

# FORM AND SUBSTANCE IN ANGLO-AMERICAN LAW

*A Comparative Study of Legal Reasoning,  
Legal Theory, and Legal Institutions*

P. S. ATIYAH AND  
R. S. SUMMERS

CLARENDON



PAPERBACKS

# Form And Substance In Anglo American Law

**Wendy Wagner, Will Walker**



## **Form And Substance In Anglo American Law:**

Form and Substance in Anglo-American Law American Bar Association. Special Committee on Standards of Judicial Conduct, Robert S. Summers, 1987      Form and substance in Anglo-American law P.S. Atiyah, 1987      *Form and Substance in the Law of Obligations* Andrew Robertson, James Goudkamp, 2019-11-28 This volume explores the relationship between form and substance in the law of obligations It builds on the rich tradition of legal thought that deploys the concepts of form and substance to inform our understanding of the common law The essays in this collection offer multiple conceptions of form and substance and cover an array of private law subjects scholarly approaches and jurisdictions The collection makes it clear that the interplay between form and substance is a key element of the dynamism that characterises this area of the law

The Employment Relationship in Anglo-American Law Marc Linder, 1989 This volume represents a search for the socioeconomic and legal origins of the employment relationship as it currently exists in the United States Although the study was sparked by legal disputes in which farmers and other employers denied the existence of an employment relationship with migrant farmworkers the scope of the controversy and the unresolved legal issues are not confined simply to unskilled and low wage agricultural workers Linder analyzes the evolution of an important legal doctrine through an examination of its origins and development in statute and case law in the political economies of both Britain and the United States      **A**

**Theory of Precedent** Raimo Siltala, 2000-11-30 Analytical jurisprudence has been mostly silent on the role of precedent in legal adjudication What is the content of a judge's precedent ideology or the rule of precedent recognition by means of which the ratio of a case is to be distinguished from mere dicta In this study the author identifies six types of judicial precedent ideology among them judicial legislation systemic construction of the underlying reasons of law in the Dworkinian sense and a radical re-evaluation of the merits of a prior case in later adjudication as envisioned by the American Realists These competing models are tested against judicial experiences in the UK US France Italy Germany and Finland By this means Lon Fuller's famous internal morality of law is shown to function rather poorly in the context of precedents and the author therefore suggests a redefinition of the rule which makes it work for precedent This in turn leads the author to confront fundamental questions about the normative nature of law Is Kelsen's grundnorm or Hart's ultimate rule of recognition a valid rule in the image of legal rules proper or is it merely a social fact observable only in the practices and behaviour of judges and other officials The author claims that Hart is caught between Kelsen and J L Borges the late Argentinian fabulist in so far as the ontology and epistemology of the rule of recognition are concerned This leads the author to the conclusion that the two predicaments affecting analytical positivism namely the threat of endless self-referentiality or infinite regress can only be accounted for by means of recourse to the philosophy of deconstruction as posited by Jacques Derrida      *Form and Function in a Legal System* Robert S. Summers, 2005-11-14 This book addresses three major questions about law and legal systems 1 What are the defining and organising forms of legal institutions legal rules interpretative methodologies and other legal

phenomena 2 How does frontal and systematic focus on these forms advance understanding of such phenomena 3 What credit should the functions of forms have when such phenomena serve policy and related purposes rule of law values and fundamental political values such as democracy liberty and justice This book seeks to offer general answers to these questions and thus gives form in the law its due The answers not only provide articulate conversancy with the subject but also reveal insights into the nature of law itself the oldest and foremost problem in legal theory and allied subjects Legal Positivism in American Jurisprudence Anthony J. Sebok, 1998-10-28 This work represents a serious and philosophically sophisticated guide to modern American legal theory demonstrating that legal positivism has been a misunderstood and underappreciated perspective through most of twentieth century American legal thought **Stability and Change in Modern Property Law** Ernesto Vargas Weil, 2025-09-04 This book examines the English and German version of the numerus clausus principle which holds that there is a closed list of permitted property rights It challenges recent views that the principle renders property law inflexible and unable to accommodate social and economic changes Relying on a novel approach combining property theory and comparative research of English and German law it argues that the restrictions the principle imposes on the creation of new property types actually does accommodate social changes through a process of functional transformation of the existing property rights This is a fascinating unique study that makes a rigorous original contribution to property law theory The Common Law in Two Voices Kwai Hang Ng, 2009-07-21 Hong Kong is one of the very few places in the world where the common law can be practiced in a language other than English Introduced into the courtroom over a decade ago Cantonese has significantly altered the everyday working of the common law in China's most Westernized city In The Common Law in Two Voices Ng explores how English and Cantonese respectively reinforce and undermine the practice of legal formalism This first ever ethnographic study of Hong Kong's unique legal system in the midst of social and political transition this book provides important insights into the social nature of language and the work of institutions Ng contends that the dilemma of legal bilingualism in Hong Kong is emblematic of the inherent tensions of postcolonial Hong Kong Through the legal dramas presented in the book readers will get a fresh look at the former British colony that is now searching for its identity within a powerful China **Habermas on Law and Democracy** Michel Rosenfeld, Andrew Arato, 2023-12-22 In the first essay Habermas himself succinctly presents the centerpiece of his theory his proceduralist paradigm of law The following essays comprise elaborations criticisms and further explorations by others of the most salient issues addressed in his theory The distinguished group of contributors internationally prominent scholars in the fields of law philosophy and social theory includes many who have been closely identified with Habermas as well as some of his best known critics The final essay is a thorough and lengthy reply by Habermas which not only engages the most important arguments raised in the preceding essays but also further elaborates and refines some of his own key contributions in Between Facts and Norms This volume will be essential reading for philosophers legal scholars and political and social

theorists concerned with understanding the work of one of the leading philosophers of our age. These provocative in depth debates between Jürgen Habermas and a wide range of his critics relate to the philosopher's contribution to legal and democratic theory in his recently published *Between Facts and Norms*. Drawing upon his discourse theory, Habermas has elaborated a novel and powerful account of law that purports to bridge the gap between democracy and rights by conceiving law to be at once self-imposed and binding. In the first essay, Habermas himself succinctly presents the centerpiece of his theory: his proceduralist paradigm of law. The following essays comprise elaborations, criticisms, and further explorations by others of the most salient issues addressed in his *Regulation, Crime and Freedom*. John Braithwaite, 2020-09-10. This title was first published in 2000. John Braithwaite is a distinguished criminologist with an international reputation in the study of regulation and globalization. This collection contains his most important and influential essays in criminal justice and business regulation. It has a substantial introduction explaining the thematization of his work around the design of regulatory systems to maximize freedoms as non-domination.

**The Scope and Intensity of Substantive Review** Hanna Wilberg, Mark Elliott, 2015-11-26. Inspired by the work of Professor Michael Taggart, this collection of essays from across the common law world is concerned with two separate but related themes. First, to what extent and by what means should review on substantive grounds such as unreasonableness be expanded and intensified? Jowell, Elliott, and Varuhas all agree with Taggart that proportionality should not sweep the rainbow but propose different schemes for organising and conceptualising substantive review. Groves and Weeks and Hoexter evaluate the state of substantive review in Australia and South Africa respectively. The second theme concerns the broader Canadian sense of substantive review including the illegality grounds and whether deference should extend to these grounds. Cane and Aronson consider the relevance and impact of different constitutional and doctrinal settings. Wilberg and Daly address questions concerning when and how deference is to operate once it is accepted as appropriate in principle. Rights-based review is discussed in a separate third part because it raises both of the above questions. Geiringer, Sales, and Walters examine the choices to be made in settling the approach in this area, each focusing on a different dichotomy. Taggart's work is notable for treating these various aspects of substantive review as parts of a broader whole and for his search for an appropriate balance between judicial scrutiny and administrative autonomy across this entire area. By bringing together essays on all these topics, this volume seeks to build on that approach.

*Incomprehensible!* Wendy Wagner, Will Walker, 2019-07-11. Explains how the law often encourages actors to be incomprehensible in ways that actually undermine the purpose of the laws themselves. Elements of Legislation Neil Duxbury, 2013. Neil Duxbury combines analytical legal philosophy and legal history to explore the concept of legislation.

Controlling Administrative Power Peter Cane, 2016-03-29. This wide-ranging comparative account of the legal regimes for controlling administrative power in England, the USA, and Australia argues that differences and similarities between control regimes may be partly explained by the constitutional structures of the systems of government in which they are embedded. It

applies social scientific and historical methods to the comparative study of law and legal systems in a novel and innovative way and combines accounts of long term and large scale patterns of power distribution with detailed analysis of features of administrative law and the administrative justice systems of three jurisdictions It also proposes a new method of analysing systems of government based on two different models of the distribution of public power diffusion and concentration a model which proves more illuminating than traditional separation of powers analysis

Interpreting Constitutions Charles J. G. Sampford, Kim Preston, 1996 Constitutions can be viewed as the road map of liberal democracies And like any road map they need to be constantly reconsidered and redrawn as the territory develops and changes The contributors undertake this re interpretation on a number of levels They examine first the theoretical approaches to constitutional interpretation and then move on to implied rights There then follows a consideration of the role of the judiciary and parliament in constitutional interpretation drawing upon a number of examples from around the world

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The Judicial Assessment of Expert Evidence Déirdre Dwyer, 2008-12-18 Deirdre Dwyer examines how a court can decide when to accept an expert s opinion focusing on English civil justice

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**Legality and Community** Philip Selznick, 2002 Bridging sociology legal and social theory and moral philosophy this volume explores the significance of Philip Selznick s work in a variety of social contexts particularly the search for responsive law and governance humane institutions and a balance between freedom and communal life

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