

PATTERNS OF AMERICAN JURISPRUDENCE



NEIL DUXBURY

Patterns Of American Jurisprudence

William M. Wiecek



Patterns Of American Jurisprudence:

Patterns of American Jurisprudence Neil Duxbury, 1995-06-08 This unique study offers a comprehensive analysis of American jurisprudence from its emergence in the later stages of the nineteenth century through to the present day The author argues that it is a mistake to view American jurisprudence as a collection of movements and schools which have emerged in opposition to each other By offering a highly original analysis of legal formalism legal realism policy science process jurisprudence has evolved as a collection of themes which reflect broader American intellectual and cultural concerns

The Prophet of Harvard Law Andrew Porwancher, Austin Coffey, Taylor Jipp, Jake Mazeitis, 2022-09-01 Amid the halls of Harvard Law a professor of legend James Bradley Thayer shaped generations of students from 1874 to 1902 His devoted prot g s included future Supreme Court justices appellate judges and law school deans The legal giants of the Progressive Era Holmes Brandeis and Hand to name only a few came under Thayer s tutelage in their formative years He imparted to his pupils a novel jurisprudence attuned to modern realities that would become known as legal realism Thayer s students learned to confront with candor the fallibility of the bench and the uncertainty of the law Most of all he instilled in them an abiding faith that appointed judges must entrust elected lawmakers to remedy their own mistakes if America s experiment in self government is to survive In the eyes of his loyal disciples Thayer was no mere professor he was a prophet bequeathing to them sacred truths His followers eventually came to preside over their own courtrooms and classrooms and from these privileged perches they remade the law in Thayer s image Thanks to their efforts Thayer s insights are now commonplace truisms The Prophet of Harvard Law draws from untouched archival sources to reveal the origins of the legal world we inhabit today It is a story of ideas and people in equal measure Long before judges don their robes or scholars their gowns they are mere law students on the cusp of adulthood At that pivotal phase a professor can make a mark that endures forever after Thayer s life and legacy testify to the profound role of mentorship in shaping the course of legal history

Law as a Means to an End Brian Z. Tamanaha, 2006-10-02 The contemporary US legal culture is marked by ubiquitous battles among various groups attempting to seize control of the law and wield it against others in pursuit of their particular agenda This battle takes place in administrative legislative and judicial arenas at both the state and federal levels This book identifies the underlying source of these battles in the spread of the instrumental view of law the idea that law is purely a means to an end in a context of sharp disagreement over the social good It traces the rise of the instrumental view of law in the course of the past two centuries then demonstrates the pervasiveness of this view of law and its implications within the contemporary legal culture and ends by showing the various ways in which seeing law in purely instrumental terms threatens to corrode the rule of law

The Judicial Process Christopher P. Banks, David M. O'Brien, 2015-02-19 The Judicial Process Law Courts and Judicial Politics is an all new concise yet comprehensive core text that introduces students to the nature and significance of the judicial process in the United States and across the globe It is social scientific in its approach situating the role of the

courts and their impact on public policy within a strong foundation in legal theory or political jurisprudence as well as legal scholarship Authors Christopher P Banks and David M O Brien do not shy away from the politics of the judicial process and offer unique insight into cutting edge and highly relevant issues In its distinctive boxes Contemporary Controversies over Courts and In Comparative Perspective the text examines topics such as the dispute pyramid the law and morality of same sex marriages the hardball politics of judicial selection plea bargaining trends the right to counsel and pay as you go justice judicial decisions limiting the availability of class actions constitutional courts in Europe the judicial role in creating major social change and the role lawyers juries and alternative dispute resolution techniques play in the U S and throughout the world Photos cartoons charts and graphs are used throughout the text to facilitate student learning and highlight key aspects of the judicial process

The Lost World of Classical Legal Thought William M. Wiecek, 2001 This text examines the ideology of elite lawyers and judges from the Gilded Age to the New Deal Between 1866 and 1937 this coherent outlook or legal orthodoxy shaped the way the American bar interpreted and understood the law

American Jurisprudence Trials, 1993 An encyclopedic guide to the modern practices techniques and tactics used in preparing and trying cases with model programs for the handling of all types of litigation

American Jurisprudence Proof of Facts, 3d Series, 1988 Provides text and sample testimony to assist in preparing for and proving facts that may be in issue in judicial and administrative proceedings Kept up to date by packet supplements Library has second and third series

Yale Law School and the Sixties Laura Kalman, 2006-05-18 The development of the modern Yale Law School is deeply intertwined with the story of a group of students in the 1960s who worked to unlock democratic visions of law and social change that they associated with Yale s past and with the social climate in which they lived During a charged moment in the history of the United States activists challenged senior professors and the resulting clash pitted young against old in a very human story By demanding changes in admissions curriculum grading and law practice Laura Kalman argues these students transformed Yale Law School and the future of American legal education Inspired by Yale s legal realists of the 1930s Yale law students between 1967 and 1970 spawned a movement that celebrated participatory democracy black power feminism and the counterculture After these students left the repercussions hobbled the school for years Senior law professors decided against retaining six junior scholars who had witnessed their conflict with the students in the early 1970s shifted the school s academic focus from sociology to economics and steered clear of critical legal studies Ironically explains Kalman students of the 1960s helped to create a culture of timidity until an imaginative dean in the 1980s tapped into and domesticated the spirit of the sixties helping to make Yale s current celebrity possible

Law and Politics Mauro Zamboni, 2007-10-25 Politics and the political discourse occupy a central position in the modern legal theoretical discussion The goal of this book is to reconstruct and to classify according to ideal typical models the different positions taken by the major contemporary legal theories as to whether and how law relates to politics In particular attention is focused on Kelsen Hart Finnis Critical Legal Studies Law

and Economics and legal realisms Though reaching different conclusions these major legal theories have some common points of departure as to the law and politics issue law and politics tend to keep the features of being two different phenomena as well as of presenting regions of interaction although with differences as to extent and intensity Finally a possible explanation is presented as to why such different legal theories though often reaching diametric results somehow must still begin from these common basic points The explanation for this is found in the specific character of law in the modern state and the welfare state in particular

The New European Private Law:Vol. 3:Essays on the Future of Private Law in Europe Martijn Hesselink,2002-10-16 In The New European Private Law Martijn W Hesselink presents a revised and supplemented collection of essays written over the last five years on European private law He argues that the creation of a common private law in Europe is not merely a matter of rediscovering the old *ius commune* or of neutrally establishing the present common core which may be codified in a European Civil Code Rather it is a matter of making choices some of which may be highly controversial In this book he discusses some of the most important choices which will have to be made with regard to culture principles politics models rights concepts and structure in the new European private law

The Judicial Process E. W. Thomas,2005-09-15 In the absence of a sound conception of the judicial role judges at present can be said to be muddling along They disown the declaratory theory of law but continue to behave and think as if it had not been discredited Much judicial reasoning still exhibits an unquestioning acceptance of positivism and a rulish predisposition Formalistic thinking continues to exert a perverse influence on the legal process This 2005 book dismantles these outdated theories and seeks to bridge the gap between legal theory and judicial practice The author propounds a coherent and comprehensive judicial methodology for modern times Founded on the truism that the law exists to serve society and adopting the twin criteria of justice and contemporaneity with the times a judicial methodology is developed which is realistic and pragmatic and which embraces a revised conception of practical reasoning including in that conception a critical role for legal principles

The Most Activist Supreme Court in History Thomas M. Keck,2010-02-15 When conservatives took control of the federal judiciary in the 1980s it was widely assumed that they would reverse the landmark rights protecting precedents set by the Warren Court and replace them with a broad commitment to judicial restraint Instead the Supreme Court under Chief Justice William Rehnquist has reaffirmed most of those liberal decisions while creating its own brand of conservative judicial activism Ranging from 1937 to the present *The Most Activist Supreme Court in History* traces the legal and political forces that have shaped the modern Court Thomas M Keck argues that the tensions within modern conservatism have produced a court that exercises its own power quite actively on behalf of both liberal and conservative ends Despite the long standing conservative commitment to restraint the justices of the Rehnquist Court have stepped in to settle divisive political conflicts over abortion affirmative action gay rights presidential elections and much more Keck focuses in particular on the role of Justices O Connor and Kennedy whose deciding votes have shaped this

uncharacteristically activist Court *Intermediaries in Commercial Law* Paul S Davies, Tan Cheng-Han SC, 2022-09-08 This book is the first to examine intermediaries in a holistic and systematic manner The classical model of face to face contracting between two individuals is no longer dominant Instead deals frequently involve a number of parties often acting through intermediaries As a result it is important to understand the role and power of intermediaries Intermediaries tend to be considered within discrete silos of the law But by focussing upon a particular narrow area of law lessons are not learned from analogous situations This book takes a broader approach and looks across the traditional boundaries of private law in order to gain a proper assessment of the role played by intermediaries A wide range of jurisdictions and topical issues are discussed in order to illuminate the role intermediaries play in commercial law For example the continued growth of electronic commerce requires consideration of the role of websites and other platforms as intermediaries And developments in artificial intelligence raise the prospect of intermediaries being non human actors All these issues are subject to rigorous analysis by the expert contributors to this book **Diversity Judgments** Roy L. Brooks, 2022-03-17 Shows how the Supreme Court can repair its diminished legitimacy in a society committed to diversity and inclusion **The Oxford Handbook of Legal History** Markus D. Dubber, Christopher Tomlins, 2018-07-26 Some of the most exciting and innovative legal scholarship has been driven by historical curiosity Legal history today comes in a fascinating array of shapes and sizes from microhistory to global intellectual history Legal history has expanded beyond traditional parochial boundaries to become increasingly international and comparative in scope and orientation Drawing on scholarship from around the world and representing a variety of methodological approaches areas of expertise and research agendas this timely compendium takes stock of legal history and methodology and reflects on the various modes of the historical analysis of law past present and future Part I explores the relationship between legal history and other disciplinary perspectives including economic philosophical comparative literary and rhetorical analysis of law Part II considers various approaches to legal history including legal history as doctrinal intellectual or social history Part III focuses on the interrelation between legal history and jurisprudence by investigating the role and conception of historical inquiry in various models schools and movements of legal thought Part IV traces the place and pursuit of historical analysis in various legal systems and traditions across time cultures and space Finally Part V narrows the Handbooks focus to explore several examples of legal history in action including its use in various legal doctrinal contexts The History of the Supreme Court of the United States William M. Wiecek, 2006-01-23 The Birth of the Modern Constitution recounts the history of the United States Supreme Court in the momentous yet usually overlooked years between the constitutional revolution in the 1930s and Warren Court judicial activism in the 1950s 1941 1953 marked the emergence of legal liberalism in the divergent activist efforts of Hugo Black William O Douglas Frank Murphy and Wiley Rutledge The Stone Vinson Courts consolidated the revolutionary accomplishments of the New Deal and affirmed the repudiation of classical legal thought but proved unable to provide a substitute for that powerful legitimating

explanatory paradigm of law Hence the period bracketed by the dramatic moments of 1937 and 1954 written off as a forgotten time of failure and futility was in reality the first phase of modern struggles to define the constitutional order that will dominate the twenty first century

The Policy of Law Mauro Zamboni, 2007-11-19 The book focuses on the relationship between law and politics as perceived by the legal community and more specifically the transformation of politics into law After exploring the relationship between law and politics as considered by the major modern schools of legal theory the focus moves to the regions of interaction in which law and politics meet termed the policy of law The policy of law is characterized in this work as the stage of the law making process at which values entrenched in political decisions are transformed into legal concepts in order to fit the existing legal system The space labeled as policy of law is today mainly but not exclusively the domain of legal actors Consequently the identification of a branch of the legal discipline specifically devoted to the investigation of the transformations of values into law is given the policy of law analysis Finally whether and to what extent the policy of law analysis can be encompassed within the traditional legal discipline and more particularly as a part of jurisprudence is explored Zamboni ranges broadly and knowledgeably over vast areas of legal theory But it is no mere taxonomising his argument is valuable and original It is clear learned and never boring Zenon Bankowski University of Edinburgh

A Companion to Philosophy of Law and Legal Theory Dennis Patterson, 2010-01-15 The articles in this new edition of A Companion to Philosophy of Law and Legal Theory have been updated throughout and the addition of ten new articles ensures that the volume continues to offer the most up to date coverage of current thinking in legal philosophy Represents the definitive handbook of philosophy of law and contemporary legal theory invaluable to anyone with an interest in legal philosophy Now features ten entirely new articles covering the areas of risk regulatory theory methodology overcriminalization intention coercion unjust enrichment the rule of law law and society and Kantian legal philosophy Essays are written by an international team of leading scholars

Street on Torts Christian Witting, 2018 Street on Torts provides a scholarly and incisive treatment of the law of torts with a focus upon key concepts and clear explanations

The Oxford Encyclopedia of American Political and Legal History, 2012-04-17 The Oxford Encyclopedia of American Political and Legal History brings together in one authoritative reference work an unparalleled wealth of information about the laws institutions and actors that have governed America throughout its history Embracing the interconnectedness of politics and law The Encyclopedia addresses all aspects of both spheres from presidents and Supreme Court justices to specifics of policy history critical legislation and party formation Entries capture the unique nature of the nation's founding principles embodied in the Constitution the expansive nature of American democracy political conflict and compromise and the emergence of the modern welfare and regulatory state all of which evince the tensions contradictions and possibilities manifest throughout America's history Clearly demonstrating how US politics and law have evolved since the colonial era The Encyclopedia encourages readers to anticipate further changes With over 450 articles by expert scholars each signed entry features

numerous cross references and discussion of political and legal history as well as additional sources for further study This two volume A to Z compendium is a reference work of unparalleled depth and scope and will introduce a new generation of readers to the complexities of this dynamic field of study It also features extensive cross referencing a topical outline and a subject index

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