



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

**Jaap C. HAGE**



## **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 Legal Requirements** Jordi Ferrer Beltrán, Giovanni Battista Ratti, 2012-09-13 Does the law contain implicit exceptions to its own

rules If so what consequence does that have for understanding the relationship between law and morality This collection gathers leading legal philosophers to analyse the logical structure of legal norms advancing the understanding of the general philosophy of 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 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 Market of Virtue** Michael Baurmann, 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

**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

**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

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