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A THEORY OF
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Rhetoric And The Rule Of Law A Theory Of Legal Reasoning

Douglas E. Edlin



Rhetoric And The Rule Of Law A Theory Of Legal Reasoning:

Rhetoric and The Rule of Law Neil MacCormick, 2005-07-28 Is legal reasoning rationally persuasive working within a discernible structure and using recognisable kinds of arguments Does it belong to rhetoric in this sense or to the domain of the merely rhetorical in an adversative sense Is there any reasonable certainty about legal outcomes in dispute situations If not what becomes of the Rule of Law Neil MacCormick's book tackles these questions in establishing an overall theory of legal reasoning which shows the essential part legal syllogism plays in reasoning aimed at the application of law while acknowledging that simple deductive reasoning though always necessary is very rarely sufficient to justify a decision There are always problems of relevancy classification or interpretation in relation to both facts and law In justifying conclusions about such problems reasoning has to be universalistic and yet fully sensitive to the particulars of specific cases How is this possible Is legal justification at this level consequentialist in character or principled and right based Both normative coherence and narrative coherence have a part to play in justification and in accounting for the validity of arguments by analogy Looking at such long discussed subjects as precedent and analogy and the interpretative character of the reasoning involved Neil MacCormick expands upon his celebrated *Legal Reasoning and Legal Theory* OUP 1978 and 1994 and restates his institutional theory of law

Universals of Legal Reasoning by Judges Thomas Lundmark, 2024-03-28 *Universals in Legal Reasoning by Judges* explores and expounds the usage of rules to justify judicial decisions It argues for judicial transparency and candour to enhance the persuasiveness and efficacy of judicial precedents to foster democratic legitimacy and to permit political accountability

Theory of Legal Principles Humberto Avila, 2007-09-26 This book intends to help understand and apply principles and rules better Its target is to keep the distinction between principles and rules whereas structuring it on different foundations than those jurisprudence ordinarily employs The first object of investigation is the phenomenon of interpretation in Law in order to understand that the classification of certain normative species as either principles or rules depends in the first place on axiological connections that are not ready prior to the interpretation process that unveils them Then a definition of principles is proposed aiming to understand what their unique characteristics are when compared to other norms of the legal order Thirdly the conditions for the application of principles and rules are examined which are the normative applicative postulates It will be shown on one hand that principles not only explicit values but also set forth precise species of behaviors though indirectly on the other hand the creation of conducts by rules is also to be weighed even though the behavior set forth in advance may be overcome depending on the accomplishment of a few requirements That will surpass both the mere praise of values which does not create behaviors and the automatic application of rules A model is proposed to explain the normative species which includes structured weighing on the application process while encompassing substantive criteria of justice in its argument through the analytical reconstruction of the concrete use of normative postulates especially those of reasonableness and proportionality All of that is done with a focus on the ability of

intersubjective control of the argumentation which often degenerates into capricious decisionism

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

Persuasion and Legal Reasoning in the ECtHR Rulings Aleksandra Mężykowska, Anna Młynarska-Sobaczewska, 2023-05-24 This book analyses the case law of the European Court of Human Rights ECtHR from the point of view of argumentative tools used by the Court to persuade the audience States applicants and public opinion of the correctness of its rulings The ECtHR judgments selected by the authors concern justification of some of the most difficult issues These are matters related to human life human dignity and the right to self determination in matters concerning one s private life The authors looked for paths and repetitive patterns of argumentation and divided them into three categories of argumentative tools authority deontological and teleological The work tracks how ECtHR judges aim to find a consensual universal and at the same time pragmatic and axiologically neutral narrative on the collisions of rights and interests in the areas under discussion It analyses whether the voice of the ECtHR carries the overtones of an ethical statement and if so to which arguments it appeals The book will be of interest to academics and researchers working in the areas of jurisprudence human rights law and law and language

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

Law and Democracy in Neil MacCormick's Legal and Political Theory Agustín José Menéndez, John Erik Fossum, 2011-03-29 This volume offers a collection of articles by leading legal and political theorists Originally intended as a celebration of MacCormick's work on the occasion of the completion of the four volume series on Law State and Practical Reason it has turned into a homage and salute after MacCormick's passing Cast in MacCormick's reflexive spirit the book presents a critical reconstruction of the Scottish philosopher's work with the aim of revealing the connections between law and democracy in his writings and furthering his insights in each specific field Neil MacCormick made outstanding contributions to the understanding of law and democracy under conditions of pluralism His institutional theory of law has elucidated the close connection between the normative character of law as a means of social integration and legal social practices This has produced a synthesis of the key insights of the legal and political theories of Kelsen Hart Alexy and Dworkin and has broken new ground by undermining the monolithic and nation state centered character of standard legal theories

Rethinking Evidence William Twining, 2006-06-01 The Law of Evidence has traditionally been perceived as a dry highly technical and mysterious subject This book argues that problems of evidence in law are closely related to the handling of evidence in other kinds of practical decision making and other academic disciplines that it is closely related to common sense and that it is an interesting lively and accessible subject These essays develop a readable coherent historical and theoretical perspective about problems of proof evidence and inferential reasoning in law Although each essay is self standing they are woven together to present a sustained argument for a broad inter disciplinary approach to evidence in litigation in which the rules of evidence play a subordinate though significant role This revised and enlarged edition includes a revised introduction the best known essays in the first edition and chapters on narrative and argumentation teaching evidence and evidence as a multi disciplinary subject

Jurisprudence Scott Veitch, Emiliós Christodoulidis, Marco Goldoni, 2018-06-04 Jurisprudence Themes and Concepts offers an original introduction to and critical analysis of the central themes studied in jurisprudence courses The book is presented in three parts the first two contain general themes with corresponding tutorial questions and the third contains advanced topics Every chapter in the book gives guidance on further reading Accessible interdisciplinary and socially informed this book has been revised to take into account the latest developments in jurisprudential scholarship

How to Do Things with Rules William Twining, David Miers, 2010-05-20 New

to English law Need to know how rules are made interpreted and applied This popular and well established textbook will show you how It simplifies legal method by combining examples with an account of rules in general the who what why and how of interpretation Starting with standpoint and context it identifies factors that give rise to doubts about the interpretation of a rule and recommends a systematic approach to analysing those factors Questions and exercises integrated in the text and on the accompanying website will help you to develop skills in reading interpreting and arguing about legal and other rules The text is fully updated on developments in the legislative process and the judicial interpretation of statutes and precedent It includes a new chapter on The European Dimension reflecting the changes brought about by the Human Rights Act 1998

Common Law Judging Douglas E. Edlin, 2020-03-06 Are judges supposed to be objective Citizens scholars and legal professionals commonly assume that subjectivity and objectivity are opposites with the corollary that subjectivity is a vice and objectivity is a virtue These assumptions underlie passionate debates over adherence to original intent and judicial activism In *Common Law Judging* Douglas Edlin challenges these widely held assumptions by reorienting the entire discussion Rather than analyze judging in terms of objectivity and truth he argues that we should instead approach the role of a judge s individual perspective in terms of intersubjectivity and validity Drawing upon Kantian aesthetic theory as well as case law legal theory and constitutional theory Edlin develops a new conceptual framework for the respective roles of the individual judge and of the judiciary as an institution as well as the relationship between them as integral parts of the broader legal and political community Specifically Edlin situates a judge s subjective responses within a form of legal reasoning and reflective judgment that must be communicated to different audiences Edlin concludes that the individual values and perspectives of judges are indispensable both to their judgments in specific cases and to the independence of the courts According to the common law tradition judicial subjectivity is a virtue not a vice

The Making of Constitutional Democracy Paolo Sandro, 2022-01-27 This open access book addresses a palpable yet widely neglected tension in legal discourse In our everyday legal practices whether taking place in a courtroom classroom law firm or elsewhere we routinely and unproblematically talk of the activities of creating and applying the law However when legal scholars have analysed this distinction in their theories rather than simply assuming it many have undermined it if not dismissed it as untenable The book considers the relevance of distinguishing between law creation and law application and how this transcends the boundaries of jurisprudential enquiry It argues that such a distinction is also a crucial component of political theory For if there is no possibility of applying a legal rule that was created by a different institution at a previous moment in time then our current constitutional democratic frameworks are effectively empty vessels that conceal a power relationship between public authorities and citizens that is very different from the one on which constitutional democracy is grounded After problematising the most relevant objections in the literature the book presents a comprehensive defence of the distinction between creation and application of law within the structure of constitutional democracy It does so through an integrated

jurisprudential methodology which combines insights from different disciplines including history anthropology political science philosophy of language and philosophy of action while also casting new light on long standing issues in public law such as the role of legal discretion in the law making process and the scope of the separation of powers doctrine The ebook editions of this book are available open access under a CC BY NC ND 4 0 licence on bloomsburycollections com **Law, Virtue and Justice** Amalia Amaya,Hock Lai Ho,2012-12-20 This book explores the relevance of virtue theory to law from a variety of perspectives The concept of virtue is central in both contemporary ethics and epistemology In contrast in law there has not been a comparable trend toward explaining normativity on the model of virtue theory In the last few years however there has been an increasing interest in virtue theory among legal scholars Virtue jurisprudence has emerged as a serious candidate for a theory of law and adjudication Advocates of virtue jurisprudence put primary emphasis on aretaic concepts rather than on duties or consequences Aretaic concepts are on this view crucial for explaining law and adjudication This book is a collection of essays examining the role of virtue in general jurisprudence as well as in specific areas of the law Part I puts together a number of papers discussing various philosophical aspects of an approach to law and adjudication based on the virtues Part II discusses the relationship between law virtue and character development with some of the essays selected analysing this relationship by combining both eastern perspectives on virtue and character with western approaches Parts III and IV examine problems of substantive areas of law more specifically criminal law and evidence law from within a virtue based framework Last Part V discusses the relevance of empathy to our understanding of justice and legal morality

Classifying Genocide in International Law Onur Uraz,2022-08-05 This book offers an in depth examination into genocide law by focusing on one of the lesser examined yet practically significant issues the substantiality requirement This refers to the requirement in international law that intended destruction should be directed towards a substantial part of a protected group in order for an atrocity to qualify as genocide This comprehensive and detailed study draws connections between different judicial approaches to substantiality and the varying theoretical presumptions about the constitutive concepts of the crime This prima facie doctrinal problem is used as a springboard to scrutinise the broader theoretical problems underlying the legal conceptualisation of genocide The book systematically explores how the individualistic and collectivistic conceptions of the crime have been able to co exist in case law and how the different approaches to assessing substantiality have played a backdoor role between these two conceptions The work demonstrates that these two philosophical standpoints are far from effectively representing the reality of the protected groups and fully explaining the harm inherent to group destruction The book revisits the recent philosophical and sociological studies on the crime and considering ideas from the emerging relational approaches to genocide offers a third way to understand the existing legal representation of the crime and consequently the idea of substantiality It demonstrates the practical significance of its theoretical debates and applies its novel perspective through a case study on South Sudan This book will be highly useful to students and scholars with an

interest in genocide studies international criminal law and legal theory It will also be of interest to policymakers engaged with issues around genocide

Law as Institutional Normative Order Maksymilian Del Mar, 2016-04-22 MacCormick's Institutions of Law is the culmination of a lifetime's work in legal theory by one of the world's most respected legal theorists Featuring an impressive collection of contributions from well known legal theorists from around the world all of whom are familiar with MacCormick's work this collection provides a cutting edge account of the book's significance

The Performance of Law Randy Gordon, 2022-08-19 This book considers how law is always enacted or performed in ways that can be analyzed in relation to fiction theatre and other dramatic forms Of necessity lawyers and judges need to devise techniques to make rules respond situationally The performance of law supplements or it extends the reach of the law as written And in this respect the act of lawyering is in many ways an instantiation of acts often associated with for example literature and the plastic and performing arts Combining legal theory and legal practice this book maintains that the modes of enquiry found in and applied to novels paintings and plays can help us understand how things like legal arguments and trials work or don't As such and through the examination of a wide range of both historical and fictional legal cases the book pursues an interdisciplinary analysis of how law is performed and moreover how legal performances can be accomplished ethically This book will appeal to scholars and students in sociolegal studies legal theory and jurisprudence as well as those teaching and training in legal practice

Reflections on 'The Concept of Law' A. W. Brian Simpson, 2011-09-22 HLA Hart's The Concept of Law is one of the most influential works of philosophy of the twentieth century redefining the field of legal philosophy and introducing generations of students to philosophical reflection on the nature of law Since its publication in 1961 an industry of academic research and debate has grown up around the book disputing refining and developing Hart's work Under the sheer volume of competing interpretations of the book the original contexts cultural and intellectual that shaped Hart's project can be obscured In this book renowned legal historian AWB Simpson attempts to sweep aside the volumes of academic criticism and return to Troy I revealing the world of post war Oxford that produced Hart and his famous book Drawing on his personal experience of studying and teaching in Oxford at the time Hart developed The Concept of Law Simpson recreates with characteristic wit the social and intellectual culture of Oxford philosophy and the law faculty in the 1950s He traces Hart's early work and influences within and outside Oxford showing how Hart developed his picture of philosophy and its potential for enriching the understanding of law He also lays bare the painful shortcomings of post war Oxford academia depicting a world of eccentric dons and intellectual Cyclopes isolated and closed to broad interdisciplinary exchange arguing that Hart did not escape from the limitations of his intellectual world Simpson's entertaining and controversial account of the world that produced The Concept of Law will be essential reading for all those engaged in interpreting and teaching the seminal book and an engaging read for anyone interested in the history of Oxford philosophy and legal education

The Interpretation of International Law by Domestic Courts Helmut Philipp Aust, Georg

Nolte, 2016-01-22 *The Interpretation of International Law by Domestic Courts* assesses the growing role of domestic courts in the interpretation of international law. It asks whether and if so to what extent domestic courts make use of the international rules of interpretation set forth in the Vienna Convention on the Law of Treaties. Given the expectation that rules of international law are to have a uniform interpretation and application throughout the world, the practice of domestic courts is considerably more diverse. The contributions to this book analyse three key questions: first, whether international law requires a coherent interpretive approach by domestic courts; second, whether a common or convergent methodological outlook can be found in domestic court practice; third, whether a common interpretive approach is desirable from a normative perspective. The book identifies a considerable tension between international law's ambition for universal and uniform application and a plurality of different approaches. This tension between unity and diversity is analysed by a group of leading international lawyers from a wide range of geographical disciplinary and methodological approaches. Drawing on domestic practice of number of jurisdictions including among others Colombia, France, Japan, India, Israel, Mexico, South Africa, the United Kingdom and the United States, the book puts the interpretative practice of domestic courts in a wider context. Its chapters offer doctrinal, practical as well as theoretical perspectives on a central question for international law. [The Remnants of the Rechtsstaat](#)

Jens Meierhenrich, 2018-02-23 This book is an intellectual history of Ernst Fraenkel's *The Dual State* 1941, reissued 2017, one of the most erudite books on the theory of dictatorship ever written. Fraenkel's was the first comprehensive analysis of the rise and nature of Nazism and the only such analysis written from within Hitler's Germany. His sophisticated, not to mention courageous analysis amounted to an ethnography of Nazi law. As a result of its clandestine origins, *The Dual State* has been hailed as the ultimate piece of intellectual resistance to the Nazi regime. In this book, Jens Meierhenrich revives Fraenkel's innovative concept of the dual state, restoring it to its rightful place in the annals of public law scholarship. Blending insights from legal theory and legal history, he tells in an accessible manner the remarkable gestation of Fraenkel's ethnography of law from inside the belly of the behemoth. In addition to questioning the conventional wisdom about the law of the Third Reich, Meierhenrich explores the legal origins of dictatorship elsewhere, then and now. The book sets the parameters for a theory of the authoritarian rule of law, a cutting edge topic in law and society scholarship with immediate policy implications. *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

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Table of Contents Rhetoric And The Rule Of Law A Theory Of Legal Reasoning

1. Understanding the eBook Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - The Rise of Digital Reading Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Advantages of eBooks Over Traditional Books
2. Identifying Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - User-Friendly Interface
4. Exploring eBook Recommendations from Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Personalized Recommendations
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning User Reviews and Ratings
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning and Bestseller Lists
5. Accessing Rhetoric And The Rule Of Law A Theory Of Legal Reasoning Free and Paid eBooks
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning Public Domain eBooks
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning eBook Subscription Services
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning Budget-Friendly Options
6. Navigating Rhetoric And The Rule Of Law A Theory Of Legal Reasoning eBook Formats

- ePub, PDF, MOBI, and More
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning Compatibility with Devices
 - Rhetoric And The Rule Of Law A Theory Of Legal Reasoning Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Highlighting and Note-Taking Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Interactive Elements Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 8. Staying Engaged with Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 9. Balancing eBooks and Physical Books Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Setting Reading Goals Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Fact-Checking eBook Content of Rhetoric And The Rule Of Law A Theory Of Legal Reasoning
 - Distinguishing Credible Sources
 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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