

The Judicial Process

Constitution, Federalism, Courts, Process
Discretion, and Principles



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Judicial Process Realism Pragmatism Practical Reasoning And Principles

Michael Giudice



Judicial Process Realism Pragmatism Practical Reasoning And Principles:

The Judicial Process Edmund Walter Thomas, 2005 This book dismantles the outdated theories still exhibited in much judicial reasoning and seeks to bridge the gap between legal theory and judicial practice The author propounds a coherent and comprehensive judicial methodology for modern times which is realistic and pragmatic and which embraces a revised conception of practical reasoning

The Judicial Process E. W. Thomas, 2005-09-15 In the absence of a sound conception of the judicial role judges at present can be said to be muddling along They disown the declaratory theory of law but continue to behave and think as if it had not been discredited Much judicial reasoning still exhibits an unquestioning acceptance of positivism and a rulish predisposition Formalistic thinking continues to exert a perverse influence on the legal process This 2005 book dismantles these outdated theories and seeks to bridge the gap between legal theory and judicial practice The author propounds a coherent and comprehensive judicial methodology for modern times Founded on the truism that the law exists to serve society and adopting the twin criteria of justice and contemporaneity with the times a judicial methodology is developed which is realistic and pragmatic and which embraces a revised conception of practical reasoning including in that conception a critical role for legal principles

The Judicial Process E. W. Thomas, 2005-09-15 In the absence of a sound conception of the judicial role judges at present can be said to be muddling along They disown the declaratory theory of law but continue to behave and think as if it had not been discredited Much judicial reasoning still exhibits an unquestioning acceptance of positivism and a rulish predisposition This book written by a practicing judge dismantles these outdated theories and seeks to bridge the gap between legal theory and judicial practice The author propounds a coherent and comprehensive judicial methodology for modern times

Principles, Procedure, and Justice Rabeea Assy, Andrew Higgins, 2020-05-14 This collection is in honour of Adrian Zuckerman Emeritus Professor of Civil Procedure at the University of Oxford Bringing together a distinguished group of judges and academics to reflect on the impact of his work on our understanding of civil procedure and evidence today An internationally renowned scholar Professor Zuckerman has dedicated his professional life to the law of evidence and civil procedure drawing attention to the principles and policies that shape litigation practice and their wider social impact His pioneering scholarship is admired by the judiciary and the academy and has influenced several major reforms of the civil justice system including the Woolf Reforms that heralded the introduction of the Civil Procedure Rules and Lord Justice Jackson s Review of Civil Litigation Costs His work has also informed law reform bodies and courts in other jurisdictions Building upon Professor Zuckerman s work the contributors address outstanding problems in the field of civil procedure and evidence and in keeping with Adrian s record of always exploring new areas the book includes chapters on the prospects for a digital justice system including the new online court being developed in England and the potential role of algorithms in the court room

The Methodology of Legal Theory Michael Giudice, 2017-07-05 The last decade has witnessed a particularly intensive debate over methodological issues in legal

theory The publication of Julie Dickson's *Evaluation and Legal Theory* 2001 was significant as were collective returns to H. L. A. Hart's *Postscript to The Concept of Law* While influential articles have been written in disparate journals no single collection of the most important papers exists This volume the first in a three volume series aims not only to fill that gap but also propose a systematic agenda for future work The editors have selected articles written by leading legal theorists including among others Leslie Green Brian Leiter Joseph Raz Ronald Dworkin and William Twining and organized under four broad categories 1 problems and purposes of legal theory 2 the role of epistemology and semantics in theorising about the nature of law 3 the relation between morality and legal theory and 4 the scope of phenomena a general jurisprudence ought to address

Due Process and International Terrorism Roza Pati, 2009 Acts of terror on a global scale are straining to the breaking point the due process guarantees of the legal systems of modern democracies In unequalled breadth and depth this book analyzes the rights of persons suspected of a crime in normal times and emergencies from the pre trial phase to the trial and the post trial period under all the universal and regional human rights treaty regimes pertinent customary international law general principles of law international humanitarian law as well as the hybrid procedures developed by international criminal tribunals The book then presents a detailed analysis of United States due process guarantees in

peacetime and in war and the executive legislative and judicial responses to the attacks of September 11 2001 Professor Pati appraises the American actions in terms of international law's due process guarantees and proposes courses of action which can better defend a public order of human dignity

Values in the Supreme Court Rachel Cahill-O'Callaghan, 2020-02-20 This book examines the significance of values in Supreme Court decision making Drawing on theories and techniques from psychology it focuses on the content analysis of judgments and uses a novel methodology to reveal the values that underpin decision making The book centres on cases which divide judicial opinion Dworkin's hard cases in which the result is not clearly dictated by statute or precedent In hard cases there is real uncertainty about the legal rules that should be applied and factors beyond traditional legal sources may influence the decision making process It is in these uncertain cases where legal developments can rest on a single judicial decision that values are revealed in the judgments The findings in this book have significant implications for developments in law judicial decision making and the appointment of the judiciary

Polish vs. American Courtroom Discourse G. Bednarek, 2014-07-29 *Polish vs American Courtroom Discourse* brings together the fields of discourse analysis and socio legal studies to identify illustrate and explain the cross cultural similarities and disparities between the inquisitorial and adversarial procedures of witness examination in criminal trials

Perils of Judicial Self-Government in Transitional Societies David Kosař, 2016-04-01 Judicial councils and other judicial self government bodies have become a worldwide phenomenon Democracies are increasingly turning to them to insulate the judiciary from the daily politics enhance independence and ensure judicial accountability This book investigates the different forms of accountability and the taxonomy of mechanisms of control to determine a best practice methodology The author

expertly provides a meticulous analysis using over 800 case studies from the Czech and Slovak disciplinary courts from 1993 to 2010 and creates a systematic framework that can be applied to future cases

Constitutional Interpretation in Singapore Jaclyn L Neo, 2016-06-17 At the heart of constitutional interpretation is the struggle between on the one hand fidelity to founding meanings and on the other hand creative interpretation to suit the context and needs of an evolving society This book considers the recent growth of constitutional cases in Singapore in the last ten years It examines the underpinnings of Singapore's constitutional system explores how Singapore courts have dealt with issues related to rights and power and sets developments in Singapore in the wider context of new thinking and constitutional developments worldwide It argues that Singapore is witnessing a shift in legal and political culture as both judges and citizens display an increasing willingness to engage with constitutional ideas and norms

The International Court of Justice and the Judicial Function Gleider I Hernández, 2014-05-29 This book evaluates the concept of the function of law through the prism of the International Court of Justice It goes beyond a conventional analysis of the Court's case law and applicable law to consider the compromise between supranational order and state sovereignty that lies at the heart of its institutional design It argues that this compromise prevents the Court from playing a progressive role in the development of international law Instead it influences the international legal order in more subtle ways in particular in shaping understanding of the nature or form of the international legal order as a whole The book concludes that the role of the Court is not to advance some universal conception of international law but rather to decide the cases before it in the best possible way within its institutional limits while remaining aware of law's deeper theoretical foundations The book considers three key elements firstly it examines the historical aspects of the Court's constitutive Statute and the manner in which it defines its judicial character Secondly it considers the drafting process the function of a dissenting opinion and the role of the individual judge in an attempt to discern insights on the function of the Court Finally the book examines the Court's practice in regard to three conceptual issues which assist in understanding the Court's function its theory of precedent its definition of the international community and its theory on the completeness of the international legal order

Equity Irit Samet, 2018-12-06 This book sets out to defend the claim that Equity ought to remain a separate body of law the temptation to iron out the differences between neighbouring doctrines on the two sides of the Equity Common Law divide should in most cases be resisted The theoretical part of the book argues that the characteristics of Equity namely appeal to conscience flexibility retroactivity and the use of morally freighted jargon are essential for the implementation of a legal ideal that has been neglected by the Common Law Accountability Correspondence According to this fundamental legal ideal liability imposed by legal rules should correspond to the pattern of moral duty in the circumstances to which the rules apply Equity promotes this ideal in the fields of property and obligations by disallowing parties to exploit the rule like nature of Common Law norms in a way that breaches their moral duty to the other party By reference to various equitable doctrines it is argued that the faults

identified by critics of Equity especially from the perspective of the Rule of Law are highly exaggerated and that the criticism often reflects a political belief in the supremacy of individualism and free market over empathy and social justice The theoretical part is followed by three chapters each dedicated to an in depth analysis of the equitable doctrines of fiduciary duties proprietary estoppel and clean hands For each doctrine it is shown how their equitable characteristics are indispensable for achieving their social ethical and economic purpose

Form in Intellectual Property Law David Booton, 2017-06-30 This book sets out to expose analyse and evaluate the conflicting conceptions of legal judgment that operate in intellectual property law Its central theme is the opposition between law making by way of the creation of generally applicable rules and law making done at the point of application through case by case decisions tailored to the particulars of individual circumstances Through an exploration of form the analysis sets out to provide insights into how intellectual property law achieves a balance between various competing interests

Legitimate Expectations in the Common Law World Matthew Groves, Greg Weeks, 2017-01-12 The recognition and enforcement of legitimate expectations by courts has been a striking feature of English law since *R v North and East Devon Health Authority ex parte Coughlan* 2001 3 QB 213 Although the substantive form of legitimate expectation adopted in *Coughlan* was quickly accepted by English courts and received a generally favourable response from public law scholars the doctrine of that case has largely been rejected in other common law jurisdictions The central principles of *Coughlan* have been rejected by courts in common law jurisdictions outside the UK for a range of reasons such as incompatibility with local constitutional doctrine or because they mark an undesirable drift towards merits review The sceptical and critical reception to *Coughlan* outside England is a striking contrast to the reception the case received within the UK This book provides a detailed scholarly analysis of these issues and considers the doctrine of legitimate expectations both in England and elsewhere in the common law world

General Defences in Criminal Law Alan Reed, Michael Bohlander, 2016-04-15 The law relating to general defences is one of the most important areas in the criminal law yet the current state of the law in the United Kingdom reveals significant problems in the adoption of a consistent approach to their doctrinal and theoretical underpinnings as exemplified by a number of recent developments in legislation and case law A coherent and joined up approach is still missing This volume provides an analysis of the main contentious areas in British law and proposes ways forward for reform The collection includes contributions from leading experts across various jurisdictions Part I examines the law in the United Kingdom with specialist contributions on Irish and Scottish law Part II consists of contributions by authors from a number of foreign jurisdictions all written to a common research grid for maximum comparability which provide a wider background of how other legal systems treat problems relating to general defences in the context of the criminal law and which may serve as points of reference for domestic law reform

Franchisees as Consumers Jenny Buchan, 2012-11-07 Franchising is an increasingly important global business model but how well protected are franchisees the people who operate and make any franchise system really

work In this book the author explores the many different roles that franchisees play in modern business and their importance to the success of every franchise arrangement As well as providing a comprehensive overview and analysis of the legal context of modern franchising relationships and the different measures taken to deal with franchisee concerns the author examines the weak links in contemporary franchising the areas where franchisees are rarely appropriately protected Despite all the rhetoric franchisees remain awkwardly accommodated within the law and they are in need of attention through improved consumer protection corporate governance and business insolvency bankruptcy laws Franchisees As Consumers examines why franchisees remain more vulnerable under the law than employees and suppliers and what can be done about it

Comparative Privacy and Defamation András Koltay, Paul Wragg, 2020-07-31 Providing comparative analysis that examines both Western and non Western legal systems this wide ranging Handbook expands and enriches the existing privacy and defamation law literature and addresses the fundamental issues facing today's scholars and practitioners Comparative Privacy and Defamation provides insightful commentary on issues of theory and doctrine including the challenges of General Data Protection Regulations GDPR and the impact of new technologies on the law

Administrative Law in Action Robert Thomas, 2022-02-10 This book investigates and analyses how administrative law works in practice through a detailed case study and evaluation of one of the UK's largest and most important administrative agencies the immigration department In doing so the book broadens the conversation of administrative law beyond the courts to include how administrative agencies themselves make apply and enforce the law Blending theoretical and empirical administrative legal analysis the book demonstrates why we need to pay closer attention to what government agencies actually do how they do it how they are organised and held to account Taking a contextual approach the book provides a detailed analysis of how the immigration department performs its core functions of making policy and law taking mass casework decisions and enforcing immigration law The book considers major recent episodes of immigration administration including the development of the hostile environment policy and the treatment of the Windrush generation By examining a diverse range of material the book presents a model of administrative law based upon the organisational competence and capacity of administration and its institutional design Alongside diagnosing the immigration department's failings the book advances positive proposals for its reform

A Unified Approach to Contract Interpretation Ryan Catterwell, 2020-07-23 Interpretation or construction is central to the operation of contract law Despite the fundamental role it plays there have been limited attempts to explain construction in holistic terms This important book aims to fill that gap by offering a systematic exposition of the iterative process It also goes further suggesting practical solutions to disputes regarding questions of interpretation The book argues that construction is not simply about establishing what words mean it is a process through which objective intention is inferred from the choice of words in a contract The interpretive process involves four steps formulate the question of interpretation in dispute explore competing answers to the question analyse the

admissible material supporting each interpretation and weigh and balance the competing considerations By so doing the book offers a simple yet sophisticated framework for interpreting constructing contracts Good Judgment Robert J. Sharpe, 2018-10-11 Good Judgment based upon the author's experience as a lawyer law professor and judge explores the role of the judge and the art of judging Engaging with the American English and Commonwealth literature on the role of the judge in the common law tradition Good Judgment addresses the following questions What exactly do judges do What is properly within their role and what falls outside How do judges approach their decision making task In an attempt to explain and reconcile two fundamental features of judging namely judicial choice and judicial discipline this book explores the nature and extent of judicial choice in the common law legal tradition and the structural features of that tradition that control and constrain that element of choice As Sharpe explains the law does not always provide clear answers and judges are often left with difficult choices to make but the power of judicial choice is disciplined and constrained and judges are not free to decide cases according to their own personal sense of justice Although Good Judgment is accessibly written to appeal to the non specialist reader with an interest in the judicial process it also tackles fundamental issues about the nature of law and the role of the judge and will be of particular interest to lawyers judges law students and legal academics

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