

MANAGING

LEGAL

UNCERTAINTY

ELITE LAWYERS

IN THE NEW DEAL

RONEN SHAMIR

Managing Legal Uncertainty

Barry Cushman



Managing Legal Uncertainty :

Managing Legal Uncertainty Ronen Shamir, 1995 With the New Deal came a dramatic expansion of the American regulatory state Threatening to undermine many of the traditional roles of the legal system and its actors by establishing a system of administrative law the new emphasis on federal legislation as a form of social and economic planning ushered in an era of legal uncertainty In this study Ronen Shamir explores how elite corporate lawyers and the American Bar Association clashed with academic legal realists over the constitutionality of the New Deal s legislative program Applying the insights of Weber and Bourdieu to the sociology of the legal profession Shamir shows that elite members of the bar had a keen self interest in blocking the expansion of administrative law He dismisses as oversimplified the view that elite lawyers were hired guns who argued that New Deal legislation was unconstitutional solely because of their duty to represent their capitalist clients Instead Shamir suggests their alignment with the capitalist class was an incidental result of their attempt to articulate their vision of the law as scientific apolitical and judicially oriented and thereby to defend their own position within the law profession The academic legal realists on the other side of the constitutional debates criticized the rigidity of the traditional judicial process and insisted that flexibility of interpretation and the uncertainty of legal outcomes was at the heart of the legal system The author argues that many legal realists encouraged by the experimental nature of the New Deal seized an opportunity to improve on their marginal status within the legal profession by moving their discussions from academic circles to the national policy agenda

The Legal Risk Management Handbook Matthew Whalley, Chris Guzelian, 2016-12-03 Legal risk covers all areas of business where regulation and the law impact on operations and decisions From risks arising from contract drafting and management through to regulators new focus on conduct as well as compliance regulatory and dispute risks the effective management of legal risk is key for organizations that want to maximise value while minimizing cost and exposure to legal losses The Legal Risk Management Handbook is a practical guide to making sure your business is legal protected and making the most of its opportunities Written by experts in law and risk management this highly practical guide sets out a clear definition for legal risk and a framework for its management Covering the full spectrum of legal risks that international businesses can face it translates legal concepts into clear mitigatory actions Whether you are an in house lawyer needing a clear approach to managing risk in your areas of influence or a member of the risk management function needing a jargon free guide to your company s legal responsibilities you will find authoritative insight and guidance Containing case studies from international businesses and real life insights from those at the coal face of legal risk management The Legal Risk Management Handbook is essential reading for everyone who needs a better understanding of this important business topic Now includes online resources author recorded lectures that align with the book and the Legal Risk Management course at Texas A M School of Law U S

The Management of Intellectual Property D. Bosworth, 2006-01-01 This book will be a useful resource for those studying or teaching the management of IP a welcome

addition on the reading list for all good IP management courses Duncan Bucknell Journal of Intellectual Property Law and Practice This book brings together innovative contributions on the management of intellectual property IP and intellectual property rights by an esteemed and multi disciplinary group of economists management scientists accountants and lawyers Offering a broad and enlightening picture of the measurement and management of IP the contributors argue that the shift towards a knowledge based economy has increased the importance of IP and more generally intangible assets as a focus for company decision making behaviour The book explores these intangible assets which are driven by investments in R D marketing education and training management information systems and organizational structure The inherent risk in the development of such assets born from the involvement of creativity and innovation is also discussed The Management of Intellectual Property should prove of use to both students of management and managers in the field who have to make decisions with regard to investments in and the protection of IP and other intangible assets Legal Risks in EU Law Emilia Mišćenić, Aurélien Raccach, 2016-04-13 This book takes a completely new and innovative approach to analysing the development of EU law Within the framework of different important areas of EU law such as the internal market consumer protection law social law investment law environment law migration law legal translation and terminology it examines the Union s approach to the regulation and management of legal risks Over the years the Union has come to a point where it is becoming increasingly difficult to justify its authority to regulate in various areas of law In managing legal risks deriving from the diversity of Member States laws which create barriers to trade and hinder the Union s economy the Union itself has actually produced new legal risks that now have to be addressed This failure on the part of EU institutions to manage legal risks has contributed to legal uncertainty for actors operating on the internal market This book intends to contribute to the Union s smoother functioning and continuing development by proposing effective concrete solutions for managing the legal risks distorting the development of various areas of EU law It pursues an innovative and effective approach to identify legal risks their causes at the EU level and their impacts on the functioning of the Union and its Member States By presenting new approaches in this context the first book on legal risk management in the EU will actively promote the improvement of the EU lawmaking process and the application of EU law in practice **Rethinking the New Deal Court** Barry Cushman, 1998-02-26 Rethinking the New Deal Court The Structure of a Constitutional Revolution challenges the prevailing account of the Supreme Court of the New Deal era which holds that in the spring of 1937 the Court suddenly abandoned jurisprudential positions it had staked out in such areas as substantive due process and commerce clause doctrine In this view the impetus for such a dramatic reversal was provided by external political pressures manifested in FDR s landslide victory in the 1936 election and by the subsequent Court packing crisis Author Barry Cushman by contrast discounts the role that political pressure played in securing this constitutional revolution Instead he reorients study of the New Deal Court by focusing attention on the internal dynamics of doctrinal development and the role of New Dealers in seizing opportunities

presented by doctrinal change Recasting this central story in American constitutional development as a chapter in the history of ideas rather than simply an episode in the history of politics Cushman offers a thoroughly researched and carefully argued study that recharacterizes the mechanics by which laissez faire constitutionalism unraveled and finally collapsed during FDR's reign Identifying previously unseen connections between various lines of doctrine Cushman charts the manner in which *Nebbia v. New York*'s abandonment of the distinction between public and private enterprise hastened the demise of the doctrinal structure in which that distinction had played a central role

Research Handbook on Modern Legal Realism

Shauhin Talesh, Elizabeth Mertz, Heinz Klug, 2021-03-26 This insightful Research Handbook provides a definitive overview of the New Legal Realism NLR movement reaching beyond historical and national boundaries to form new conversations Drawing on deep roots within the law and society tradition it demonstrates the powerful virtues of new legal realist research and its attention to the challenges of translation between social science and law It explores an impressive range of contemporary issues including immigration policing globalization legal education and access to justice concluding with an examination of how different social science disciplines intersect with NLR

Justice and Power in Sociolegal Studies Bryant G. Garth, Austin Sarat, 1998 *Justice and Power in the Sociolegal Studies* asks what interdisciplinary work in the law and society tradition tells us about the relationship of law and justice as well as the way power operates in and through law The fundamental concepts of justice and power provide points of departure for leading scholars to explore the various domains of socio legal research As they note the explicitness of the engagement with issues of power and the relative silence about or indirectness in taking on questions of justice found in most law and society research they ask how engagement with issues of power and silence about justice constituted law and society as a research field caught between a desire to have political impact and at the same time to maintain its scientific respectability

European Regulation of Medical Devices and Pharmaceuticals

Nupur Chowdhury, 2014-04-29 One of the primary functions of law is to ensure that the legal structure governing all social relations is predictable coherent consistent and applicable Taken together these characteristics of law are referred to as legal certainty In traditional approaches to legal certainty law is regarded as a hierarchical system of rules characterized by stability clarity uniformity calculable enforcement publicity and predictability However the current reality is that national legal systems no longer operate in isolation but within a multilevel legal order wherein norms created at both the international and regional level are directly applicable to national legal systems Also norm creation is no longer the exclusive prerogative of public officials of the state private actors have an increasing influence on norm creation as well Social scientists have referred to this phenomenon of interacting and overlapping competences as multilevel governance Only recently have legal scholars focused attention on the increasing interconnectedness and therefore the concomitant loss of primacy of national legal orders between the global European and national regulatory spheres through the concept of multilevel regulation In this project the author uses multilevel regulation as a term to characterize a regulatory space in

which the process of rule making rule enforcement and rule adjudication the regulatory lifecycle is dispersed across more than one administrative or territorial level and amongst several different actors both public and private The author draws on the concept of a regulatory space using it as a framing device to differentiate between specific aspects of policy fields The relationship between actors in such a space is non hierarchical and they may be independent of each other The lack of central ordering of the regulatory lifecycle within this regulatory space is the most important feature of such a space The implications of multilevel regulation for the notion of legal certainty have attracted limited attention from scholars and the demand for legal certainty in regulatory practice is still a puzzle The book explores the idea of legal certainty in terms of the perceptions and expectations of regulatees in the context of medical products specifically pharmaceuticals and medical devices which can be differentiated as two regulatory spaces and therefore form two case studies As an exploratory project the book necessarily explores new territory in terms of investigating legal certainty first in terms of regulatee perceptions and expectations and second because it studies it in the context of multilevel regulation

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

The Limits of the Legal Complex Malcolm Feeley, Malcolm M. Feeley, Malcolm Langford, 2021 Spanning two centuries and five Nordic countries this book questions the view that political lawyers are required for the development of a liberal political regime It combines cross disciplinary theory and careful empirical case studies by country experts whose regional insights are brought to bear on wider global contexts The theory of the legal complex posits that lawyers will not simply mobilize collectively for material self interest instead they will organize and struggle for the limited goal of political liberalism Constituted by a moderate state core civil rights and civil society freedoms political liberalism is presented as a discrete but professionally valued good to which all lawyers can lend their support Leading scholars claim that when one finds struggles against political repression politics of the Legal Complex are frequently part of that struggle One glaring omission in this research program is the Nordic region This insightful volume provides a comprehensive account of the history and politics of lawyers of the last 200 years in the Nordic countries Norway Sweden Denmark Finland and Iceland Topping most global indexes of core civil rights these states have been found to contain few to no visible legal complexes Where previous studies have characterized lawyers as stewards and guardians of the law that seek to preserve its semi autonomous nature these legal complexes have emerged in a manner that challenges the standard narrative This book offers rational choice and structuralist explanations for why and when lawyers mobilise collectively for political liberalism In each country analysis authors place lawyers in nineteenth century state transformation and emerging constitutionalism followed by expanding democracy and the welfare state the challenge of fascism and world war the tensions of the Cold War and the latter day rights revolutions These analyses are complemented by a comprehensive comparative introduction and a

concluding reflection on how the theory of the legal complex might be recast making *The Limits of the Legal Complex* an invaluable resource for scholars and practitioners alike

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