Exercising judicial discretion

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Precedent And Judicial Discretion

Oshisanya, 'lai Oshitokunbo

Precedent And Judicial Discretion:

Precedents and Judicial Politics in EU Immigration Law Marie De Somer, 2018-07-27 This study explores the use of precedents in the case law of the Court of Justice of the European Union CJEU It argues that a strategic use of precedent based discourses aids the Court in developing its jurisprudence autonomously that is independent of the political preferences of EU member states The study is based on a long term assessment of CJEU case law in the politically sensitive area of immigration law It traces the Court's rulings in this area from the 1970s up until the most recent period. The study identifies a series of consistent discursive patterns that slowly but surely moved EU immigration law beyond what member states had intended The work takes an interdisciplinary approach engaging with both political science and legal discussions on the Court of Justice and its role in processes of European integration A Theory of Precedent Raimo Siltala, 2000-11-25 In this study the author identifies six types of judicial precedent ideology and are tests them against judicial experiences in various countries Precedents, Statutes, and Analysis of Legal Concepts Scott Brewer, 2013-06-17 At least since plato and Aristotle thinkers have pondered the relationship between philosophical arguments and the sophistical arguments offered by the Sophists who were the first professional lawyers Judges wield substantial political power and the justifications they offer for their decisions are a vital means by which citizens can assess the legitimacy of how that power is exercised However to evaluate judicial justifications requires close attention to the method of reasoning behind decisions. This new collection illuminates and explains the political and moral importance in justifying the exercise of judicial power Precedent in US Supreme Court Reasoning David Schultz, 2022-03-15 Precedent is an important tool of judicial decision making and reasoning in common law systems such as the United States Instead of having each court decide cases anew the rule of precedent or stares decisis dictates that similar cases should be decided similarly Adherence to precedent promotes several values including stability reliability and uniformity and it also serves to constrain judicial discretion Yet while adherence to precedent is important there are some cases where the United States Supreme Court does not follow it when it comes to constitutional reasoning Over time the US Supreme Court under its different Chief Justices has approached rejection of its own precedent in different ways and at varying rates of reversal This book examines the role of constitutional precedent in US Supreme Court reasoning The author surveys the entire history of the US Supreme Court up until 2020 keying in on decisions regarding when it chose to overturn its own constitutional precedent and why He explores how the US Supreme Court under its different Chief Justices has approached constitutional precedents and justified its reversal and quantifies which Courts have reversed the most constitutional precedents and why Constitutional Precedent in US Supreme Court Reasoning is essential reading for law professors and students interested in precedent and its role in legal reasoning Law libraries which will find this book of importance to their collections on legal reasoning and analysis An Almanac of Contemporary Judicial Restatements (Administration of Justice and Evidence) vol. ia Oshisanya, 'lai

Oshitokunbo, 2020-01-02 1 Justice Administration of 2 Evidence Criminal 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 Constitutional Precedent in Us Supreme Court Reasoning David Schultz, 2023-03-28 Precedent is an important tool of judicial decision making and reasoning in common law systems such as the United States Instead of having each court decide cases anew the rule of precedent or stares decisis dictates that similar cases should be decided similarly Adherence to precedent promotes several values including stability reliability and uniformity and it also serves to constrain judicial discretion Yet while

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music lesson perhaps best taught by critical improvisation scholars Values in the Supreme Court Rachel Cahill-O'Callaghan, 2020-02-20 This book examines the significance of values in Supreme Court decision making Drawing on theories and techniques from psychology it focuses on the content analysis of judgments and uses a novel methodology to reveal the values that underpin decision making The book centres on cases which divide judicial opinion Dworkin's hard cases in which the result is not clearly dictated by statute or precedent In hard cases there is real uncertainty about the legal rules that should be applied and factors beyond traditional legal sources may influence the decision making process It is in these uncertain cases where legal developments can rest on a single judicial decision that values are revealed in the judgments The findings in this book have significant implications for developments in law judicial decision making and the appointment of the judiciary The Cambridge Companion to Legal Positivism Torben Spaak, Patricia Mindus, 2021-02-04 Legal positivism is one of the fundamental theories of jurisprudence studied in law and related fields around the world This volume addresses how legal positivism is perceived and makes the case for why it is relevant for contemporary legal theory The Cambridge Companion to Legal Positivism offers thirty three chapters from leading scholars that provide a comprehensive commentary on the fundamental ideas of legal positivism its history and major theorists its connection to normativity and values its current development and influence as well as on the criticisms moved against it Overcriminalization and Mass Incarceration Anthony B. Bradley, 2018-08-16 Personalism points to reforming criminal justice from the person up by changing criminal law and enlisting civil society institutions Investment Treaty Arbitration Andrés Rigo Sureda, 2012-04-16 Investment claims have exposed the vague nature of the standards by which arbitral tribunals are expected to adjudicate them and the policy reasons which explicitly or implicitly have an influence The ad hoc nature of the tribunals and the decisions reached on various controversial issues have brought to the fore the issue of consistency Andr s Rigo Sureda s Hersch Lauterpacht Memorial Lecture examines how arbitral discretion is exercised in the face of uncertainty of the law It explores the choices made by arbitral tribunals as they approach treaty interpretation as they search for limits in determining jurisdiction and the content of the standards of protection and as they search for consistency in the exercise of Originalism's Promise Lee J. Strang, 2019-08-08 Provides the first natural law justification for an arbitral discretion originalist interpretation of the American Constitution Virtue, Emotion and Imagination in Law and Legal **Reasoning** Amalia Amaya, Maksymilian Del Mar, 2020-02-06 What is the role and value of virtue emotion and imagination in law and legal reasoning These new essays by leading scholars of both law and philosophy offer striking and exploratory answers to this neglected question The collection takes a holistic approach inquiring as to the connections and relations between virtue emotion and imagination In addition to the principal focus on adjudication essays in the collection also engage with a variety of different legal political and moral contexts eg criminal law sentencing the Black Lives Matter movement and professional ethics A number of different areas of the law are addressed eg criminal law constitutional law

and tort law and the issues explored include the benefits and limits of empathy in legal reasoning the role of attention and perception in judicial reasoning the identification of judicial virtues such as compassion and humility and judicial vices such as callousness and partiality the values and dangers of certain imaginative devices eg personification and the interactive and social dimensions of virtue emotion and imagination **Best V. Best ,2005** The Western Monthly Magazine, and Literary Journal ,1833** **Western Monthly Magazine ,1833**

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