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Reason and Law



Reason And Law Studies In Juristic Philosophy

Mark McBride, James Penner



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ABA Journal, 1950-10 The ABA Journal serves the legal profession Qualified recipients are lawyers and judges law students law librarians and associate members of the American Bar Association

Reason and Law : Studies in Juristic Philosophy Thomas J. Sheehan, 1972 Reason and Law Morris Raphael Cohen, 1972 **Architect of Justice** Dalia Tsuk Mitchell, 2018-05-31 A major figure in American legal history during the first half of the twentieth century Felix Solomon Cohen 1907 1953 is best known for his realist view of the law and his efforts to grant Native Americans more control over their own cultural political and economic affairs A second generation Jewish American Cohen was born in Manhattan where he attended the College of the City of New York before receiving a Ph D in philosophy from Harvard University and a law degree from Columbia University Between 1933 and 1948 he served in the Solicitor s Office of the Department of the Interior where he made lasting contributions to federal Indian law drafting the Indian Reorganization Act of 1934 the Indian Claims Commission Act of 1946 and as head of the Indian Law Survey authoring *The Handbook of Federal Indian Law* 1941 which promoted the protection of tribal rights and continues to serve as the basis for developments in federal Indian law In *Architect of Justice* Dalia Tsuk Mitchell provides the first intellectual biography of Cohen whose career and legal philosophy she depicts as being inextricably bound to debates about the place of political social and cultural groups within American democracy Cohen was she finds deeply influenced by his own experiences as a Jewish American and discussions within the Jewish community about assimilation and cultural pluralism as well the persecution of European Jews before and during World War II Dalia Tsuk Mitchell uses Cohen s scholarship and legal work to construct a history of legal pluralism a tradition in American legal and political thought that has immense relevance to contemporary debates and that has never been examined before She traces the many ways in which legal pluralism informed New Deal policymaking and demonstrates the importance of Cohen s work on behalf of Native Americans in this context thus bringing federal Indian law from the margins of American legal history to its center By following the development of legal pluralism in Cohen s writings *Architect of Justice* demonstrates a largely unrecognized continuity in American legal thought between the Progressive Era and ongoing debates about multiculturalism and minority rights today A landmark work in American legal history this biography also makes clear the major contribution Felix S Cohen made to America s legal and political landscape through his scholarship and his service to the American government

A New Introduction to Jurisprudence Paul Cliteur, Afshin Ellian, 2019-03-28 *A New Introduction to Jurisprudence* takes one of the central problems of law and jurisprudence as its point of departure what is the law Adopting an intermediate position between legal positivism and natural law this book reflects on the concept of liberal democracy or constitutional democracy In five chapters the book analyses i the idea of higher law ii liberal democracy as a legitimate model for the state iii the separation of church and state or secularism as essential for the democratic state iv the universality of higher law principles v the history of modern political thought This interdisciplinary approach to jurisprudence

is relevant for legal scholars philosophers political theorists public intellectuals historians and politicians **Law, Morality and Judicial Reasoning** Thomas Bustamante, Saulo de Matos, André L. S. Coelho, 2024-08-28 This book provides a critical outlook on and an inquiry into the practical implications of the works of Professor W J Waluchow one of the most important jurisprudence scholars of the early twenty first century while also reflecting on the interconnections between his legal theory and his theory of constitutional interpretation It also features an interview with Waluchow in which he responds to some of the chapters and shares a first person perspective on his main philosophical ideas how they emerged and how they can be further developed and applied The book makes a valuable contribution to contemporary legal philosophy by asking and providing different answers from prominent legal philosophers and newer scholars in the field to questions such as How does Waluchow's jurisprudence relate to his theories of legal reasoning and constitutional interpretation On what terms should we understand inclusive legal positivism Can inclusive legal positivism be reconciled with an interpretivist theory of adjudication How does it compare with Raz's model of legal authority Can Waluchow's notion of community constitutional morality be applied to contexts such as international law pluralist legal communities and indigenous laws and Is Waluchow's methodology equipped to provide interpretive directives in unstable and extremely unequal legal systems The chapters all written by experts on jurisprudence including some of the scholars who helped develop the tradition known as inclusive legal positivism offer a unique analysis of Waluchow's most complex and intriguing theses providing not only a valuable exegetical analysis of his work but also a range of answers to the challenge of interpreting legal and constitutional values as well as practical resolutions to persisting controversies in the philosophy of law 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 *Legal Reasoning, Legal Theory and Rights* Martin P. Golding, 2017-07-05 This book is a selection of articles and chapters published over Martin Golding's academic career Golding's approach to the philosophy of law is that it contains conceptual and normative issues and in this volume logical issues in legal reasoning are examined and various theories of law are critically discussed Normative questions are dealt with

regarding the rule of law and criminal law defenses and the concept of rights and the terminology of rights are analyzed Much of Golding s work is critical historical as well as constructive This volume will prove an informative and useful collection for scholars and students of the philosophy of law

Dictionary Of Modern American Philosophers John R. Shook,2005-05-15 The Dictionary of Modern American Philosophers includes both academic and non academic philosophers and a large number of female and minority thinkers whose work has been neglected It includes those intellectuals involved in the development of psychology pedagogy sociology anthropology education theology political science and several other fields before these disciplines came to be considered distinct from philosophy in the late nineteenth century Each entry contains a short biography of the writer an exposition and analysis of his or her doctrines and ideas a bibliography of writings and suggestions for further reading While all the major post Civil War philosophers are present the most valuable feature of this dictionary is its coverage of a huge range of less well known writers including hundreds of presently obscure thinkers In many cases the Dictionary of Modern American Philosophers offers the first scholarly treatment of the life and work of certain writers This book will be an indispensable reference work for scholars working on almost any aspect of modern American thought

The Bloomsbury Encyclopedia of Philosophers in America John R. Shook,2016-02-11 For scholars working on almost any aspect of American thought The Bloomsbury Encyclopedia to Philosophers in America presents an indispensable reference work Selecting over 700 figures from the Dictionary of Early American Philosophers and the Dictionary of Modern American Philosophers this condensed edition includes key contributors to philosophical thought From 1600 to the present day entries cover psychology pedagogy sociology anthropology education theology and political science before these disciplines came to be considered distinct from philosophy Clear and accessible each entry contains a short biography of the writer an exposition and analysis of his or her doctrines and ideas a bibliography of writings and suggestions for further reading Featuring a new preface by the editor and a comprehensive introduction The Bloomsbury Encyclopedia to Philosophers in America includes 30 new entries on twenty first century thinkers including Martha Nussbaum and Patricia Churchland With in depth overviews of Waldo Emerson Margaret Fuller Noah Porter Frederick Rauch Benjamin Franklin Thomas Paine and Thomas Jefferson this is an invaluable one stop research volume to understanding leading figures in American thought and the development of American intellectual history

Practice Theory and Law Maciej Dybowski,Weronika Dzięgielewska,Wojciech Rzepiński,2024-10-02 This book engages the field of practice theory in order to consider law as a social practice Taking up the theoretical concept of practices the contributors to this volume maintain that law can be fruitfully understood as one among other social practices Including perspectives from philosophers of language experts in practice theory linguists and legal philosophers the book examines the twin questions of what it means for law to be considered a practice and what law s place is among other social practices The book is comprised of three parts The first provides a broad methodological framework for discussing how the concept of practice is used in the

social sciences and in law The second deals with specific problems arising from the use of the concept of practice in the legal context and from the intersection of different social practices The third part identifies and addresses the consequences of applying insights from practice theory to law Together they offer a comprehensive consideration of what is at stake in understanding law as a social practice This book will appeal to sociolegal scholars sociologists of law philosophers of language and action as well as philosophers of law and legal theorists Chapter 15 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution CC BY 4.0 license Chapter 8 of this book is freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution ShareAlike CC BY SA 4.0 license

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 hard reality 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

Jurisprudence in the Mirror Luka Burazin, 2024-08-28 There is something quite puzzling about the global conversation on jurisprudence On the one hand jurisprudence is supposed to deal with abstract questions concerning the nature structure and distinctive features of the law These questions are not tightly associated with or dependent on the particular legal practices in one jurisdiction or another But on the other hand it seems that jurisprudents are tacitly affected by their background institutional context there is an evident divide between theorizing about the law in the civil law world and in the common law world *Jurisprudence in the Mirror The Common Law World Meets the Civil Law World* systematically presents the major achievements of contemporary civil law jurisprudence to the common law world and bridges the gap in analytic jurisprudence as it is currently practiced in the two traditions The volume seeks to bring different voices to the table and overcome the cultural and linguistic divides that have created barriers in philosophical exchanges The book's structure is dialogical it includes twelve essays written by prominent and influential jurisprudents from the civil law

world each followed by a response by a jurisprudent from the common law world This approach highlights what the two worlds share where they part ways and why The varied contributions reveal how their respective legal traditions shape fundamental legal concepts and jurisprudential debates and will be invaluable to readers from both the civil and common law worlds

Legal Reasoning and Briefing Jesse Franklin Brumbaugh, 1917

Agency, Morality and Law Joshua

Jowitt, 2023-01-12 How does law possess the normative force it requires to direct our actions This book argues that this seemingly innocuous question is of central importance to the philosophy of law and by extension of the very concept of law itself It advances a position grounded in the secular natural law tradition and in doing so addresses the two success criteria for this position head on Firstly that commitment to the existence of a supreme moral principle is required Secondly that any supreme moral principle must be identifiable through human reason The book argues that these conditions are met by Alan Gewirth's Principle of Generic Consistency PGC which through a dialectically necessary argument locates the existence of universally applicable moral norms in the concept of agency Given the very purpose of law is to guide action legal norms must be located in a unified hierarchy of practical reason It follows that if law is to succeed in claiming to be capable of guiding our action moral permissibility with reference to the PGC is a necessary condition of a rule's legal validity This strong theory of natural law is defended throughout both against moral sceptics and positions within contemporary legal positivism

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

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

Anglo-American Law Collections Mortimer D. Schwartz, Dan F. Henke, 1970

New Essays on the Nature of Legal Reasoning Mark McBride, James Penner, 2022-05-19 This is the first book to bring together distinguished jurisprudential theorists as well as up and coming scholars to critically assess the nature of legal reasoning The volume is divided into 3 parts The first part General Jurisprudence and Legal Reasoning addresses issues at the intersection of general jurisprudence those pertaining to the nature of law itself and legal reasoning The second part Rules and Reasons addresses two concepts central to two prominent types of theory of legal reasoning The essays in the third and final part Doctrine and Practice delve into the mechanics of legal practice and doctrine from a legal reasoning perspective

Islamic and Jewish Legal Reasoning Anver Emon, 2016-04-07 By pairing a scholar of Islamic law with a scholar of Jewish law a unique dynamic is created and new perspectives are made possible These new perspectives not only enable an understanding of the other's legal tradition but most saliently they offer new insights into one's own legal tradition shedding light on what had previously been assumed to be outside the scope of analytic vision In the course of this volume scholars come together to examine such issues as judicial authority the legal policing of female sexuality and the status of those who stand outside one's own tradition Whether for the pursuit of advanced scholarship pedagogic innovation in the classroom or simply a greater appreciation of how to live in a multi faith post secular world these encounters are richly stimulating demonstrating how legal tradition can be used as a common site for developing discussions and opening up diverse approaches to questions about law politics and community Islamic and Jewish Legal Reasoning offers a truly incisive model for considering the good the right and the legal in our societies today

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