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Theory of Legal Principles



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Theory Of Legal Principles Law And Philosophy Library

**Jordi Ferrer Beltrán, José Juan
Moreso, Diego M. Papayannis**



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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

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

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

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 **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 **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 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 Invisible Origins of Legal Positivism W.E. Conklin, 2012-12-06 Conklin's thesis is that the tradition of modern legal positivism beginning with Thomas Hobbes postulated different senses of the invisible as the authorising origin of humanly posited laws Conklin re-reads the tradition by privileging how the canons share a particular understanding of legal language as written Leading philosophers who have espoused the tenets of the tradition have assumed that legal language is written and that the authorising origin of humanly posited rules norms is inaccessible to the written legal language Conklin's re-reading of the tradition teases out how each of these leading philosophers has postulated that the authorising origin of humanly posited laws is an unanalysable externality to the written language of the legal structure As such the authorising origin of posited rules norms is inaccessible or invisible to their written language What is this authorising origin Different forms include an originary author an a priori concept and an immediacy of bonding between person and laws In each case the origin is unwritten in the sense of being inaccessible to the authoritative texts written by the officials of civil institutions of the sovereign state Conklin sets his thesis in the context of the legal theory of the polis and the pre polis of Greek tribes The author claims that the problem is that the tradition of legal positivism of a modern sovereign state excises the experiential or bodily meanings from the written language of the posited rules norms thereby forgetting the very pre legal authorising origin of the posited norms that each philosopher admits as offering the finality that legal reasoning demands if it is to be authoritative

Legal Institutions D.W. Ruiter, 2013-03-14 Building on his contributions to institutional legal theory in *Institutional Legal Facts* of 1993 *Law and Philosophy Library* volume 18 the author presents a comprehensive theory of legal institutions To that end the initial theoretical approach which mainly concentrated on problems connected with legal powers and legal acts acts in law is widened to allow for the development of a theory of legal judgements capable of accounting not only for enacted but also unwritten law legal principles and customary law With the use of the concept of institutional legal facts the structure of legal institutions is analyzed in detail In addition to that a classification of legal institutions is provided Extensive attention is given to logical as well as doctrinal problems connected with a conception of legal validity as the mode of existence of legal conditions rather than as a value of legal norms similar to the truth of propositions The study results in an elaborate conceptual framework for institutional analysis of positive law In a final chapter the analytical potential of the framework is put to the test by applying it to the branch of public international law known as the law of treaties Readership Specialists in

legal theory and lawyers interested in theoretical issues particularly in linguistic approaches and questions related to the institutional nature of law

The Scepter of Reason R. Gargarella, 2012-12-06 It is not unusual that formal and informal discussions about the political system its virtues and its many defects conclude in a discussion about impartiality In fact we all discuss impartiality when we talk about the best way to equally consider all viewpoints We show our concerns with impartiality when facing a particular problem we try to figure out the best solution for all of us given our conflicting interests Thus the quest for impartiality tends to be a common objective for most of us although we normally disagree on its particular contents Generally these formal and informal discussions about impartiality conclude in a dispute between different epistemic conceptions That is to say simply that in these situations we begin to disagree about best procedure to define the more neutral impartial solution for all of us Basically trying to answer this question we tend to fluctuate between two opposite positions According to some the best way to know which is the more impartial solution is to resort to a process of collective reflection in those situations we have to consider the opinions of all those who are possibly affected

The Concept of Rights George W. Rainbolt, 2006-07-08 Discussions of rights are ubiquitous One constantly hears things such as The Chinese are violating Tibetan rights Landlords have a right that their tenants pay their rent Students have a right to be graded fairly Animals have a right not to suffer merely to bring pleasure to humans Abortion violates a fetus right to life We violate the rights of future generations when we pollute the water These statements assert that Tibetans landlords students animals fetuses and future generations all have rights Tibetans landlords students animals fetuses and future generations do not seem to have much in common When one presses for clarity it is very difficult to say precisely what a right is What is it to have a right That is the question this book seeks to answer To paint with an overly broad brush previous answers to this question can be divided into two groups Some hold interest benefit theories of rights while others hold choice will theories of rights Perhaps the first person to propose an interest benefit theory was Jeremy Bentham Its most cited contemporary defender is Joseph Raz The seminal statement of the choice theory was made by H L A Hart Carl Wellman is perhaps the most able defender of a will theory of rights The debate between these two groups of theories has been a productive one

Methods of Legal Reasoning Jerzy Stelmach, Bartosz Brozek, 2006-09-03 Anyone reflecting on the methodology of legal reasoning faces a difficult task The number of methodological theories in jurisprudence and the vast literature on the subject are not the only problems that have to be taken into account Perhaps the most striking difficulty concerning the methodology of legal argument is the heated debate between jurists legal theorists and philosophers of law that has been recurring since at least nineteenth century Therefore a justification is needed for writing yet another book concerning the methods of legal reasoning a book that aims to cover a lot of what has already been proposed in legal theory We believe that there is such a justification First the perspective that we adopt in the present book is unique at least in some respects We venture to look at the methodology of legal reasoning from the outside i.e. from a more general philosophical perspective while taking into account

the hard reality of law This perspective enables us to ask questions about the justification for the methods of legal argument presented Second we do not want to defend one paradigmatic conception of legal reasoning On the contrary we put forward the thesis that there is a plurality of argumentative methods The plurality however does not lead to relativism in legal decision making Third we reject any hierarchy of the methods of legal reasoning and take the view that one can speak only of the precision and flexibility of different methodologies

Neutrality and Theory of Law Jordi Ferrer Beltrán, José Juan Moreso, Diego M. Papayannis, 2013-04-03 This book brings together twelve of the most important legal philosophers in the Anglo American and Civil Law traditions The book is a collection of the papers these philosophers presented at the Conference on Neutrality and Theory of Law held at the University of Girona in May 2010 The central question that the conference and this collection seek to answer is Can a theory of law be neutral The book covers most of the main jurisprudential debates It presents an overall discussion of the connection between law and morals and the possibility of determining the content of law without appealing to any normative argument It examines the type of project currently being held by jurisprudential scholarship It studies the different approaches to theorizing about the nature or concept of law the role of conceptual analysis and the essential features of law Moreover it sheds some light on what can be learned from studying the non essential features of law Finally it analyzes the nature of legal statements and their truth values This book takes the reader a step further to understanding law

Reasoning with Rules Jaap Hage, 2013-04-17 Rule applying legal arguments are traditionally treated as a kind of syllogism Such a treatment overlooks the fact that legal principles and rules are not statements which describe the world but rather means by which humans impose structure on the world Legal rules create legal consequences they do not describe them This has consequences for the logic of rule and principle applying arguments the most important of which may be that such arguments are defeasible This book offers an extensive analysis of the role of rules and principles in legal reasoning which focuses on the close relationship between rules principles and reasons Moreover it describes a logical theory which assigns a central place to the notion of reasons for and against a conclusion and which is especially suited to deal with rules and principles

Essays in Legal Theory Robert Summers, 2013-11-11 As I explain in the introduction this is the third in a series of collections of my previously published essays in legal theory All of the essays here but three have been revised for this volume I now wish to record my gratitude and indebtedness to various persons I am most indebted and grateful to my wife Dorothy Kopp Summers to whom I dedicate this book I also wish to record my gratitude for his interest and patience to Hendrik Jan van Leusen of Kluwer Academic Publishers He strongly encouraged me to put this collection together and without his efforts it certainly would not have appeared in this timely fashion I also wish to thank his successor Sabine Wesseldijk for assistance In the course of my academic career I have benefitted greatly from the many Cornell Law School students serving as my research assistants I have also been privileged to have the fine aid of many Cornell Law School secretaries and administrative assistants Foremost

here is Mrs Pamela Finnigan who has so ably seen this collection put together from start to finish *The Legal Essays of Michael Bayles* W.L. Robison,2002-06-30 The legal essays by Michael Bayles in this collection display his commitment to utilitarianism both as a moral theory and an analytical device A utilitarian must choose between the best of all possible alternatives and so must lay out the alternatives and thus their consequences carefully and completely As it happens there is no better way of understanding why something is as it is in the law and no better way to lay the foundations for criticism and improvement than to lay out what the alternatives are carefully distinguishing them their justifications and their implications for changing other areas of the law and for changing our relation to the law Bayles was a master at such work and each essay thus repays careful study for anyone concerned about the law The essays cover a wide variety of topics from contract law to the criminal law from torts to theory and form a natural set Laying out the alternatives in one area makes it much clearer how and why alternatives in other areas are acceptable or required Interconnections within the legal system as a whole not readily visible when studying one area of the law become obvious when several are laid out side by side using the analytical skill required by a good utilitarian **Legal Interpretation and Scientific Knowledge** David Duarte,Pedro Moniz Lopes,Jorge Silva Sampaio,2019-09-25 This book discusses the question of whether legal interpretation is a scientific activity The law s dependency on language at least for the usual communication purposes not only makes legal interpretation the main task performed by those whose work involves the law but also an unavoidable step in the process of resolving a legal case This task of decoding the words and sentences used by normative authorities while enacting norms carried out in compliance with the principles and rules of the natural language adopted is prone to all of the difficulties stemming from the uncertainty intrinsic to all linguistic conventions In this context seeking to determine whether legal interpretation can be scientific or in other words can comply with the requirements for scientific knowledge becomes a central question In fact the coherent application of the law depends on a knowledge regarding the meaning of normative sentences that can be classified at least as being structured systematically organized and tendentially objective Accordingly this book focuses on analyzing precisely these problems its respective contributions offer a range of revealing perspectives on both the problems and their ramifications

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