business to that of the franchisor is idiosyncratic to franchising; such dependency does not typically exist in most other types of investment in one's own business. Existing definitions may fail to capture what one writer has termed this 'peculiar blend of independence and dependence,'1 and existing legislation may fail to accurately and fully address this aspect of the relationship.

2. **Franchise Goodwill: "Take a Sad Song and Make it Better"**
   Robert W. Emerson, University of Florida (USA)

Like a marriage, a franchise relationship can end poorly. This franchise "divorce" may produce long-term problems affecting the parties' ability to conduct business. As in a dissolving marriage, the dispute often centers on ownership: who gets what? Singing the sad refrain of remorse, the franchisee or franchisor laments that she spent her blood, sweat, and tears building the business, only to have the other party claim title to what was built. At its core is a clash over goodwill; and the dispute frequently exposes glaring inconsistencies. The franchisee-franchisor quarrel often features shifting assertions about the nature of the goodwill. Indeed, dueling franchisors and franchisees often switch arguments depending on the situation. That is, a party to a franchise contract – whether franchisor or franchisee – in one context will assert that the franchisee purchased specific rights, including goodwill, as part of a "franchise package." However, in another circumstance, the same party will declare that goodwill is severable from both the trademark and the franchise and that therefore the franchisee, while buying a franchise, purchased no goodwill.

This paper analyzes franchise law cases from the perspectives of termination, non- renewal, trademark infringement, non-compete covenants, antitrust tying, and taxes to determine why franchisors and franchisees engage in such inconsistent reasoning and what the consequences are for franchising. In addressing the most contentious issues of franchising, the litigants' and the courts' adherence to a logical, systemic framework could improve the resolution process for individual cases, and clarify standards of practice for all franchising matters. A proposed standard could lessen the lamentations – the sad songs of franchising – by quickly and fairly resolving the ownership of goodwill.

3. **The Vicarious Liability of Franchisors in Australia**
   Andrew Terry, University of Sydney (Australia)
   Joseph Huan, University of New South Wales (Australia)

Franchisors and franchisees are legally and financially independent parties responsible for their own torts, contracts and other legal obligations. From the perspective of the general public however the independent contractor nature of the relationship is obscured by system standardisation and uniformity which conveys the appearance of a single entity. Although in law there is a fundamental difference between a system outlet operated by a franchisee and a system outlet operated by the franchisor through a manager, the outlets are otherwise identical and the legal subtleties are imperceptible to customers and the public generally. The legal ramifications are nevertheless significant. In general terms a franchisor is liable under the principle of vicarious liability for the torts committed by employee managers but not for the torts committed by franchisees who are independent contractors. Franchisors may also be liable under agency principles- for contracts made by those agents who have the actual or apparent authority to make contracts on behalf of the franchisor principal- which will generally be the case for employed outlet managers but rarely for franchisees. Liability in particular cases may also be imposed under legislation. This paper addresses the liability of franchisors for franchisee conduct in the Australian context.

4. **Franchise Agreements, Alleged Fraud, and Parol Evidence: From Bedlam to Bright Lines**
   Robert W. Emerson, University of Florida (USA)

This paper surveys the variety of approaches courts have used to evade the inequitable results of strictly applying the parol evidence rule. It determines that reform is needed to clarify the law and establish a better judicial balance between adherence to the traditional rule and protection of vulnerable franchisees at the hands of more sophisticated franchisors. The Paper then explores a "middle ground" where this balance may be found: addressing the particularities of contracts in the franchising context that make a more flexible approach to parol evidence especially useful. The Paper concludes with recommendations for future judicial and legislative handling of parol evidence in the franchising context, including testing for the parties' relative sophistication and possible use of a "soft" rule. It notes how franchise contract provisions could more expressly warn potential franchisees that the presumed promises from prior discussions or correspondence are superseded by the actual contract terms.

5. **Multi-unit Franchising: Organizational Capability and Transaction Cost Explanations**
Dildar Hussain, ESC Rennes School of Business (France)
Josef Windsperger, University of Vienna (Austria)

This study presents an organizational capability (OC) and transaction cost (TC) explanation for the franchisors' choice between single-unit and multi-unit franchising. The OC-perspective regards the firm as a bundle of resources which are transformed into organizational capabilities through interactive firm- specific processes, in order to create competitive advantage. According to the OC-view, multi-unit franchising increases the franchise firm's capabilities (such as knowledge transfer, monitoring, and innovation capabilities) and hence its competitive advantage (as rent-generating potential) when compared to a single-unit franchising system. On the other hand, the TC-perspective regards the firm as incentive and adaptation mechanism. It is primarily oriented towards the selection of an ownership strategy which minimizes transaction costs. According to the TC-view, multi-unit franchising reduces the franchisor's opportunism risk due to the stronger bonding effect of transaction-specific investments when compared to single-unit franchising. Multi-unit franchising also increases the franchisor's control over the network, as he/she has to manage a smaller number of contractual relationships, resulting in reduced behavioral uncertainty through lower opportunism risk. On the other hand, high environmental uncertainty reduces franchisor's propensity to use multi-unit franchising, resulting from the lower local responsiveness of the multi-unit franchisees when compared to single-unit franchisees. The results from the German franchise sector support the OC and TC hypotheses. Overall, our study complements the agency-theoretical perspective by developing and testing a combined transaction cost and organizational capability model to explain the franchisor's use of multi-unit franchising.

6. **Determinants of E-commerce Adoption by Franchisors: Insights from the U.S. Market**
Rozenn Perrigot, University of Rennes 1 & ESC Rennes (France)
Thierry Pénard, University of Rennes 1 (France)

E-commerce has grown tremendously over the past decade. This paper focuses on E-commerce adoption within the franchising sector. We formulate various hypotheses on the factors that influence the adoption of an E-commerce strategy by franchisors, namely the percentage of company-owned stores in the network, network size and age, franchisor resources (franchising fees and franchising royalties), and the allocation of exclusive territories to franchisees. The empirical study relies on a sample of 486 franchise networks in the U.S. market. Our findings suggest that the percentage of company-owned stores and the brand image, as represented by network size, both exert a significant and positive impact on the adoption of an E-commerce strategy, whereas network age and franchising royalties

exert a significant and negative impact on the adoption of such a strategy. These findings are discussed with respect to previous research results.

7. **A Theoretical Explanation of the Cost Advantages of Multi-unit Franchising**

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We advance franchising research by explaining the important role, so far overlooked, of different franchising forms in developing low cost competitive advantage. We analyze the most meaningful cost drivers for franchising systems: economies of scale, reduced transaction costs, economies of learning, reduced monitoring costs, standardization, and relative bargaining power. Our analysis suggests that asymmetrical cost effects are likely for franchisors and franchisees. For franchisors, relative to single-unit franchising (SUF), multi-unit franchising (MUF) should yield lower costs from scale economies and monitoring, higher costs from bargaining power, and similar costs from learning economies and standardization. For franchisees, lower costs for MUF are indicated from scale economies and standardization, but not for monitoring. Within MUF, comparisons between area development franchising (ADF) and incremental franchising (IF) suggest that ADF yields lower costs from scale economies and learning economies for the entire system, but monitoring and standardization only reduce costs for their franchisees. Implications for practice and research are discussed.

8. **The Effects of Service Brand, Service Category and Level of Criticality on Customer's Service Quality Perceptions: A Comparison of Franchised Versus Independent Businesses**

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Using a mixed factorial design, this study experimentally investigates the main and interactive effects of two levels each of (1) service brands (i.e., nationally known franchised brands versus locally grown non-franchised brands), (2) service category (i.e., experience versus credence based services), and (3) criticality of the service (low versus high) on consumer preferences. The dependent construct of consumer preferences is operationalized in terms of consumer perceptions of four SERVQUAL dimensions (i.e., reliability, security, tangibility, and responsiveness), convenience, and perceived risk associated with the focal services. A convenience sample of 349 consumers is used to carry out the empirical assessment of a total of eighteen hypotheses related to the above variables. Besides shedding theoretical light on the key drivers of service quality dimensions in the above contextual setting, we discuss a series of recommendations for actionable managerial guidance to franchisors, franchisees as well as independent service providers. To the best of our knowledge, this study represents one of the first explorations of a franchising issue from the consumers' perspective, much of the extant franchising literature

having adopted the vantage point of the franchisors and more recently the franchisees but with virtual exclusion of franchise customers' viewpoint (Dant, Grunhagen and Windsperger 2011; Dant 2008).

9. **Vertical Contracts in Branded-networks: Sector-based Explanations for the French Case**
   Magali Chaudey, University of Lyon (France)
   Muriel Fadairo, University of Lyon (France)
   Gwennaël Solard, National Institute of Statistics and Economic Studies (France)

Based on recent data concerning the French distribution networks in retail trade and services, this paper highlights several stylized facts relating to the sector-based differences in the organizational choices. Until now this issue has not been studied in the economical literature. This paper provides an analytical framework derived from the theory of contracts, and evidence for the French case.

10. **Can Franchising Be an Economic Development Strategy for Developing Nations? An Empirical Investigation**
    Steven C. Michael, University of Illinois Urbana Champaign (USA)

Prior research has examined why franchisors expand abroad, but no paper has empirically examined the role of franchising in the macroeconomy of developing nations. In this note, the pattern of franchising development is statistically analyzed within the context of the general economic development of Latin America. It is found that franchising follows, rather than leads, economic development. Implications for theory and policy are considered.

11. **Monitoring and Conflict in Franchise Relationships**
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Franchisors empower franchisees to take decisions on a package of management issues. This autonomy produces counter effects: While it enables them to capitalize on franchisees' local knowledge, it may also damage system homogeneity. This paper aims to assess assignment of these rights to enhance performance and, particularly, to reduce early terminations instigated by the franchisor. It studies the direct effects of delegating a number of decisions (pricing, human resource practices, product assortment, decoration and local advertising) on the number of early terminations. It also tests the moderating effects of brand name value and of the tacit value transferred to franchisees on these variables. The results indicate that delegation of pricing decisions increases early terminations within the chain, whereas delegation of decisions on product assortment and local advertising tends to decrease them. Moreover, the larger the chain, the more pronounced this effect is, except for local advertising. Delegation of local advertising reduces early terminations and delegation of pricing tends to increase them, regardless of the size of the system.

12. **Live or Let Die: An Examination of Franchisee Discontinuity Rates Across States and Metropolitan Statistical Areas**

Robert E. Stassen, University of Arkansas (USA)
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To date, little has been reported with respect to franchise unit failure within franchise systems, even for the most successful franchise systems, where these rates should be the lowest. While the assessment of franchise unit "failure" is difficult given extant data sources, a related measure is unit "discontinuity" for which data actually is reported in the Uniform Franchise Offer Circular required in thirteen of the fifty states in the U.S.

This is the first study to examine these discontinuity rates for U.S. franchisee locations for two of the largest and best established franchise systems, McDonald's and Subway, using mailing list data (Frandata) for 2008 and UFOC filings for both franchise systems. The study links these discontinuity rates to the characteristics of the franchise system and to the competitive conditions in their geography. It also compares them to the "charge-off" rates for failed franchisees reported by the U.S. Small Business Administration, calculated as the dollar amounts provided by the SBA's guarantees in settling with the lending bank divided by the total in loans made to that system's franchisees. Using multiple regression analysis across U.S. states and metropolitan statistical areas, the study's results show that the proportion of single-unit franchisees is significantly associated with failures rates for both systems, but controlling for this, substantial differences related to system size and the effect of coverage are discovered. Specifically, compared to McDonald's, Subway shows higher discontinuity rates associated with increased market coverage as well as increased growth rates. The discontinuity rates reported in the UFOCs differ significantly from and are well above the "charge-off" rates from SBA guaranteed loans. Implications of the findings for research and practice are discussed.

13. **The Prevalence and Performance Impact of Synergies in Dual Distribution**

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The intriguing issue of "dual distribution" in franchising (the "plural form", i.e. the coexistence of franchised and company-owned outlets in a chain) has received consistent attention from organizational and franchising scholars. Based on Bradach's (1995, 1997, 1998) early work, the broad consensus is that using the plural form helps chains cope with the four "franchising imperatives" – system growth, chain uniformity, local responsiveness, and systemwide adaptation. Hence, the "right" mix of franchised and company-owned units is critical for chain performance. Yet, despite the obvious importance of chain composition, empirical research on synergies in the plural form is largely absent, and insights on performance implications of dual distribution are equally scarce. Consequently, based on extensive data from 122 chains, this paper provides what is ostensibly the first in-depth examination of the prevalence and performance effects of synergies that franchisors actually achieve by using the plural form. The study concludes with managerial implications for governance design in franchised chains.

14. Antecedents of Franchisee Trust

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The success of relationships depends upon trust among the partners involved. In franchise relationships, a lack of trust of franchisees in their franchisor will negatively affect franchise system performance. However, very little is known about how franchisors can maintain and/or create trust among their franchisees. The aim of this paper is therefore to develop a theoretical framework on antecedents of franchisees' trust in their franchisors and franchise systems. We integrate literature on franchising with literature on trust in other organizational contexts to develop our theoretical framework. We argue that a franchisee's general propensity to trust combined with its perception of trustworthiness of its franchisor and franchise system determines this franchisee's level of organizational trust. We distinguish three franchise system components that each entail a set of determinants by which franchisees evaluate a franchisor's and franchise system's trustworthiness; the system's strategic positioning in the market, the system's operational management, and franchisee management. Insights into these determinants provide franchisors with important information on potentially relevant instruments to strengthen trust among their franchisees.

15. Identification in Franchise Organizations

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16. **The Moderating Role of HR Operational Autonomy on the Entrepreneurial Orientation–Performance Link in Franchise Systems**

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The role of entrepreneurial activity in franchising has often been questioned. This study investigates the concept of entrepreneurial orientation (EO) in franchise systems, drawing on a sample of franchisors operating in the United Kingdom. The results demonstrate EO's significant and positive impact on performance outcomes, both from financial and non-financial perspectives. In addition, operational autonomy with respect to HR policies is shown to have a significant positive moderating effect on the EO-performance link among UK franchise systems, explaining over 20 percent of the variance in performance outcomes. Implications and future research directions are discussed.

17. **Specific Investments in Franchisor-Franchisee Relationships: A Model**

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Franchisors are often faced with situations where they are called on to make relationship-specific investments in their extant franchise relationships to fully leverage new business opportunities. Such specific investments may, either by lowering economic costs or by facilitating the realization of unique value propositions, enhance value creation. However, these investments have negligible salvage value outside the relationship and imply potentially greater transactions costs (in terms of opportunistic behavior by the exchange partner) under conditions of high environmental uncertainty and bounded rationality. When should a franchisor make such investments? Should it make them even if they do not directly enhance exchange efficiency? Are there conditions where the franchisor should disregard potential opportunism arising from these investments? How do information asymmetries impact the investment decision? We investigate these questions using a formal, game-theoretic model of bilateral, sequential specific investment decisions in a franchisor-franchisee exchange relationship characterized by information asymmetry, with the franchisor better informed than the franchisee. A key result is that there are conditions where it is optimal for the franchisor to make a specific investment even when it is not reciprocated by the franchisee. Here, the franchisor's specific investment does not increase exchange efficiency or lower transaction costs. Rather, it performs a purely signaling function. The extensive Transactions Cost Theory literature has largely focused on specific investments as an exogenous variable, leading to calls for a greater focus on specific investments as an endogenous variable. We contribute to this literature as well as research on franchising by identifying a new, signaling rationale for endogenous specific investments that allow existing franchisor-franchisee exchange relationships to fully realize business growth opportunities.

18. **Governance of Franchising Networks**
Comparison of Research Results and Future Research Strategy

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The aim of this study is to present an overview and comparison of major research results on the governance structure of franchise firms, based on various theoretical perspectives. In addition, we focus on the question which contribution the property rights theory can make to the franchise literature. Most studies have focused on the explanation of the incentive structure (fees, royalties, and other contractual restrictions) and the proportion of company-owned outlets without investigating the governance structure of the franchise firm as an institutional entity that consists of decision rights and ownership rights. We present major research results based on the property rights theory and compare them with results based on agency-theoretical, transaction cost and resource scarcity explanations. Finally, this study addresses the question about how to apply the property rights view and other theoretical perspectives in organizational economics and strategic management to new research questions in franchising.

19. Learning Effect and Contractual Completeness: The Case of Franchising

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How firms design their contracts is a mayor theme in the literature on managing outsourcing relationships because it can have strategic consequences for firms. Literature has mainly focused in the importance of identifying potential contractual hazards and to incorporate safeguards into their contracts to protect the relationship between parties. However, a matter totally ignored has been the possibility that firm's contract design capabilities can also be an important factor in contractual design. In this study, we analyze this phenomenon in the case of franchising using a sample of 74 Spanish contracts. Our results support this idea, showing that those chains with enhanced knowledge about what to specify in their contract (that is, those which have developed a learning effect) draw up more complete contracts.

20. Academics Pick Up the Challenges of Franchising in Healthcare: A Systematic Review

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The organizational form of franchising is increasingly used in the healthcare sector with the aim of enhancing quality and accessibility of care for patients, improving the efficiency and competitiveness of healthcare organizations and/or providing healthcare professionals with a supportive working environment. However, an overview of the scientific evidence for these claims is absent. Therefore, the aim of this paper is to provide a systematic review of literature on outcomes of franchising in healthcare. Eight major databases were systematically searched and evaluated. Peer-reviewed empirical journal articles focusing on the relationship between franchising and outcomes were included, without placing limitations on dates of publication. This resulted in the inclusion of 15 articles. The majority of these articles present low levels of evidence. The review shows that outcomes of franchising in healthcare have primarily been evaluated in developing countries in the reproductive health/family planning sector. Articles from developed countries are largely absent, apart from three articles evaluating pharmacy franchises. Most studies focus on outcomes for customers. There has been less focus on organizations and professionals. Franchising is predominantly positively associated with customer volumes, physical accessibility, and some types of quality. The findings regarding utilization, customer loyalty, efficiency, and results for providers are mixed. We conclude that franchising has potential to improve outcomes in healthcare practices for patients, professionals and organizations,

but that extensive further research is needed to determine the value of healthcare franchising. We advocate more research in developed countries, in other healthcare sectors, on more types of outcomes with attention to trade-offs, and on what factors produce those outcomes.

21. **The Influence of Relational Embeddedness on the Formation and Performance of Social Franchising; An Explorative Qualitative Analyses of Four Social Franchises Active in the UK from a Social Network Theory Perspective**
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This paper investigates the novel interorganizational format named social franchising which has emerged as a possible solution to tackle the issues of growth and financial sustainability that social enterprises face, to enhance the alleviation of poverty and of other pressuring social issues, and to address the need of many governments to reduce fiscal deficits. We explore the issue of social franchising through case study analyses of four social franchises active in the UK from a social network theory perspective and through the argument of embeddedness. We collected data through face to face semi-structured interviews from the owners of the Social Franchisor. We coded behaviour of actors on the three constructs of formation, partner selection and performance. We investigated the influence of relational embeddedness and its eight core variables on these constructs. Our findings indicate that relational embeddedness plays the preeminent role in the formation, partner selection and performance of social franchises. We learn that the biggest challenges that social franchisors face are: the creation of a straightforward clear model, the training of the partners to a different operationally-wise and commercially-wise culture, and their ability to focus on supporting the whole network.

22. **Franchisee Role Perceptions and Expectations: A Study in Taiwanese Franchise Industry**
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This study explores the relationship between franchisee role perception and importance given to various expectation associated with franchising. The data for this study was collected from franchisees in Taiwan franchise industry. The results indicate that Taiwanese franchisees who have a balanced (and high) role perception about being a franchisee (i.e., franchisee is both an owner and a manager) gave more importance to the focal expectation dimensions. Next, all three franchisee groups gave highest importance to 'franchisor's market value', followed by 'franchisor support', 'independence', 'family', and the lowest importance was given to 'being entrepreneurial'. These findings have interesting implications for role clarification, and formation and fulfillment of franchisee expectations, especially in international markets.