



Visiting Professor

The Poverty of Private Law through the Prism of Equity

Monday, March 4, 2019, 17:45

Buchmann Faculty of Law | The Jeanette Klar Seminar Room (305)



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I defend two related ideas concerning the law of Equity ('Equity'), and discuss a third that is much more speculative. The two related ideas are that Equity has the characteristic form of public law, and that Equity shares many of public law's substantive concerns. The speculative idea is that Equity is best regarded as a branch of public law.

In Part II I distinguish Equity's anti-opportunist law, which involves cases of rights sticklers and opportunists, and Equity's jurisdictional law, which is mainly composed of cases involving fiduciary relations, such as trusts or agency relations. Part III compares trust law and administrative law, and a series of doctrines they share. In Part IV I discuss other-regarding powers. These powers are a defining and structural feature of Equity. Their significance to Equity is the principal basis for thinking that Equity has the form of public law. In Part V I argue that Equity is not structured by corrective justice or distributive justice, but rather by jurisdictional justice. This is the form of justice apposite to supervisory review of the exercise of other-regarding powers. Its structure is plainly evident in Equity's jurisdictional law. In Part VI I argue that this mode of justice is also present in Equity's anti-opportunist law. In Part VII I canvas some of the advantages of the public law model, and its explanatory power.

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