UNRULY CURRENTS IN THE STREAM OF THOUGHT

LEGAL SYSTEM AND LAWYERS' REASONINGS. By Julius Stone. [Sydney: Maitland Publ., London: Stevens and Sons, Ltd., 1964. xxiv + 454 pp. £ 3 15s net.]

Since 1946, when Stone's Province and Function of Law burst like a bombshell upon the two legal hemispheres of academics and practitioners, the hymns of praise have not subsided. Some fifteen years ago this reviewer, in need of the support of that book and its penetrating analysis, contributed a few short lines of his own to the chorus: "Stone shows throughout...that he...enjoyed many games in the field of formal logic before he wrote it. His appraisal of the role of syllogistic logic in the law is exactly the proper account which the so-called logical legal philosophers have not rendered."

There is no need to change these lines or to add to them and there is little purpose in adapting any other old, but still up-to-date, compliment paid to the Province and Function of Law to the "successor books" of which the above-mentioned and Human Law and Human Justice (1965) are now in print and the third will soon be published. It is already obvious that these new volumes will be as sought-after, as indispensable, as the original work. Yet some fascinating and useful reviews may still be written on these "systems" and "reasonings" and in particular on the deeper philosophical currents and sources which sparkle even more in the 1964 vintage than in that of 1946. The task would, however, make great demands on time, even for someone who has worked alongside the author over a much longer period than this writer, who was privileged to assist in the preparation of the forthcoming volume only. Instead of such a thorough enquiry and within the limits set by the editors of this journal an attempt will be made to sketch in brief outline the relevance of the nonlegal authors cited by Stone, and their relation—at first sight perhaps somewhat loose—to the legal problems which are the main concern of the book.

Stone warns his readers, on page 10, possibly a little late for some of those for whom the warning is intended, that his "work and its projected sequels do not aspire to be read by one who runs." One can, however, venture even further: the book under review, apart from not being for "runners", can be appreciated to the full only by "ponderers", by people who themselves have pondered over its perplexing problematics. It is above all for those who know how eternal doubt turns answers into questions and solutions into riddles.

Readers with little "pondering" inclination of their own and with an exaggerated faith in the empty clamour for crisp "unambiguous" legal texts or for a greater "logification" of legal science must expect a number of shocks such as: "no single meaning that is both determinate and stable can usually be fixed on any word; plurisignation (or polysemy) is a pervading quality of words" (p. 31). Even if a context has some sort of "ordinary meaning", "the context changes with time, and with all that time changes" (ibid.). After all these shocks they will never-

Legal System And Lawyers Reasonings

Gidon Gottlieb

Legal System And Lawyers Reasonings:

Legal System and Lawyers' Reasonings Julius Stone, 2004 **Legal System and Lawyers' Reasonings** Julius **Reasoning with Law** Andrew Halpin, 2001-12-31 The reader is invited to follow a route that visits Fish s Stone, 1968 view of theory and practice Raz s legal reasoning thesis theoretical models of judicial review Dworkin s right answer thesis the law of the excluded middle and Lukasiewicz s development of three valued logic Wittgenstein s language games and Moore's metaphysical realism The destination is the practice at the heart of legal reasoning It is suggested that this manifests the way in which the limitations of language and the incompleteness of human experience allow the opportunity for coherent development of the law and at the same time produce an inherent incoherence within the law The central part of the book seeks to demonstrate how the problems of understanding legal reasoning replicate difficulties encountered in the philosophy of language but challenges the attempts that have been made to harness approaches from within that discipline to illuminate legal reasoning Instead it is argued that law provides an unrivalled test bed for examining the limits of the capacity of our words and that the study of law may be used to confront in a robust and illuminating manner the limitations of that discipline The final chapter considers some of the implications of recognising the incoherence at the heart of legal reasoning commenting on an institutional approach to law the legitimacy of law legal definitions different approaches to legal reasoning the role of appellate courts the general possibility of providing a theoretical model of law the use of legal rules and the nature of law s critical aperture. The book should be of interest to advanced undergraduate students particularly on jurisprudence courses postgraduate students academics and practitioners concerned to reflect on the nature of the discipline **Legal System and Lawyers' Reasonings** Julius Stone, 1964 they practice Interpretation. Law and the **Construction of Meaning** Anne Wagner, Wouter Werner, Deborah Cao, 2007-05-16 Legal semiotics emphasizes the contingency and fluidity of legal concepts and stresses the existence of overlapping competing and coexisting legal discourses In response to new problems changing power structures changing societal norms and new faces of injustice established doctrines are reconsidered reformulated and partly replaced by competing doctrines and hypotheses Given the relative indeterminacy of law it is no surprise that the problem of interpretation has always been one of the focal points of attention for legal semiotics. Who has the power to define words and concepts Who can successfully assume the power to speak on behalf of the legal community Which methods are used to justify the power to define This book discusses the questions mentioned above from three related perspectives Legal theory Part I Judicial reasoning Part II Application of law in politics and diplomatic practice Part III The Continuity of Legal Systems in Theory and Practice Benjamin Spagnolo, 2015-10-22 The Continuity of Legal Systems in Theory and Practice examines a persistent and fascinating question about the continuity of legal systems when is a legal system existing at one time the same legal system that exists at another time The book s distinctive approach to this question is to combine abstract critical analysis of two of the most developed

theories of legal systems those of Hans Kelsen and Joseph Raz with an evaluation of their capacity in practice to explain the facts attitudes and normative standards for which they purport to account That evaluation is undertaken by reference to Australian constitutional law and history whose diverse and complex phenomena make it particularly apt for evaluating the theories explanatory power In testing whether the depiction of Australian law presented by each theory achieves an adequate fit with historical facts the book also contributes to the understanding of Australian law and legal systems between 1788 and 2001 By collating the relevant Australian materials systematically for the first time it presents the case for reconceptualising the role of Imperial laws and institutions during the late nineteenth and early twentieth centuries and clarifies the interrelationship between Colonial State Commonwealth and Imperial legal systems both before and after Federation

Why Grundnorm? Uta Bindreiter, 2002-12-31 Who presupposes Kelsen's basic norm Is it possible to defend the presupposition in a way that is convincing And what difference does the presupposition make Endeavouring to highlight the role of basic assumptions in the law the author argues that the verb to presuppose with Kelsen has not only a conceptual but also a normative dimension and that the expression presupposing the basic norm is adequate in so far as it marks the descriptive normative nature of utterances made in specifically legal speech situations Addressed to legal theorists in general the treatise purports to show that Kelsen's doctrine lends itself to an interpretation according to which the very act of presupposing the Grundnorm can be understood as a Grund i e normative source of all positive law and what is more that this interpretation admits of addressing the issue of the formal legitimacy of supra national and directly applicable rules and Reasoning in Ethics and Law Albert W. Musschenga, Wim J. van der Steen, 2017-03-02 Legal and moral other norms reasoning share much methodology and they address similar problems This volume charts two shared problems the relation between theory principles and particular judgments and the role of facts and factual assertions in normative settings The relation between theory and practice and between principle and particular judgment has become the subject of much debate in moral philosophy In the ongoing debate some moral philosophers refer to legal philosophy for a support of their views on the primacy of practice over theory According to them legal philosophy should have a more balanced view in that relation In the contributions to Part One this claim is critically analysed The role of the facts is underestimated in discussions on legal reasoning and legal theory as well as moral reasoning and ethical theory Factual statements enter into moral and legal discussions not only because they link the conclusion with a rule They also play a role as background assumptions in supporting a theory Its focus on the role of facts in normative reasoning makes this book of special interest to scholars of Informatics and the Foundations of Legal Reasoning Z. Bankowski, I. White, Ulrike legal and moral argumentation Hahn, 2013-03-09 Informatics and the Foundations of Legal Reasoning represents a close collaboration between a wide range of disciplines and countries Fourteen papers together with a long analytical introduction by the editors were selected from the contributions of legal theorists computer scientists philosophers and logicians who were members of an International

Working Group supported by the European Commission The Group was mandated to work towards determining how far the law is amenable to formal modeling and in what ways computers might assist legal thinking and practice The book is the result of discussions held by the Group over two and half years It will help students and researchers from different backgrounds to focus on a common set of topics of increasing general interest It embodies the results of work in progress and suggests many issues for further discussion A stimulating text for undergraduate and graduate courses in law philosophy and computer science departments as well as for those interested in the place of computers in legal practice especially at the international level

The Legal System Lawrence M. Friedman,1975-08-01 Examines the impact of social forces on the legal system and how the rules and orders promulgated by that legal system affect social behavior Dr Friedman explores the relationship between class structure and the work of legal systems in the light of the existing literature and analyzes the influence of the cultural elements contained in a legal system In a comprehensive analysis of the concept of legal culture the author sheds new light on the development of our legal norms and the types of legal systems which prevail in a democracy

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 **Legal science, philosophy** Jacques Havet, 2019-06-04 No detailed description available for Legal science philosophy A Pragmatic Legal Expert System James Popple,1996-05-21 Most legal expert systems attempt to implement complex models of legal reasoning This book argues that a complex model is unnecessary It advocates a simpler pragmatic approach in which the utility of a legal expert system is evaluated by reference not to the extent to which it simulates a lawyer's approach to a legal problem but to the quality of its predictions and of its arguments The author describes the development of a legal expert system called SHYSTER which takes a pragmatic approach to case law He discusses the testing of SHYSTER in four different and disparate areas of case law and draws conclusions about the advantages and limitations of this approach to legal expert system development Chapter 1 presents a critical analysis of previous work of relevance to the development of legal expert systems Chapter 2 explains the pragmatic approach that was adopted in the development of SHYSTER The implementation of SHYSTER is detailed using examples in chapter 3 Chapter 4 describes the testing of SHYSTER and conclusions are drawn from those tests in chapter 5

Examples of SHYSTER's output are provided in appendices **Legal Technique** Christopher Enright, 2002 This title is no longer stocked by us It is now available directly from Christopher Enright cenrigh2 une edu au How should lawyers go about their tasks in working with law in making interpreting using reading and writing law Enright's book describes clear and simple techniques for working with law It explains why the technique is needed and what it achieves and then provides a model for doing it Each model consists of a step by step guide for performing the relevant task Legal Technique is structured to be the textbook in an introductory law course where the techniques are described and intended for re use in later courses on substantive law where these techniques must be further taught and practised in the context of those subjects Legal Technique is accompanied by a free Legal Technique eWorkbook see Supplement containing materials questions and answers Included are exercises for working with statutes cases legal texts and for solving legal problems further exercises to practise approaches to common law and statutory law subjects generally and specific exercises for the subjects Introduction to Law Constitutional Law and Property Law The Logic of Choice Gidon Gottlieb, 2019-10-30 Originally published in 1968 This is a critical study of the concept of rule featuring in law ethics and much philosophical analysis which the author uses to investigate the concept of rationality The author indicates in what manner the modes of reasoning involved in reliance upon rules are unique and in what fashion they provide an alternative both to the modes of logico mathematical reasoning and to the modes of scientific reasoning This prepares the groundwork for a methodology meeting the requirements of the fields using rules such as law and ethics which could be significant for communications theory and the use of computers in normative fields Other substantive issues related to the mainstream of legal philosophy are discussed theories of interpretation the notion of purpose and the requirements of principled decision making The book utilizes examples drawn from English and American legal decisions to suggest how the positions of legal positivism and of natural law are equally artificial and misleading Talmudic Reasoning Leib Moscovitz, 2002 The development of explicit legal concepts and principles in rabbinic literature reflects rabbinic legal thought at its most creative and sophisticated as many of these concepts and principles deal with abstract metaphysical entities In this study Leib Moscovitz systematically surveys the development and impact of abstraction and conceptualization in the various legal corpora of rabbinic literature illustrating the critical and unique role that conceptualization plays in talmudic reasoning He demonstrates how the analysis of rabbinic conceptualization can shed light on numerous important aspects of rabbinic scholarship such as the character and development of rabbinic legal thought techniques of rabbinic legal exegesis rabbinic jurisprudence and various philological and historical issues in rabbinics such as the chronology of the anonymous stratum of the Babylonian Talmud Rabbinic conceptualization though unique in many respects shares certain features with cognate disciplines and this study utilizes these disciplines mainly jurisprudence cognitive psychology and philosophy to illuminate rabbinic conceptualization wherever relevant The themes addressed in this study include the use of casuistics generalization and implicit conceptualization in the

earlier strata of rabbinic literature classification and legal definition legal fictions legal explanation analogy and association and the development and use of explicit legal concepts and principles in the later strata of rabbinic literature 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 **Legal Reasoning** Martin P. Golding, 2001-03-02 In a book that is a blend of text and readings Martin P Golding explores legal reasoning from a variety of angles including that of judicial psychology The primary focus however is on the logic of judicial decision making How do judges justify their decisions What sort of arguments do they use In what ways do they rely on legal precedent Golding includes a wide variety of cases as well as a brief bibliographic essay updated for this Broadview Encore Edition Law and Legal Theory in Classical and Medieval Islam Wael B. Hallaq, 2022-02-23 These studies by Wael Hallaq represent an important contribution to our understanding of the neglected field of medieval Islamic law and legal thought Spanning the period from the 8th to the 16th centuries they draw upon a wide range of original sources to offer both fresh interpretations of those sources and a careful evaluation of contemporary scholarship The first articles expound the interrelated issues of legal reasoning legal logic and the epistemology of the law There follows a set of primarily historical studies which question a series of widely held assumptions while the last items explore issues of legal theory and methodology One particular topic concerns the role of Shafi i as the master architect of Islamic legal theory and Professor Hallaq would finally argue that this image is in fact false and a creation of later centuries Form and Substance in the Law of Obligations Andrew Robertson, James Goudkamp, 2019-11-28 This volume explores the relationship between form and substance in the law of obligations It builds on the rich tradition of legal thought that deploys the concepts of form and substance to inform our understanding of the common law The essays in this collection offer multiple conceptions of form and substance and cover an array of private law subjects scholarly approaches and jurisdictions The collection makes it clear that the interplay between form and substance is a key element of the dynamism that characterises this area of the law

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