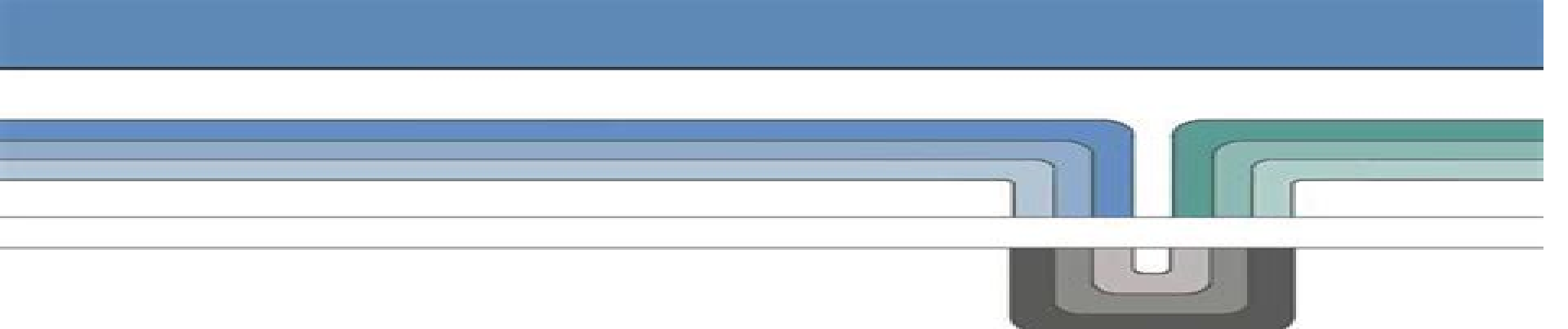




Jaap C. Hage

Reasoning with Rules

An Essay on Legal Reasoning and
Its Underlying Logic

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Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic

Govert Hartogh



Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic:

Reasoning with Rules Jaap Hage, 1996-11-30 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.

Reasoning with Rules Jaap C. HAGE, 1997 **Handbook of Legal Reasoning and Argumentation** Giorgio Bongiovanni, Gerald Postema, Antonino Rotolo, Giovanni Sartor, Chiara Valentini, Douglas Walton, 2018-07-02 This handbook addresses legal reasoning and argumentation from a logical, philosophical and legal perspective. The main forms of legal reasoning and argumentation are covered in an exhaustive and critical fashion and are analysed in connection with more general types and problems of reasoning. Accordingly, the subject matter of the handbook divides in three parts. The first one introduces and discusses the basic concepts of practical reasoning. The second one discusses the general structures and procedures of reasoning and argumentation that are relevant to legal discourse. The third one looks at their instantiations and developments of these aspects of argumentation as they are put to work in the law in different areas and applications of legal reasoning.

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 hardness 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.

The Logic of Autonomy Jan-R Sieckmann, 2012-11-13 Autonomy is the central idea of modern practical philosophy. Understood as self

legislation autonomy seems to require that the validity of norms depends on recognition namely that their addressees being autonomous agents recognise these norms to be valid But how can one be bound by norms whose validity depends on their being recognised as valid by their addressees The questions of how autonomous morality and on this basis the authoritative character of law can be understood present persistent puzzles that have been widely discussed but still await a satisfactory solution This book presents an analysis of the idea of autonomy as self legislation and its consequences for law and morality It links the idea of autonomy with the idea of the balancing of normative arguments develops a notion of normative arguments as distinct from normative judgements and statements and explains claims to correctness and objectivity that are found in normative discourse Thus a logic of autonomy emerges and it is pervasive in normative reasoning It connects theses regarding the logic of norms the structure of balancing human and fundamental rights legal validity legal interpretation and the relations among legal systems offering a theory of central elements of normative argumentation a theory that is undergirded by the mutual relations that exist between and among its parts as well as through the relations that it bears to other theories Moreover it offers an alternative to Kantian notions of autonomy and provides solutions to problems that other theories have failed to master

A Treatise of Legal Philosophy and General Jurisprudence Enrico Pattaro, 2007-10-08 A Treatise of Legal Philosophy and General Jurisprudence is the first ever multivolume treatment of the issues in legal philosophy and general jurisprudence from both a theoretical and a historical perspective The work is aimed at jurists as well as legal and practical philosophers Edited by the renowned theorist Enrico Pattaro and his team this book is a classical reference work that would be of great interest to legal and practical philosophers as well as to jurists and legal scholar at all levels The work is divided The theoretical part published in 2005 consisting of five volumes covers the main topics of the contemporary debate the historical part consisting of six volumes Volumes 6 8 published in 2007 Volumes 9 and 10 published in 2009 Volume 11 published in 2011 and volume 12 forthcoming in 2012 2013 accounts for the development of legal thought from ancient Greek times through the twentieth century The entire set will be completed with an index Volume 1 The Law and the Right a Reappraisal of the Reality that ought to be by Enrico Pattaro This work brings out and recovers the normative dimension of law called the reality that ought to be placing within this reality the idea of what is right Part I reconstructs the current as well as the traditional civil law conception of the reality that ought to be and raises some critical theoretical issues Part II introduces some basic concepts on language and behaviour and presents a conception of norms as beliefs Part III aims to find explanations for the idea of a reality that ought to be Part IV consists of inquiries focussed on Homeric epic the natural law school and the normativistic view of positive law

Logical Models of Legal Argumentation H. Prakken, Giovanni Sartor, 2012-12-06 In the study of forms of legal reasoning logic and argumentation theory long followed separate tracks Legal logicians tended to focus on a deductive reconstruction of justifying a decision disregarding the dialectical process leading to the chosen justification Others instead emphasized the adversarial and

discretionary nature of legal reasoning involving reasonable evaluation of alternative choices and the use of analogical reasoning. Recently however developments in Artificial Intelligence and Law have paved the way for overcoming this separation. Logic has widened its scope to defensible argumentation and informal accounts of analogy and dialectics have inspired the construction of computer programs. Thus the prospect is emerging of an integrated logical and dialectical account of legal argument adding to the understanding of legal reasoning and providing a formal basis for computer tools that assist and mediate legal debates while leaving room for human initiative. This book presents contributions to this development. From a logical point of view it covers topics such as evaluating conflicting arguments, weighing reasons, modelling legal disputes as a dialogue game, the role of the burden of proof, the relation between principles, rules, reasons and facts, and the relation between deductive and nondeductive arguments. Written by leading scholars in the field and building on recent developments in logic and Artificial Intelligence, the chapters provide a state of the art account of research on the logical aspects of legal argument.

Judicial Applications of Artificial Intelligence Giovanni Sartor, L. Karl Branting, 2013-04-17. The judiciary is in the early stages of a transformation in which AI. Artificial Intelligence technology will help to make the judicial process faster, cheaper and more predictable without compromising the integrity of judges' discretionary reasoning. Judicial decision making is an area of daunting complexity where highly sophisticated legal expertise merges with cognitive and emotional competence. How can AI contribute to a process that encompasses such a wide range of knowledge, judgment and experience? Rather than aiming at the impossible dream or nightmare of building an automatic judge, AI research has had two more practical goals: producing tools to support judicial activities including programs for intelligent document assembly, case retrieval and support for discretionary decision making; and developing new analytical tools for understanding and modeling the judicial process such as case based reasoning and formal models of dialectics, argumentation and negotiation. Judges, squeezed between tightening budgets and increasing demands for justice, are desperately trying to maintain the quality of their decision making process while coping with time and resource limitations. Flexible AI tools for decision support may promote uniformity and efficiency in judicial practice while supporting rational judicial discretion. Similarly, AI may promote flexibility, efficiency and accuracy in other judicial tasks such as drafting various judicial documents. The contributions in this volume exemplify some of the directions that the AI transformation of the judiciary will take.

Political Friendship and the Good Life Gianfrancesco Zanetti, 2002-07-31. The main subject of this book is the rather fascinating link between an acceptable concept of political whole and its legal and moral implications. When we face this problem we find that widespread categories like happiness and friendship are at the same time necessary and dangerous, crucial and elusive. In order to make the case against the so called Legal Enforcement of Morals and to grasp the complex relationship between law and morality from a liberal point of view, it is not enough to reject a pattern of happiness or of human flourishing from which to draw normative instructions for men and women; it must be recognized that

integration of individuals in the comprehensive groups as well as in the political whole itself is not the only valuable option. The fragile value of a relative lack of integration a right to unhappiness turns out to be eventually what makes the weak but decisive moral primacy of liberal societies.

Approaches for Community Decision Making and Collective Reasoning: Knowledge Technology Support Yearwood, John, Stranieri, Andrew, 2012-06-30 This book focuses on how groups can structure their activities toward making better decisions or in developing technologies for the support of decision making in groups. Provided by publisher.

Approaches to Legal Rationality Dov M. Gabbay, Patrice Canivez, Shahid Rahman, Alexandre Thiercelin, 2010-10-04 Legal theory political sciences sociology philosophy logic artificial intelligence there are many approaches to legal argumentation. Each of them provides specific insights into highly complex phenomena. Different disciplines but also different traditions in disciplines e.g. analytical and continental traditions in philosophy find here a rare occasion to meet. The present book contains contributions both historical and thematic from leading researchers in several of the most important approaches to legal rationality. One of the main issues is the relation between logic and law the way logic is actually used in law but also the way logic can make law explicit. An outstanding group of philosophers logicians and jurists try to meet this issue. The book is more than a collection of papers. However different their respective conceptual tools may be the authors share a common conception legal argumentation is a specific argumentation context.

Living Lawfully Z. Bankowski, 2013-04-17 The aim of this book is to explore what it means to live a life under the law. Does a life of law preclude love and does a life of love preclude law? Part of the theme of the book is that social questions also raise individual moral and ethical questions that to live lawfully implies both a question of how I should live in my relations with my fellows and how society should be organised. These questions must be looked at together. The book explores these questions and in looking at the articulation of law and love touches upon debates in personal morality aesthetics epistemology social and political organisation institutional design and the form and substance of law. It raises questions that are of interest to students and those working in law theology and social and political theory.

Mutual Expectations Govert Hartogh, 2002-05-31 The law persists because people have reasons to comply with its rules. What characterizes those reasons is their interdependence each of us only has a reason to comply because he or she expects the others to comply for the same reasons. The rules may help us to solve coordination problems but the interaction patterns regulated by them also include Prisoner's Dilemma games Division problems and Assurance problems. In these games the rules can only persist if people can be expected to be moved by considerations of fidelity and fairness not only of prudence. This book takes a fresh look at the perennial problems of legal philosophy the source of obligation to obey the law the nature of authority the relationship between law and morality and the nature of legal argument from the perspective of this conventionalist understanding of social rules. It argues that since the resilience of such rules depends on cooperative dispositions conventionalism properly understood does not imply positivism.

Justifying Taxes Agustín José Menéndez, 2013-03-14 Justifying Taxes offers readers some of the elements of a

democratic tax law considered within its political and philosophical context in order to determine the extent of legitimate tax obligations The objective is to revisit some of the issues in the dogmatics of tax law from the viewpoint of a critical citizen always ready to ask questions about the justification underlying her obligations and especially about her paramount burden viz the payment of certain amounts of money Within this purview special attention is paid to the general principles of taxation The argument is complemented by a detailed reconstruction of constitutional reasoning in tax matters close attention being paid to the jurisprudence of the Spanish Tribunal Constitucional Readership Legal scholars political scientists and philosophers Especially recommended to graduate and undergraduate students of Tax Law Constitutional Law Jurisprudence Philosophy of Law and Political Theory

Handbook of Philosophical Logic Dov M. Gabbay, Franz Guenther, 2013-06-29 It is with great pleasure that we are presenting to the community the second edition of this extraordinary handbook It has been over 15 years since the publication of the first edition and there have been great changes in the landscape of philosophical logic since then The first edition has proved invaluable to generations of students and researchers in formal philosophy and language as well as to consumers of logic in many applied areas The main logic article in the Encyclopaedia Britannica 1999 has described the first edition as the best starting point for exploring any of the topics in logic We are confident that the second edition will prove to be just as good The first edition was the second handbook published for the logic community It followed the North Holland one volume Handbook of Mathematical Logic published in 1977 edited by the late Jon Barwise The four volume Handbook of Philosophical Logic published 1983-1989 came at a fortunate temporal junction at the evolution of logic This was the time when logic was gaining ground in computer science and artificial intelligence circles These areas were under increasing commercial pressure to provide devices which help and/or replace the human in his daily activity This pressure required the use of logic in the modelling of human activity and organisation on the one hand and to provide the theoretical basis for the computer program constructs on the other

The Market of Virtue Michael Baumann, 2002-08-31 The Market of Virtue Morality and Commitment in a Liberal Society is a contribution to the present controversy between liberalism and communitarianism This controversy is not only confined to academic circles but is becoming of increasing interest to a wider public It has become popular again today to criticize a liberal market society as being a society in which morality and virtues are increasingly being displaced by egoism and utility maximization According to this view the competition between individuals and the dissolution of community ties erode the respect for the interests of others and undermine the commitment to the common good The present book however develops quite a different picture of a liberal society An analysis of its fundamental principles shows that anonymous market relations and competition are by no means the only traits of a liberal society Such a society also provides the framework for freedom of cooperation and association It gives its citizens the right to cooperate with other people in pursuit of their own interests Just as the rivalry between competitors is a basic element of a liberal society so is the cooperation between partners Thus not

only self centred individualism is rewarded The main part of the book explains how the freedom to cooperate and to establish social ties lays the empirical foundation for the emergence of civil virtues and moral integrity It is the basic insight of this analysis that it can no longer be maintained that a liberal society is incapable of producing moral attitudes and social commitment If a civil society can develop under a liberal order then one can reckon with citizens who voluntarily contribute to public goods and who commit themselves of their own accord to the society its constitution and institutions However this book not only develops further arguments for the current debate between liberalism and communitarianism by explaining the emergence of morality and virtue in a market society It also provides new aspects for the present theoretical and methodological controversies over the fundamentals of the social sciences and contributes to the advancement of the modern individualistic approach in social theory In this context it aims especially at an improvement of a sociological model of behaviour

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

Legal Knowledge and Information Systems Bart Verheij, 2001 This volume contains the proceedings of the fourteenth JURIX conference held December 13 14 2001 at the University of Amsterdam The Foundation for Legal Knowledge Based Systems JURIX is a forum for research in law and computer science Since 1988 JURIX has organized annual international conferences on research in the field Topics addressed range from the theoretical such as the modelling of the law and legal reasoning to the practical such as the design of systems that support legal decision making and teaching

Constitutional Justice, East and West Wojciech Sadurski, 2002-12-31 How can the power of constitutional judges to overturn parliamentary choices on the basis of their own reading of the constitution be reconciled with fundamental democratic principles which assign the supreme role in the political system to parliaments This time honoured question acquired a new significance when the post communist countries of Central and Eastern Europe without exception adopted constitutional models in which constitutional courts play a very significant role at least in theory Can we learn something about the relationship between democracy and constitutionalism in general from the meteoric rise of constitutional tribunals in the post communist countries Can the

discussions and controversies relating to constitutional review which have been going on for decades in more established democracies illuminate the sources of the strength of constitutional courts in Central and Eastern Europe These questions lie at the center of this book which focuses on the question of constitutional review in postcommunist states from a theoretical and comparative perspective The chapters contained in the book outline the conceptual framework for analyzing the sources the role and the legitimacy of constitutional justice in a system of political democracy From this perspective it assesses the experience of constitutional justice in the West where the model originated and in Central and Eastern Europe where the model has been implanted after the fall of Communism

Justice to Future Generations and the Environment H.P. Visser 't Hooft, 2013-03-09 The analysis of justice between generations proposed in this book is based first of all on a critical reading of Rawls theory of justice but it also pays attention to the existential and cultural context of our intuitions about intergenerational equity Although the desire for justice supplies an independent reason for action the unprecedented character of the context in which that reason must operate necessarily raises the question of its psychological support we want justice for future people but what interest do we have in their welfare in the first place I have tried to capture this double orientation by making use of Thomas Nagel's conceptual dichotomy between the objective detached point of view and the subjective in our case the culturally and historically situated perspective There is on the one hand a desire for justice that tends towards the definition of transhistorical standards detached from the particular values of the time and place there is on the other hand a motivational background that is tied to our present position in history and nourished by the values we presently believe in I have attempted to bridge the gap between the one and the other dimension by different conceptual avenues the principal one being a time related interpretation of Rawls concept of equal liberty justice wants us to maintain the worth of liberty over time by perpetuating the conditions of its meaningful exercise

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Table of Contents Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic

1. Understanding the eBook Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - The Rise of Digital Reading Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Advantages of eBooks Over Traditional Books
2. Identifying Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - User-Friendly Interface
4. Exploring eBook Recommendations from Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic

- Personalized Recommendations
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic User Reviews and Ratings
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic and Bestseller Lists
5. Accessing Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic Free and Paid eBooks
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic Public Domain eBooks
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic eBook Subscription Services
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic Budget-Friendly Options
 6. Navigating Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic eBook Formats
 - ePub, PDF, MOBI, and More
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic Compatibility with Devices
 - Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic Enhanced eBook Features
 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Highlighting and Note-Taking Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Interactive Elements Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 8. Staying Engaged with Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 9. Balancing eBooks and Physical Books Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Setting Reading Goals Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Carving Out Dedicated Reading Time

12. Sourcing Reliable Information of Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Fact-Checking eBook Content of Reasoning With Rules An Essay On Legal Reasoning And Its Underlying Logic
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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