

# The Craft of Legal Reasoning

BRIAN L. PORTO



**THE CRAFT OF  
LEGAL REASONING**

# Craft Of Legal Reasoning

**Richard E. Flathman**



## **Craft Of Legal Reasoning:**

*The Craft of Legal Reasoning* Brian L. Porto, Calvin C. Jillson, 1998 Ideal for courses in constitutional law judicial process and politics or law and society this book prepares undergraduates for case analysis and debate by providing systematic instruction in legal language and the legal method The book includes numerous case examples of the legal method in operation which allow students to learn the legal method prior to analyzing cases on their own Three helpful appendices explain the structure and jurisdiction of state and federal courts list the federal appellate circuits and explain how and where to find the legal sources cited in the book A comparison of common law and civil traditions shows the unique roots of American law and the values that continue to shape it Back cover The book is designed for advanced undergraduates but beginning law students will also find it useful Pref

Demystifying Legal Reasoning Larry Alexander, Emily Sherwin, 2008-06-16 Demystifying Legal Reasoning defends the proposition that there are no special forms of reasoning peculiar to law Legal decision makers engage in the same modes of reasoning that all actors use in deciding what to do open ended moral reasoning empirical reasoning and deduction from authoritative rules This book addresses common law reasoning when prior judicial decisions determine the law and interpretation of texts In both areas the popular view that legal decision makers practise special forms of reasoning is false

Science and Judicial Reasoning Katalin Sulyok, 2020-10-29 This pioneering study on environmental case law examines how courts engage with science and reviews legitimate styles of judicial reasoning

**Learning Legal Reasoning** John Delaney, 1987 Publisher description This widely used book in many printings begins with answers to forty commonly asked questions of first year law students It specifies a six step approach to briefing a case with specific guidelines for accomplishing each step The process of briefing cases is then demonstrated with excellent and poor briefs of increasing complexity Emphasis is placed initially on the techniques of briefing as an introduction to the learning of legal reasoning the first priority of the first year of law school In addition the book also demonstrates the relevance of more advanced modes of legal reasoning including positivist pragmatic policy oriented natural law and other perspectives applied in decoding and understanding cases In its introduction of jurisprudential perspectives Learning Legal Reasoning transcends the typical technical positivist orientation of most first year materials

American Criminal Courts Casey Welch, John Randolph Fuller, 2013-04-05 American Criminal Courts Legal Process and Social Context provides a complete picture of both the theory and day to day reality of criminal courts in the United States The book begins by exploring how democratic processes affect criminal law the documents that define law the organizational structure of courts at the federal and state levels the overlapping authority of the appeals process and the effect of legal processes such as precedent jurisdiction and the underlying philosophies of various types of courts In practice criminal courts are staffed by people who represent different perspectives occupational pressures and organizational goals Thus this book includes chapters on actors in the traditional courtroom workgroup judges prosecutors and defense attorneys

etc as well as those outside the court who seek to influence it including advocacy groups the media and politicians It is the interplay between the court s legal processes and the social actors in the courtroom that makes the application of criminal law fascinating By focusing on the tension between the law and the actors inside of it American Criminal Courts Legal Process and Social Context demonstrates how the courts are a product of law in action and presents content in a way that enables you to understand not only the how of the U S criminal court system but also the why Clearly explains both the principles underlying the development of criminal law and the practical reality of the court system in action A complete picture of the criminal justice continuum including prosecution defense judges juries sentencing and pre trial and appeals processes Feature boxes look at how courts are portrayed in the media identify landmark due process cases illustrate the pros and cons of the courts discretionary decision making examine procedures and the goals of justice and highlight the various types of careers available within the criminal courts

### **Research Handbook on Legal Pluralism and EU Law**

Gareth Davies, Matej Avbelj, The Research Handbook on Legal Pluralism and EU Law explores the diversity of phenomenon of overlapping legal systems within the European Union the nature of their interactions and how they deal with the difficult question of the legal hierarchy between them The contributors reflect on the history sociology and legal scholarship on constitutional and legal pluralism and develop this further in the light of the challenges currently facing the EU

**Freedom and Its Conditions** Richard E. Flathman, 2003 Freedom and its Conditions challenges the received wisdom that discipline and freedom are opposite and mutually exclusive Flathman shows how resistance to rules can mean more than criminals breaking laws Resistance can also mean political protest and political dialogues about what the rules can be This book draws on Foucault s theories of the self to describe the inner discipline it takes to resist authority declaring that individuals must sometimes resist forces that wish to destroy freedom to ensure freedom

### **International Legal Theory** Jeffrey L.

Dunoff, Mark A. Pollack, 2022-08-04 A reader friendly overview of leading theoretical approaches to international law for students scholars and practitioners

### **A Treatise of Legal Philosophy and General Jurisprudence** Gerald J.

Postema, 2011-08-05 Volume 11 the sixth of the historical volumes of A Treatise of Legal Philosophy and General Jurisprudence offers a fresh philosophically engaged critical interpretation of the main currents of jurisprudential thought in the English speaking world of the 20th century It tells the tale of two lectures and their legacies Oliver Wendell Holmes Jr s The Path of Law 1897 and H L A Hart s Holmes Lecture Positivism and the Separation of Law and Morals 1958 Holmes s radical challenge to late 19th century legal science gave birth to a rich variety of competing approaches to understanding law and legal reasoning from realism to economic jurisprudence to legal pragmatism from recovery of key elements of common law jurisprudence and rule of law doctrine in the work of Llewellyn Fuller and Hayek to root and branch attacks on the ideology of law by the Critical Legal Studies and Feminist movements Hart simultaneously building upon and transforming the undations of Austinian analytic jurisprudence laid in the early 20th century introduced rigorous

philosophical method to English speaking jurisprudence and offered a reinterpretation of legal positivism which set the agenda for analytic legal philosophy to the end of the century and beyond A wide ranging debate over the role of moral principles in legal reasoning sparked by Dworkin s fundamental challenge to Hart s theory generated competing interpretations of and fundamental challenges to core doctrines of Hart s positivism including the nature and role of conventions at the foundations of law and the methodology of philosophical jurisprudence

**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

**Perspectives on Environmental Law Scholarship** Ole W. Pedersen,2018-11-08 Presents the first comprehensive reflection on the nature of environmental law scholarship from the perspectives of leading scholars in the field

**Logic, Probability, and Presumptions in Legal Reasoning** 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

How to Measure the Quality of Judicial Reasoning Mátyás Bencze,Gar Yein Ng,2018-08-30 This edited volume examines the very essence of the function of judges building upon developments in the quality of justice research throughout Europe Distinguished authors address a gap in the literature by considering the standards that individual judgments should meet presenting both academic and practical perspectives Readers are invited to consider such questions as What is expected from judicial reasoning Is there a general concept of good quality with regard to judicial reasoning Are there any attempts being made to measure the quality of judicial reasoning The focus here is on judges meeting the highest standards possible in adjudication and how they may be held to account for the way they reason The contributions examine theoretical questions surrounding the measurement of the quality of judicial reasoning practices and legal systems across Europe and judicial reasoning in various international courts Six legal systems in Europe are featured England andWales Finland Italy the Czech Republic France and Hungary as well as three non domestic levels of court jurisdictions including the Court of Justice of the European Union CJEU The depth and breadth of subject matter presented in this volume ensure its relevance for many years to come All those with an interest in benchmarking the quality of judicial reasoning including judges themselves academics students and legal practitioners can find something of value in this book

**It's All in the Game** Allan C. Hutchinson,2000-01-24 The author argues for an understanding of judging that rejects foundationalism the effort to ground legal thought on something attempts to carve out a middle way between formalist and

the political visions of law and offers a reconceptual

**Reconstructing American Legal Realism & Rethinking Private Law Theory** Hanoch Dagan, 2013-09 This book demonstrates how legal realism offers important and unique jurisprudential insights that are not just a part of legal history but are also relevant and useful for a contemporary understanding of legal theory

**The Role of Law in China's Economic Development, 1978-2011** Jia Hu, 2024-03-29 This book concerns how China's legal institutions promoted its economic growth and demonstrates that the law has played different roles at various stages of China's economic transformation a signal of legal paradigm shifts in reaction to the changing political and economic pursuits By decomposing the role of law in the process the author argues that while the Chinese economy was transforming from a planned economy to a market oriented one the law also made its adjustment as a response the Chinese legal system was evolving from the one consisting of primarily substantive laws to the one filled with high level formal laws by the end of the last century The above observation of legal formalization is further consolidated by introducing the particularities of China's legal education in those years a topic rarely dealt with yet of significance to comprehensively understand the Chinese legal system in practice Overall the present book argues against the modernization theory and determinism that would anticipate a similar developmental path globally and shows that the relationship between law and economic development is contingent Therefrom this study weighs in the law and development debate and breaks a perception of static law in the economy by rejecting the conventional perception of established legal institutions as a precondition of modernity Hence this book could appeal to legal scholars and sociologists interested in reevaluating western theories of free economy and its relationships to the law In addition scholars interested in research methodology would find the perspective of paradigm shifts in interpreting China's transformations a helpful analytical framework in research Moreover policymakers and legislators concerned about the characteristics of law for economic results would also find the book useful

**Force of Logic** Stephen M. Rice, 2017-05-03 Have you ever read a legal opinion and come across an odd term like the fallacy of denying the antecedent the fallacy of the undistributed middle or the fallacy of the illicit process and wondered how you missed that in law school You're not alone every day lawyers make arguments that fatally trespass the rules of formal logic without realizing it because traditional legal education often overlooks imparting the practical wisdom of ancient philosophy as it teaches students how to think like a lawyer In his book *The Force of Logic Using Formal Logic as a Tool in the Craft of Legal Argument* lawyer and law professor Stephen M Rice guides you to develop your powers of legal reasoning in a new way through effective tips and tactics that will forever change the way you argue your cases Rice contends that formal logic provides tools that help lawyers distinguish good arguments from bad ones and moreover that they are simple to learn and use When you know how to recognize logical fallacies you will not only strengthen your own arguments but you will also be able to punch holes in your opponent's and that can make the difference between winning and losing In this book Rice builds on the theoretical foundation of formal logic by demonstrating logical fallacies through the use of anecdotes examples graphical illustrations

and exercises for you to try that are derived from common case documents It is a hands on primer that presents a practical approach for understanding and mastering the place of formal logic in the art of legal reasoning Whether you are a lawyer a judge a scholar or a student The Force of Logic will inspire you to love legal argument and appreciate its beauty and complexity in a brand new way     The Oxford Handbook of Law and Politics Keith E. Whittington,R. Daniel Kelemen,Gregory A. Caldeira,2010-06-10 The study of law and politics is one of the foundation stones of the discipline of political science and it has been one of the most productive areas of cross fertilization between the various subfields of political science and between political science and other cognate disciplines This Handbook provides a comprehensive survey of the field of law and politics in all its diversity ranging from such traditional subjects as theories of jurisprudence constitutionalism judicial politics and law and society to such re emerging subjects as comparative judicial politics international law and democratization The Oxford Handbook of Law and Politics gathers together leading scholars in the field to assess key literatures shaping the discipline today and to help set the direction of research in the decade ahead     **May It Please the Court** Brian L. Porto,2008-10-17 Despite their clarity and sophistication most judicial process texts currently available have two significant limitations First they understate the effects of legal factors such as stare decisis on judicial decision making and second they fail to convey the human emotions involved in litigation Reflecting the author s experience as a political scientist law student judicial clerk practicing attorney and law professor May It Please the Court Judicial Processes and Politics in America Second Edition redresses this imbalance by giving well deserved attention to legal influences on judicial decisions and to the human drama of litigation Each chapter reflects the book s premise that the judicial process operates at the intersection of law and politics and this theme guides the discussions The coverage in the book is far reaching exploring numerous topics including the structure of federal and state courts the selection and removal of judges and the legal profession s history and culture It discusses two hypothetical cases outlining their trial and appellate proceedings It also presents an engaging debate about the legitimacy and the utility of judicial policy making New to this edition Expanded appendices including a discussion of computerized legal research New illustrative cases documents and web references All chapters updated to reflect changes since the first publication in 2001 The final chapter summarizes the theme of the book noting that courts not only enforce norms and resolve disputes but also as a coequal branch of government shape the fundamental power relationships that drive American politics The chapter ends by observing that the judicial process offers a window on the entire American political system This book clarifies the view from that window     An Introduction to Law and Legal Reasoning Steven J. Burton,2007-01-10 Now in its Third Edition An Introduction to Law and Legal Reasoning continues to be the ideal go to for the first year law student It is a short practical book that introduces beginning law students and others to contemporary law and legal reasoning By presenting these topics through various discussions of cases and examples it provides students with a solid source to reference for years to come

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