

Legal Argument

I. What is a Lawyer?

A. What is a Lawyer?

- Definition: A person who practices law. (tautological definition)
- An advocate using legal arguments to represent a client's interest
 - Origin of laws goes back to ancient Greece when there were people who could speak in public who had public speaking skills when other people did not so they could rely on those people to defend them if they were charged with some kind of crime.
 - Practice of being a lawyer goes back to ancient civilizations
- Legal Arguments are one part of a lawyer's practice.
 - Legal arguments are an important part if not the most important part of a lawyers practice. Because a lawyer is making arguments in court that suggest you are not guilty of the crime you have been charged with or the evidence presented against you is inadequate, insufficient, or inadmissible.
 - In a way lawyers are having a debate with prosecutors and the jury and the judge get to decide who wins the debate.

II. Legal Argument

A. Tools of Legal Argument

- **Constitution**: Foundational legal document.
 - We have 51 constitutions
 - Depending on what kind of trouble you are in different constitutions depending on the state you live in or if it is a federal charge will apply
 - U.S constitution always applies but if you commit a crime in a specific state then that state constitution may offer separate protections for you
- **Statutes**: Legislation passed by the legislature.
 - When people in congress either at the state or federal level pass legislation that creates new restrictions they get added to a specific code
 - **Penal Code** is for criminal law
 - **Family Code** is for things like custody, divorce, child support
 - **Vehicle Code** is for speeding tickets, reckless driving, failing to obey traffic signals.
- **Case Law**: Law created by judges who rule on cases by interpreting constitution or statutes.
 - When a judge decides on a case it sets a precedent
 - So if someone commits the same crime the defense lawyer can say that in a previous case the court ruled it wasn't "trespassing" so they didn't commit a crime.

Nature Of Legal Argument

**Peter Langford, Ian Bryan, John
McGarry**



Nature Of Legal Argument:

New Essays on the Nature of Legal Reasoning Mark McBride, James Penner, 2022-05-19 This is the first book to bring together distinguished jurisprudential theorists as well as up and coming scholars to critically assess the nature of legal reasoning The volume is divided into 3 parts The first part General Jurisprudence and Legal Reasoning addresses issues at the intersection of general jurisprudence those pertaining to the nature of law itself and legal reasoning The second part Rules and Reasons addresses two concepts central to two prominent types of theory of legal reasoning The essays in the third and final part Doctrine and Practice delve into the mechanics of legal practice and doctrine from a legal reasoning perspective

Fundamentals of Legal Argumentation Eveline T. Feteris, 2017-07-10 This book is an updated and revised edition of Fundamentals of Legal Argumentation published in 1999 It discusses new developments that have taken place in the past 15 years in research of legal argumentation legal justification and legal interpretation as well as the implications of these new developments for the theory of legal argumentation Almost every chapter has been revised and updated and the chapters include discussions of recent studies major additions on topical issues new perspectives and new developments in several theoretical areas Examples of these additions are discussions of recent developments in such areas as Habermas theory MacCormick's theory Alexy's theory Artificial Intelligence and law and the pragma dialectical theory of legal argumentation Furthermore it provides an extensive and systematic overview of approaches and studies of legal argumentation in the context of legal justification in various legal systems and countries that have been important for the development of research of legal argumentation The book contains a discussion of influential theories that conceive the law and legal justification as argumentative activity From different disciplinary and theoretical angles it addresses such topics as the institutional characteristics of the law and the relation between general standards for moral discussions and legal standards such as the Rule of Law It discusses patterns of legal justification in the context of different types of problems in the application of the law and it describes rules for rational legal discussions The combination of the sound basis of the first edition and the discussions of new developments make this new edition an up to date and comprehensive survey of the various theoretical influences which have informed the study of legal argumentation It discusses salient backgrounds to this field as well as major approaches and trends in the contemporary research It surveys the relevant theoretical factors both from various continental law traditions and common law countries

Logical Tools for Modelling Legal Argument H. Prakken, 2013-04-17 This book is a revised and extended version of my PhD Thesis Logical Tools for Modelling Legal Argument which I defended on 14 January 1993 at the Free University Amsterdam The first five chapters of the thesis have remained almost completely unchanged but the other chapters have undergone considerable revision and expansion Most importantly I have replaced the formal argument based system of the old Chapters 6 7 and 8 with a revised and extended system which I have developed during the last three years in collaboration with Giovanni Sartor Apart from some technical

improvements the main additions to the old system are the enrichment of its language with a nonprovability operator and the ability to formalise reasoning about preference criteria Moreover the new system has a very intuitive dialectical form as opposed to the rather unintuitive fixed point appearance of the old system Another important revision is the split of the old Chapter 9 into two new chapters The old Section 9.1 on related research has been updated and expanded into a whole chapter while the rest of the old chapter is now in revised form in Chapter 10 This chapter also contains two new contributions a detailed discussion of Gordon's Pleadings Game and a general description of a multi-layered overall view on the structure of argumentation comprising a logical dialectical procedural and strategic layer Finally in the revised conclusion I have paid more attention to the relevance of my investigations for legal philosophy and argumentation theory

Understanding the Nature of Law Michael Giudice, 2015-06-29 Understanding the Nature of Law explores methodological questions about how best to explain law Among these questions one is central is there something about law which determines how it should be theorized This novel book explains the importance of Law, Lawyering and Legal Education Charles Sampford, Hugh Breakey, 2016-10-04 Once a highly cosmopolitan profession law was largely domesticated by the demands of the Westphalian state But as the walls between sovereign states are lowered law is globalizing in a way that is likely to change law lawyering and legal education as much over the next 30 years when the students entering law schools today reach the peak of their profession as it has over the last 300 This book provides a sustained investigation of the theoretical and practical aspects of legal practice and education synthesizing and developing nearly thirty years of Professor Sampford's critical thought analysis and academic leadership The book features two major areas of investigation First it explains the significance of the critical theoretical and ethical dimensions of legal education and legal practice in making more effective practitioners placing ethics and values at the heart of the profession Second it explores the old new challenges and opportunities for ethical lawyers Challenges include those for lawyers working in large organisations dealing with issues from international tax minimisation to advising governments bent on war Opportunities range from the capacity to give clients ethical advice to playing a key role in the emergence of an international rule of law as they had to the domestic rule of law The book should stimulate great interest and occasional passion for legal practitioners students teachers and researchers of law lawyering legal practice and legal institutions Its interdisciplinary approaches should be of interest to those with interests in education theory international relations political science and government professional ethics sociology public policy and governance studies

Argument Types and Fallacies in Legal Argumentation Thomas Bustamante, Christian Dahlman, 2015-04-07 This book provides theoretical tools for evaluating the soundness of arguments in the context of legal argumentation It deals with a number of general argument types and their particular use in legal argumentation It provides detailed analyses of argument from authority argument ad hominem argument from ignorance slippery slope argument and other general argument types Each of these argument types can be used to construct arguments that are sound as well as

arguments that are unsound To evaluate an argument correctly one must be able to distinguish the sound instances of a certain argument type from its unsound instances This book promotes the development of theoretical tools for this task

Legal Argumentation Theory: Cross-Disciplinary Perspectives Christian Dahlman, Eveline Feteris, 2012-09-14 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 Nature of Legal Argument, 1957 **The Legal Nature of International Human Rights** Michael K. Addo, 2010-05-17 The role and influence human rights in society has been enhanced by its association with international law and yet despite this legal springboard the scope of its legal nature remains uncertain By analysing the work of international human rights courts and treaty bodies alongside a brief historical review this book assesses the distinctive legal dimension of human rights It concludes that the legalisation of human rights is an unplanned and evolving social construct that continues under the managerial oversight of international human rights courts and treaty bodies which employ the primary tool of treaty interpretation These characteristics of the legal environment of human rights in international law provide a good appreciation of the law itself and its limits

Legal Method and Reasoning Sharon Hanson, 2012-09-10 Language skills study skills argument skills and legal knowledge are vital to every law student professional lawyer and academic Legal Method Reasoning offers a range of how to techniques for acquiring these skills It shows how to handle and use legal texts how to read and write about the law how to acquire disciplined study techniques and how to construct legal arguments This new edition will be of value to both undergraduate and postgraduate law students

The Nature of International Law Gerry Simpson, 2017-10-05 This title was first published in 2002 The purpose of this volume is to provide a map of some of the great theoretical debates within the discipline of international law The essays included are structured as dialogues between international legal theorists on concrete subjects such as democracy gender compliance sovereignty and justice They represent the most interesting theoretical work undertaken in international law

Provisionally Applied Treaties: Their Binding Force and Legal Nature Anneliese Quast Mertsch, 2012-10-19 In Provisionally Applied Treaties Their Binding Force and Legal Nature Anneliese Quast Mertsch analyses the binding force and legal nature of treaties during the period of their provisional application in light of international practice and academic opinion

The Legal Reasoning of the Court of

Justice of the EU Gunnar Beck, 2013-01-21 The Court of Justice of the European Union has often been characterised both as a motor of integration and a judicial law maker To what extent is this a fair description of the Court's jurisprudence over more than half a century The book is divided into two parts Part one develops a new heuristic theory of legal reasoning which argues that legal uncertainty is a pervasive and inescapable feature of primary legal material and judicial reasoning alike which has its origin in a combination of linguistic vagueness value pluralism and rule instability associated with precedent Part two examines the jurisprudence of the Court of Justice of the EU against this theoretical framework The author demonstrates that the ECJ's interpretative reasoning is best understood in terms of a tripartite approach whereby the Court justifies its decisions in terms of the cumulative weight of purposive systemic and literal arguments That approach is more in line with orthodox legal reasoning in other legal systems than is commonly acknowledged and differs from the approach of other higher especially constitutional courts more in degree than in kind It nevertheless leaves the Court considerable discretion in determining the relative weight and ranking of the various interpretative criteria from one case to another The Court's exercise of its discretion is best understood in terms of the constraints imposed by the accepted justificatory discourse and certain extra legal steadying factors of legal reasoning which include a range of political factors such as sensitivity to Member States interests political fashion and deference to the EU legislator In conclusion the Court of Justice of the EU has used the flexibility inherent in its interpretative approach and the choice it usually enjoys in determining the relative weight and order of the interpretative criteria at its disposal to resolve legal uncertainty in the EU primary legal materials in a broadly communautaire fashion subject however to i regard to the political constitutional and budgetary sensitivities of Member States ii depending on the constraints and extent of interpretative manoeuvre afforded by the degree of linguistic vagueness of the provisions in question the relative status of and degree of potential conflict between the applicable norms and the range and clarity of the interpretative topoi available to resolve first order legal uncertainty and finally iii bearing in mind the largely unpredictable personal element in all adjudication Only in exceptional cases which the Court perceives to go to the heart of the integration process and threaten its *acquis communautaire* is the Court of Justice likely not to feel constrained by either the wording of the norms in issue or by the ordinary conventions of interpretative argumentation and to adopt a strongly communautaire position if need be in disregard of what the written laws says but subject to the proviso that the Court is assured of the express or tacit approval or acquiescence of national governments and courts

Political Ponerology: A Science on the Nature of Evil Adjusted for Political Purposes Andrew M. Lobaczewski, 2013

Kelsenian Legal Science and the Nature of Law Peter Langford, Ian Bryan, John McGarry, 2017-05-16 This book critically examines the conception of legal science and the nature of law developed by Hans Kelsen It provides a single dedicated space for a range of established European scholars to engage with the influential work of this Austrian jurist legal philosopher and political philosopher The introduction provides a thematization of the Kelsenian notion of law as a legal

science Divided into six parts the chapter contributions feature distinct levels of analysis Overall the structure of the book provides a sustained reflection upon central aspects of Kelsenian legal science and the nature of law Parts one and two examine the validity of the project of Kelsenian legal science with particular reference to the social fact thesis the notion of a science of positive law and the specifically Kelsenian concept of the basic norm Grundnorm The next three parts engage in a critical analysis of the relationship of Kelsenian legal science to constitutionalism practical reason and human rights The last part involves an examination of the continued pertinence of Kelsenian legal science as a theory of the nature of law with a particular focus upon contemporary non positivist theories of law The conclusion discusses the increasing distance of contemporary theories of legal positivism from a Kelsenian notion of legal science in its consideration of the nature of law

Legal Argumentation and Evidence Douglas Walton,2010-11-01 A leading expert in informal logic Douglas Walton turns his attention in this new book to how reasoning operates in trials and other legal contexts with special emphasis on the law of evidence The new model he develops drawing on methods of argumentation theory that are gaining wide acceptance in computing fields like artificial intelligence can be used to identify analyze and evaluate specific types of legal argument In contrast with approaches that rely on deductive and inductive logic and rule out many common types of argument as fallacious Walton s aim is to provide a more expansive view of what can be considered reasonable in legal argument when it is construed as a dynamic rule governed and goal directed conversation This dialogical model gives new meaning to the key notions of relevance and probative weight with the latter analyzed in terms of pragmatic criteria for what constitutes plausible evidence rather than truth

Methodologies of Legal Research Mark Van Hoecke,2011-02-28 Until quite recently questions about methodology in legal research have been largely confined to understanding the role of doctrinal research as a scholarly discipline In turn this has involved asking questions not only about coverage but fundamentally questions about the identity of the discipline Is it mainly descriptive hermeneutical or normative Should it also be explanatory Legal scholarship has been torn between on the one hand grasping the expanding reality of law and its context and on the other reducing this complex whole to manageable proportions The purely internal analysis of a legal system isolated from any societal context remains an option and is still seen in the approach of the French academy but as law aims at ordering society and influencing human behaviour this approach is felt by many scholars to be insufficient Consequently many attempts have been made to conceive legal research differently Social scientific and comparative approaches have proven fruitful However does the introduction of other approaches leave merely a residue of legal doctrine to which pockets of social sciences can be added or should legal doctrine be merged with the social sciences What would such a broad interdisciplinary field look like and what would its methods be This book is an attempt to answer some of these questions

The Nature and Scope of Restitution Peter Jaffey,2000-09-16 Joint Winner of the 2001 SPTL Prize for Outstanding Legal Scholarship In recent years there has been enormous interest in the law of restitution with many new books and academic

articles and a number of important decisions in the courts However there remains great controversy and some confusion partly for historical reasons and partly as a result of continuing differences over the principles underlying the field There are particular difficulties over the relation of the law of restitution to other areas of law including contract and property law In this new and innovative work the author advances a view of the framework of fundamental principles underlying the law of restitution which offers a means of understanding the tangle of conflicting authorities and then proceeds to examine the case law in light of it As part of his analysis the author suggests new approaches to understanding the areas of overlap between restitution contract trusts and property law **Essays on the Nature of Law and Legal Reasoning** Robert S.

Summers,1992 Metaethical Issues in Contemporary Legal Philosophy Stefano Berteau,Jorge Silva Sampaio,2024-12-31

This volume explores the importance of constitutivism for legal studies Constitutivism is the view that the normative force or authority of practical reasons is grounded in principles capacities aims or functions that are essential to and thus constitutive of agency While the implications that the constitutivist approach has on the fundamental metaethical disputes and central ethical debates have been extensively explored the literature on the relations between constitutivism and law remains scarce unsystematic and sporadic This collection brings together world renowned practical philosophers and legal theorists to fill a noticeable gap in the literature The authors systematically and innovatively address key dimensions of the relationships between constitutivism and the theoretical study of law as well as programmatically offering novel insights into the conceptual connections between constitutivist claims fundamental legal concepts and practices legal issues and ultimately the law as a distinctive concept The book will be of interest to academics and researchers working in the areas of Legal Philosophy Legal Theory Jurisprudence Moral Philosophy and Metaethics

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