Contents

List of Contributors Acknowledgments		page xi xiii
	Introduction Susannah Baruch, I. Glenn Cohen, Wendy Netter Epstein, Christopher Robertson, and Carmel Shachar	1
	PART I WHAT IS PRIVATE LAW? THEORY AND STRUCTURE	
1	Public Funds, Public Functions, Private Actors: The Cognitive Dissonance of US Health Law William Sage	7
2	Private Ordering Is Ubiquitous in Health Care, but Why? Barbara J. Evans	20
3	Abandoning Fiduciaries in Health Care Lauren R. Roth	32
4	European Distinctions between Private and Public Law in Health Care and the Emerging Influence of Private Lobbies Barry Solaiman	44
	PART II TOOLS OF PRIVATE LAW: TORTS, CONTRACTS, AND PROPERTY AS VEHICLES OF HEALTH POLICY INTRODUCTION Wendy Netter Epstein	
5	Data Transparency, ERISA Preemption, and Freedom of Contract Craig Konnoth	61

viii Contents

6	States as Contractor: Attempts to Drive Health Care Cost Containment through State Purchasing Power Christine H. Monahan, Maanasa Kona, and Madeline O'Brien	73
7	Adaptation of Tort Law to Modern Health Care Delivery in the Restatement of Medical Malpractice Mark A. Hall	85
8	Pandemic Harms and Private Law's Limits: A Proposal for Tort Replacement Jill R. Horwitz, Alberto De Diego-Habel, and Daniel B. Rodriguez	96
9	The Human Body Commons: A Private Law Contribution for the Advancement of the Right to Health Enrique Santamaría Echeverría	108
	PART III RUSSIAN DOLLS, REPRODUCTION, AND PRIVATE LAW INTRODUCTION I. Glenn Cohen	
10	Employer-Sponsored Abortion Coverage: Private Law's Role in Reproductive Freedom Valarie K. Blake and Elizabeth Y. McCuskey	123
11	Reproductive Innovation and Reproductive Exceptionalism: How Private Health Insurance Coverage of Fertility Treatment Complements Hostile Governmental Action and Expands Access to Assisted Reproduction in the United States Myrisha S. Lewis	136
12	Business Responses to <i>Dobbs</i> : The Return to a "Reproductive Rights" Approach, and Suspicions around Corporate Care Asees Bhasin	148
13	Privatizing the Creation of Equity in Women's Health Thomas W. Williams	162
	PART IV HOW PRIVATE LAW CAN AND CANNOT CONTROL COSTS: INTRODUCTION Christopher Robertson	
14	Federalism, Private Law, and Medical Debt	179

Contents ix

15	Paying for Health Care and Private Law's Internal Point of View James Toomey	192
16	Health Law's Sheathed Sword: Why Hasn't Civil Litigation Dented Health Care Costs? Jackson Williams	204
17	The Canary in the Coal Mine: Private Antitrust Law and New Dynamics in Health Care Markets Jaime S. King	217
18	Health Care Finance Law's Relational Bias Jessica Mantel	229
	PART V PRIVATE LAW APPLIED: THE PHARMACEUTICAL INDUSTRY, NURSING HOMES, AND THE END OF LIFE INTRODUCTION Carmel Shachar	
19	The Financialization of Digital Clinical Trials: Tensions between Efficiency and Scientific Evidence Accessibility Ximena Benavides	² 43
2 0	Shareholder Resolutions and Access to Medications Rebecca E. Wolitz	255
21	The Hollowed-Out American Nursing Home: Using Private Law to Police Poor Quality Care and Expand Owner Responsibilities Barry R. Furrow	270
22	Health Care Organization Policies about the California End of Life Option Act: The Paper Victory of the Medical Aid in Dying Movement Megan S. Wright and Cindy L. Cain	283