

FUNDAMENTALS OF LEGAL ARGUMENTATION

A Survey of Theories on the
Justification of Judicial Decisions

Eveline T. Feteris

Kluwer Academic Publishers

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Tshepo Bogosi Mosaka



Fundamentals Of Legal Argumentation A Survey Of Theories On The Justification Of Judicial Decisions:

Fundamentals of Legal Argumentation Eveline T. Feteris, 2013-03-09 Legal argumentation is a distinctively multidisciplinary field of inquiry. It draws its data, assumptions, and methods from disciplines such as legal theory, legal philosophy, logic, argumentation theory, rhetoric, linguistics, literary theory, philosophy, sociology, and artificial intelligence. This presents the growing group of interested scholars and students with a problem of access since even for those active in the field it is not common to have acquired a familiarity with relevant aspects of each discipline that enters into this multidisciplinary matrix. *Fundamentals of Legal Argumentation* offers its readers a unique 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 all major approaches and trends in the contemporary research. It surveys relevant theoretical factors both from various continental law traditions and common law countries. *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's 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 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. **The Logic of Legal Argumentation** Marko Novak, 2024-02-26 Presents a thorough analysis of multi-modal argumentation and its practicality within the law. Takes both a descriptive and a normative approach. Applicable in a variety of areas from Philosophy of Law to Communication Studies. *The Currency of Solidarity* Vestert Borger, 2020-10-08 Analyses the European Union's

constitutional transformation during the euro crisis especially the interaction between politics and the ECJ in its materialization

Proof, Evidence and Hate Crime Tshepo Bogosi Mosaka, 2025-07-18 Proof is the property of a disputed fact being established inferentially from an extant fact This book explicates the structural components of this phenomenon in the context of hate crimes across various jurisdictions around the world It departs from the orthodox conception of evidence and proof as being a general value neutral or non normative and epistemic subject and offers a relativistic conception of this area of law The core argument is that proof is both semantically and methodologically determined by three conditions of materiality process and probativity This argument is then justified by the context specific application of this relativistic theory of proof to hate crimes This theoretical application of proof is sustained throughout the book using multiple examples and illustrations of hate crimes around the world The discussion both at the level of proof and hate crimes while focusing on the grounds of race religion and ethnicity specifically is framed in jurisprudential cross jurisdictional and interdisciplinary terms The book will be of interest to academics and researchers working in the areas of criminal law legal philosophy and procedural law

The Language of Argumentation Ronny Boogaart, Henrike Jansen, Maarten van Leeuwen, 2021-01-20 Bringing together scholars from a broad range of theoretical perspectives The Language of Argumentation offers a unique overview of research at the crossroads of linguistics and theories of argumentation In addition to theoretical and methodological reflections by leading scholars in their fields the book contains studies of the relationship between language and argumentation from two different viewpoints While some chapters take a specific argumentative move as their point of departure and investigate the ways in which it is linguistically manifested in discourse other chapters start off from a linguistic construction trying to determine its argumentative function and rhetorical potential The Language of Argumentation documents the currently prominent research on stylistic aspects of argumentation and illustrates how the study of argumentation benefits from insights from linguistic models ranging from theoretical pragmatics politeness theory and metaphor studies to models of discourse coherence and construction grammar

The Tapestry of Reason Amalia Amaya, 2015-04-30 In recent years coherence theories of law and adjudication have been extremely influential in legal scholarship These theories significantly advance the case for coherentism in law Nonetheless there remain a number of problems in the coherence theory in law This ambitious new work makes the first concerted attempt to develop a coherence based theory of legal reasoning and in so doing addresses or at least mitigates these problems The book is organized in three parts The first part provides a critical analysis of the main coherentist approaches to both normative and factual reasoning in law The second part investigates the coherence theory in a number of fields that are relevant to law coherence theories of epistemic justification coherentist approaches to belief revision and theory choice in science coherence theories of practical and moral reasoning and coherence based approaches to discourse interpretation Taking this interdisciplinary analysis as a starting point the third part develops a coherence based model of legal reasoning While this model builds upon the standard

theory of legal reasoning it also leads to rethinking some of the basic assumptions that characterize this theory and suggests some lines along which it may be further developed Thus ultimately the book not only improves upon the current state of coherence theory in law but also contributes to the larger debate about how to articulate a theory of legal reasoning that results in better decision making

New Developments in Legal Reasoning and Logic Shahid Rahman, Matthias Armgardt, Hans Christian Nordtveit Kvernenes, 2021-12-16 This book intends to unite studies in different fields related to the development of the relations between logic law and legal reasoning Combining historical and philosophical studies on legal reasoning in Civil and Common Law and on the often neglected Arabic and Talmudic traditions of jurisprudence this project unites these areas with recent technical developments in computer science This combination has resulted in renewed interest in deontic logic and logic of norms that stems from the interaction between artificial intelligence and law and their applications to these areas of logic The book also aims to motivate and launch a more intense interaction between the historical and philosophical work of Arabic Talmudic and European jurisprudence The publication discusses new insights in the interaction between logic and law and more precisely the study of different answers to the question what role does logic play in legal reasoning Varying perspectives include that of foundational studies such as logical principles and frameworks to applications and historical perspectives

Dimensions of Normativity David Plunkett, Scott J. Shapiro, Kevin Toh, 2019-01-10 Understood one way the branch of contemporary philosophical ethics that goes by the label metaethics concerns certain second order questions about ethics questions not in ethics but rather ones about our thought and talk about ethics and how the ethical facts insofar as there are any fit into reality Analogously the branch of contemporary philosophy of law that is often called general jurisprudence deals with certain second order questions about law questions not in the law but rather ones about our thought and talk about the law and how legal facts insofar as there are any fit into reality Put more roughly and using an alternative spatial metaphor metaethics concerns a range of foundational questions about ethics whereas general jurisprudence concerns analogous questions about law As these characterizations suggest the two sub disciplines have much in common and could be thought to run parallel to each other Yet the connections between the two are currently mostly ignored by philosophers or at least under scrutinized The new essays collected in this book are aimed at changing this state of affairs Dimensions of Normativity collects together works by metaethicists and legal philosophers that address a number of issues that are of common interest with the goal of accomplishing a new rapprochement between the two sub disciplines

Modern Legal Interpretation Marko Novak, Vojko Strahovnik, 2019-01-24 Legalism or legal formalism usually depicts judges as resolving cases by allegedly merely applying pre existing legal rules They do not seem to legislate exercise discretion balance or pursue policies and they definitely do not look outside of conventional legal texts for guidance in deciding new cases For them the law is an autonomous domain of knowledge and technique What they follow are the maxims of clarity determinacy and coherence of law This perception of law and adjudication is sometimes designated as an orthodox

lawyering However at least in certain cases it is very difficult to say that legalism is not an inappropriate theory or a method of legal interpretation Different theories have attested that legal interpretation is much more than just legalism which appears to be far too na ve In the framework of modern legal interpretation the following questions can be raised Is it possible to integrate legalism in a coherent theory of legal interpretation Is legalism as a distinctive theory of legal interpretation still a feasible theory of interpretation How can such a formalist approach withstand a critique from Dworkinian moral interpretivism or accusations of being a myth masking political preferences from legal realists These and many other issues about legal interpretation are discussed in this book by prominent legal philosophers and legal theorists

What Do We Know About the World? Gabrijela Kišiček,Igor Ž. Žagar,2013-10-03 What do we know about the world Rhetorical and Argumentative Perspectives is a book trying to answer the title question by contributing to rhetorical and argumentative studies It consists of papers presented at the First International Conference on Rhetoric in Croatia the Days of Ivo S karic in May 2012 and subsequently revised for publication Through a variety of different routs the papers explore the role of rhetoric and argumentation in various types of public discourse and present interdisciplinary work connecting linguists phoneticians philosophers law experts and communication scientists in the common ground of rhetoric and argumentation The Conference was organized with the intent of paying respect to the Croatian rhetorician and professor emeritus Ivo S karic who was the first to introduce rhetoric at the Department of Phonetics at the Faculty of Humanities and Social Sciences University of Zagreb

Contextualizing Pragma-Dialectics Frans H. van Eemeren,Wu Peng,2017-12-12 Contextualizing Pragma Dialectics contains a selection of 18 article reporting on research conducted in the past decade in which the institutional context in which argumentative discourse takes place is systematically taken into account Some articles provide relevant theoretical backgrounds other articles make clear how the extended pragma dialectical theory can be used to analyse and evaluate argumentative discourse in specific institutional contexts Next to argumentative discourse in the legal domain and the medical context of health communication a great deal of attention is paid to various argumentative practices in the political domain or dealing with specific social issues A contribution on multimodal argumentation is also included All contributing authors are actively engaged in the International Learned Institute for Argumentation Studies ILIAS

Judicial Protection of Fundamental Rights on the Internet Oreste Pollicino,2021-04-22 This book explores how the Internet impacts on the protection of fundamental rights particularly with regard to freedom of speech and privacy In doing so it seeks to bridge the gap between Internet Law and European and Constitutional Law The book aims to emancipate the debate on internet law and jurisprudence from the dominant position with specific reference to European legal regimes This approach aims to inject a European and constitutional soul into the topic Moreover the book addresses the relationship between new technologies and the protection of fundamental rights within the theoretical debate surrounding the process of European integration with particular emphasis on judicial dialogue This innovative book provides a thorough analysis of the

forms models and styles of judicial protection of fundamental rights in the digital era and compares the European vision to that of the United States The book offers the first comparative analysis in which the notion of judicial frame borrowed from linguistic and cognitive studies is systematically applied to the theories of interpretation and argumentation With a Foreword by Robert Spano President of the European Court of Human Rights

Juristic Concept of the Validity of Statutory Law Andrzej Grabowski, 2013-06-24 This book presents the theory of the validity of legal norms aimed at the practice of law in particular the jurisdiction of the constitutional courts The postpositivist concept of the validity of statutory law grounded on a critical analysis of the basic theories of legal validity elaborated up to now is introduced In the first part of the book a contemporary German nonpositivist conception of law developed by Ralf Dreier and Robert Alexy is analysed in order to answer the question whether the juristic concept of legal validity should include moral standards or criteria In the second part a postpositivist concept of legal validity and an innovative model of validity discourse based on the juristic presumption of the validity of legal norms are proposed The book is a work on analytical legal theory written from a postpositivist detached point of view

Legal Reasoning in Environmental Law Douglas Fisher, 2013-09-30 I am afraid that an endorsement of this kind however condense and packed with praise cannot do justice to Doug Fisher's latest book A respected and seasoned environmental law scholar Fisher skilfully reminds us that law is about language and that

The Finnish Yearbook of International Law, Vol 26, 2016 Tuomas Tiittala, 2021-12-16 The Finnish Yearbook of International Law aspires to honour and strengthen the Finnish tradition in international legal scholarship Open to contributions from all over the world and from all persuasions the Finnish Yearbook stands out as a forum for theoretically informed high quality publications on all aspects of public international law including the international relations law of the European Union The Finnish Yearbook publishes in depth articles and shorter notes commentaries on current developments book reviews and relevant overviews of Finland's state practice While firmly grounded in traditional legal scholarship it is open for new approaches to international law and for work of an interdisciplinary nature

Argumentation in Artificial Intelligence Iyad Rahwan, 2009-06-13 Argumentation is all around us Letters to the Editor often make points of consistency and Why is one of the most frequent questions in language asking for reasons behind behaviour And argumentation is more than reasoning in the recesses of single minds since it crucially involves interaction It cements the coordinated social behaviour that has allowed us in small bands of not particularly physically impressive primates to dominate the planet from the mammoth hunt all the way up to organized science This volume puts argumentation on the map in the field of Artificial Intelligence This theme has been coming for a while and some famous pioneers are chapter authors but we can now see a broader systematic area emerging in the sum of topics and results As a logician I find this intriguing since I see AI as logic continued by other means reminding us of broader views of what my discipline is about Logic arose originally out of reflection on many agent practices of disputation in Greek Antiquity but also in India and China And logicians like me would like to return to this broader agenda

of rational agency and intelligent interaction Of course Aristotle also gave us a formal systems methodology that deeply influenced the field and eventually connected up happily with mathematical proof and foundations **Argumentation in**

Dispute Mediation Sara Greco Morasso,2011-03-09 The context of mediation immediately highlights the importance of argumentation as a means to reasonably handle conflict Argumentation in dispute mediation tackles this topic providing both theoretical insights and detailed empirical argumentative analysis Its goal is twofold to explore mediation as a real life context of argumentation and to show how an increased argumentative awareness could improve conflict resolution Particular emphasis is accorded to mapping mediation through an interdisciplinary reasoned review of existing accounts The outline of a conceptual framework of mediation constitutes a solid basis for the study of argumentation in mediation The argumentative analysis of a corpus of mediation cases based on the pragma dialectical account and the Argumentum Model of Topics shows the mediator's moves which actually help conflicting parties discuss reasonably The mediator's topical potential plays a crucial role in this relation at the levels of issue selection evoking of cultural contextual premises and choice of argument schemes **Adoption from Care** Marit Skivenes,Tarja Pösö,June Thoburn,2021-05-05 EPDF and EPUB available Open Access under CC BY NC ND This book explores how children's rights are practised and weighed against birth and adoptive parents rights and examines how governments and professionals balance rights when it is decided that children cannot return to parental care From different socio political and legal contexts in Europe and the United States it provides an in depth analysis of concepts of family contact the child's best interest principle and human rights when children are adopted from care Taking an international comparative approach to these issues this book provides detailed information on adoption processes and shares learning from best practice and research across country boundaries to help improve outcomes for all children in care for whom adoption may be the placement of choice

Explaining Communication Bryan B. Whaley,Wendy Samter,2013-03-07 Offering a direct sightline into communication theory Explaining Communication provides in depth discussions of communication theories by some of the foremost scholars working in communication today With contributions from the original theorists and scholars known for their work in specific theoretical perspectives this distinctive text breaks new ground in giving these scholars the opportunity to address students firsthand speaking directly to the coming generations of communication scholars Covering a wide range of interpersonal communication theories the scope of this exceptional volume includes the nature of theory and fundamental concepts in interpersonal communication theories accounting for individual differences in message production explanations of human communication from dyadic relational and or cultural levels and a history of communication theory Chapter authors offer their own views of the core ideas and findings of specific theoretical perspectives discussing the phenomena those perspectives are best positioned to explain how the theories fit into the field and where future research efforts are best placed While by no means comprehensive Explaining Communication includes those theories that rank among those most often used in today's work that have generated a

substantial body of knowledge over time and that have not been articulated in detail in other publications With detailed explorations and first hand discussions of major communication theories this volume is essential for students in communication studies interpersonal communication and advanced theory courses as well as for scholars needing a thorough reference to some of the most salient theories in communication today

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