

PLDG SEMINAR

The Trust: (Still) Equity's Child

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CLT Meeting Room, Elm Level 2, NUS Law (UTown)

ABSTRACT

'What is it that equity achieves in the modern law?' After more than a century of attempts, some more successful than others, to blend equity into common law, this question still excites many of those who think and write on private law. The trust, which never ceased to be one of the most attractive creations of equity, is deeply embroiled in the heated debate about the value and conceptual coherence of equity as a separate body of law. In what follows, I look at three types of account of the lasting existence of equity as a distinctive part of private law: nominalist, formalist and substantial. The question I am interested in here, is how the trust features in each type of explanation: is it a central, paradigmatic example of how we should think about equity? Or is it just one more example of an equitable doctrine that can be subsumed under a wider account of what equity does? Or maybe trust law is an area of equity that threatens to destabilise the proposed account and must be explained away as an institution that started off as equitable but has now moved on to become a legal relationship with nothing but historic, linguistic and institutional connection to its launching pad? The chapter shows that trust law can nestle comfortably within a substantive account of equity in which it is interpreted as a tool for injecting ethical standards into market practices by resorting to a specialised notion of conscience. This interpretation of the justifying principle that underlies equity reserves a less prominent place for the trust than other types of account. However, especially when compared with other substantive accounts, it can show both how the trust supports the continued existence of equity as a separate body of law, and how being a member of the equity family sheds light on the way the law of trust has been developed, what it aims to achieve, and, hence, where it needs to go. The trust can thus be explicated as an integral part of equity that exemplifies its vocation, and hence, the need to preserve its independent existence.

ABOUT THE SPEAKER



Irit Samet is a Professor of Law at The Dickson Poon School of Law, King's College London, where she also serves as a head of department (private law, IP & digital law). She specialises in theory of equity, trust law, and philosophy of private law, with her scholarly contributions focusing on the intersection of private law and morality. She is the author of *Equity: Conscience Goes to Market* (OUP, 2018) and has co-edited *Philosophical Foundations of the Law of Equity* (OUP, 2020) and *Philosophical Foundations of Express Trust* (OUP, 2023). She published papers in leading journals such as the *Modern Law Review*, *Cambridge Law Journal*, *Oxford Journal of Legal Studies*, *American Journal of Jurisprudence*, and *Law Quarterly Review*.