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Theory of Legal Principles Humberto Avila, 2007-09-26 This book intends to help understand and apply principles and rules better. Its target is to keep the distinction between principles and rules whereas structuring it on different foundations than those jurisprudence ordinarily employs. The first object of investigation is the phenomenon of interpretation in Law in order to understand that the classification of certain normative species as either principles or rules depends in the first place on axiological connections that are not ready prior to the interpretation process that unveils them. Then a definition of principles is proposed aiming to understand what their unique characteristics are when compared to other norms of the legal order. Thirdly the conditions for the application of principles and rules are examined which are the normative applicative postulates. It will be shown on one hand that principles not only explicit values but also set forth precise species of behaviors though indirectly on the other hand the creation of conducts by rules is also to be weighed even though the behavior set forth in advance may be overcome depending on the accomplishment of a few requirements. That will surpass both the mere praise of values which does not create behaviors and the automatic application of rules. A model is proposed to explain the normative species which includes structured weighing on the application process while encompassing substantive criteria of justice in its argument through the analytical reconstruction of the concrete use of normative postulates especially those of reasonableness and proportionality. All of that is done with a focus on the ability of intersubjective control of the argumentation which often degenerates into capricious decisionism.

A Theory of Legal Sentences Manuel Atienza, J. Ruiz Manero, 1997-11-30 Legal statements are according to the authors the most basic elements of the law. Nevertheless they must be considered not only as the pieces of a puzzle but also as the components of a dynamic and highly complex reality the law of contemporary society. The book presents an analysis of the different types of legal statements: mandatory rules, principles, power conferring rules, definitions, permissions, values and the rule of recognition from a threefold perspective that is considering their logical structure, their function in legal reasoning as reasons for action and their connections with the interests and power relationships among the individuals and the social groups. The result is conceived as a first step in the building of a general theory of law designed not as an isolated discourse but as a decisive element for the dynamization of the legal culture.

The Principle of Legal Certainty in EC Law J. Raitio, 2013-03-14 The intertwinement of EC law and national law may create unforeseeability in situations where EC law invades the national cases which gives rise to the very question of legal certainty in EC law. This study contributes to the contemporary discussion which wrestles with the following questions in particular: What have been the visions and objectives for European integration in the last decades? How to describe European Union as a political entity and a legal system? What is the relationship between legal certainty, rule of law, various general principles and human rights? What is the core of legal certainty on the basis of the case study? What kind of legal arguments and patterns of justification are there from a comparative perspective? How has the term legal certainty been

defined in the Nordic legal theory How predictable and acceptable are the interpretations of the European Court of Justice is it running wild Legal certainty relates to the principle of non retroactivity and the protection of legitimate expectations in particular but more profoundly it can be related to the conceptual scale for weighing up and balancing between formal justice and material fairness in legal decision making This scale is illustrated by presenting the terms formal factual and substantive legal certainty

The Concept of Ideals in Legal Theory Sanne Taekema, 2002-12-31 Talk about law often includes reference to ideals of justice equality or freedom But what do we refer to when we speak about ideals in the context of law This book explores the concept of ideals by combining an investigation of different theories of ideals with a discussion of the role of ideals in law A comparison of the theories of Gustav Radbruch and Philip Selznick leads up to a pragmatist theory of legal ideals which provides an interesting new position in the debate about values in law between legal positivists and natural law thinkers Attention for law s central ideals enables us to understand law s autonomous character while at the same time tracing its connection to societal values Essential reading for anyone interested in the role of values or ideals in law

Legal Argumentation Theory: Cross-Disciplinary Perspectives Christian Dahlman, Eveline T. Feteris, 2012-09-12 This book offers its readers an overview of recent developments in the theory of legal argumentation written by representatives from various disciplines including argumentation theory philosophy of law logic and artificial intelligence It presents an overview of contributions representative of different academic and legal cultures and different continents and countries The book contains contributions on strategic maneuvering argumentum ad absurdum argumentum ad hominem consequentialist argumentation weighing and balancing the relation between legal argumentation and truth the distinction between the context of discovery and context of justification and the role of constitutive and regulative rules in legal argumentation It is based on a selection of papers that were presented in the special workshop on Legal Argumentation organized at the 25th IVR World Congress for Philosophy of Law and Social Philosophy held 15-20 August 2011 in Frankfurt Germany

Principled Reasoning in Human Rights Adjudication Se-shauna Wheatle, 2017-04-20 Implied constitutional principles form part of the landscape of the development of fundamental rights in common law jurisdictions affecting issues ranging from the remuneration of judges to the appropriation of property by the state Principled Reasoning in Human Rights Adjudication offers thematic analysis of the use of the implied constitutional principles of the rule of law and separation of powers in human rights cases The book examines the functions played by those principles in rights adjudication in Australia Canada the Commonwealth Caribbean and the United Kingdom It argues that a complete understanding of implied constitutional principles requires thoroughgoing analysis of the sources and methods of implication and of the specific roles played by such principles in the adjudicative process By disaggregating particular functions and placing those functions within their respective institutional contexts this book develops an understanding of the features of cases in which implied constitutional principles are invoked and the work done by those principles

The Rule of Law History, Theory and

Criticism Pietro Costa, Danilo Zolo, 2007-05-06 Authors Costa and Zolo share the conviction that a proper understanding of the rule of law today requires reference to a global problematic horizon This book offers some relevant guides for orienting the reader through a political and legal debate where the rule of law and the doctrine of human rights is a concept both controversial and significant at the national and international levels Theory of Legal Evidence - Evidence in Legal Theory

Verena Klappstein, Maciej Dybowski, 2022-01-03 This book addresses theoretical problems concerning legal evidence The concept of evidence is expected to fulfill a number of distinct roles in science and philosophy but also in legal theory and law some of which are complementary while others are conflicting In their profession lawyers have to deal with evidence and proof Yet the legal concept of evidence is constantly changing and the debate concerning the distinction between a legal concept of evidence the ordinary concept of evidence and the concept of evidence in science is far from being settled What is more the problem of evidence is central to both epistemology and the philosophy of science and by extension to our academic thinking on law In short legal theorists interest in evidence may include such diverse objects as a bloody knife sensory data linguistic entities or psychologically recognized beliefs The book surveys selected theoretical roles that the concept of evidence plays and explores their relations and interconnections The content is divided into three parts investigating 1 evidence in epistemology and the philosophy of science which focuses on evidence methodologies and the problem of proof in legal scholarship 2 evidence in legal theory and legal philosophy where particular attention is paid to the interplay between evidence legal reasoning and the binding force of such reasoning and 3 evidence in law where theoretical problems pertaining to witnesses expert opinions explanations of the accused statistical evidence and neuroscientific evidence are examined

Legal Method and the Rule of Law Sebastián Urbina, 2002-08-31 We cannot see the world as it is because we face it in a contaminated vein That is our conceptual scheme and biological constitution condition our world view The legal normative world we are dealing with has some special features like the primacy of practical reason over theoretical reason and the primacy of the internal point of view over the external point of view Although it is not a feature of all legal traditions legal dogmatics is a privileged way of knowing legal normative object that is our legal orders But we are not undertaking as legal scholars an empiricist enterprise because among other reasons we are not interested in the reality in itself but in the relevant reality at least for us In this respect we do not only depend on theories like physicists but also on legal authoritative sources that is power and legitimacy Legal scholars and other participants in the legal life are not neutral observers of their own world trying to discover some hidden truth They are committed experts trying to describe justify and improve the legal order The Tapestry of the Law

E. Attwooll, 2013-11-11 Although its concern is jurisprudence The Tapestry of the Law is intended to offer neither an original theory of or about law nor an account of other people's theories in textbook form It is rather an attempt to approach the subject without following either of these conventions The reasons are as follows Those engaged in legal theory are prone to assert that one cannot properly understand the law unless one takes a

jurisprudential approach preferably their own to it Equally those engaged in exposition of the law may counter that legal theory fails to pay adequate attention to actual law There is at least some truth in these claims Analyses courses and textbooks on both sides do often seem to be produced without reference to the other Yet such isolation is probably more apparent than real Most if not all so called black letter lawyers do operate on the basis of certain jurisprudential understandings even if these are not articulated ones In the frequently quoted words of F C S Northrop There are lawyers judges and even law professors who tell us they have no legal philosophy

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