

FORM AND
FUNCTION
IN A LEGAL SYSTEM
A General Study

ROBERT S. SUMMERS

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Form And Function In A Legal System A General Study

Martin Belov



Form And Function In A Legal System A General Study:

Form and Function in a Legal System Robert S. Summers, 2005-11-14 This book addresses three major questions about law and legal systems 1 What are the defining and organising forms of legal institutions legal rules interpretative methodologies and other legal phenomena 2 How does frontal and systematic focus on these forms advance understanding of such phenomena 3 What credit should the functions of forms have when such phenomena serve policy and related purposes rule of law values and fundamental political values such as democracy liberty and justice This book seeks to offer general answers to these questions and thus gives form in the law its due The answers not only provide articulate conversancy with the subject but also reveal insights into the nature of law itself the oldest and foremost problem in legal theory and allied subjects

The Great Adaptation Guilherme Pratti, 2024-12-09 This timely book puts forward a novel understanding of the ongoing relationship between the law regulation technology and science with the goal of helping to mitigate and adapt to the severe environmental and societal impacts of climate change

Necessity and Proportionality in International Peace and Security Law Claus Kreß, Robert Lawless, 2021 There are legal limits on the circumstances under which states may use military force to address a perceived or actual threat The concepts of necessity and proportionality are central to these limitations imposed by the law Necessity and Proportionality in International Peace and Security Law explores the many ways in which necessity and proportionality arise in the law on the modern battlefield which is rapidly changing complex and ambiguous

The Making of Legal Authority Nils Jansen, 2010 Accounts of the nature of legal authority typically focus on the authority of officially sanctioned rules issued by legally recognised bodies legislatures courts and regulators that fit comfortably within traditional state centred concepts of law Such accounts neglect the more complex processes involved in acquiring legal authority Throughout the history of modern legal systems texts have come to acquire authority for legal officials without being issued by a legislature or a court From Justinian's Institutes and Blackstone's Commentaries to modern examples such as the American Law Institute's Restatements and the UNIDROIT Principles of International Commercial Contracts academic codifications have come to be seen as legally authoritative and their norms applied as such in courts and other contexts How have such texts acquired legal authority Does their authority undermine the orthodox accounts of the nature of legal systems Drawing on examples from Roman law to the present day this book offers the first comparative analysis of non legislative codifications It offers a provocative contribution to the debates surrounding the harmonisation of European private law and the growth of international law

Constitutional Rights and Constitutional Design Paul Yowell, 2018-04-26 The decisions courts make in constitutional rights cases pervade our political life and touch on our most basic interests and values The spread of judicial review of legislation around the world means that courts are increasingly called on to settle matters of moral and political controversy including assisted suicide data privacy anti terrorism measures marriage and abortion But doubts regarding the institutional capacities of courts for deciding such

questions are growing Judges now regularly review social science research to assess whether a law will effectively achieve its aim and at what cost to other interests They cite studies and statistical information from psychology sociology medicine and other disciplines in which they are rarely trained This empirical reasoning proceeds alongside open ended moral reasoning with judges employing terms such as equality liberty and autonomy then determining what these require in concrete circumstances This book shows that courts were not designed for this kind of moral and empirical reasoning It argues that in comparison to legislatures the institutional capacities of courts are deficient Legislatures are better equipped than courts for deliberating and decision making in regard to the kinds of factual and moral issues that arise in constitutional rights cases The book concludes by considering the implications of comparative institutional capacity for constitutional design Is a system of judicial review of legislation something that constitutional framers should choose to adopt If so in what form For countries with systems of judicial review practical proposals are made to remedy deficiencies in the institutional capacities of courts

Relocating the Rule of Law Gianluigi Palombella, Neil Walker, 2008-12-18 In this set of interdisciplinary essays leading scholars discuss the future of the Rule of Law a concept whose meaning and import has become ever more topical and elusive Historically the term denoted the idea of government limited by law It has also come to be equated more broadly with certain goods suggested by the idea of legality as such including the preservation of human dignity and other individual and social benefits predicated upon or conducive to a rule based social order But in both its narrow and broader senses the Rule of Law remains a much contested concept These essays seek to capture the main areas and levels of controversy by relocating the Rule of Law not just at the philosophical level but also in its main contemporary arenas of application both national and increasingly supranational and international

Making Law Work Mattias Burell, Marina Svensson, 2011-04-30 By studying law implementation in different areas and at different levels contributors from various disciplines give a nuanced picture of law implementation in China showing that it is rare to find examples of complete success or failure Instead making law work in actual practice and in any society is a matter of degree The study is multidisciplinary in character and builds on insights from both sociology of law and political science

On Flat Ontologies and Law Michał Dudek, 2024-05-13 This book examines the importance of flat ontologies for law and sociolegal theory Associated with the emergence of new materialism in the humanities and social sciences the elaboration of flat ontologies challenges the binarism that has maintained the separation of culture from nature and the human from the nonhuman Although most work in legal theory and sociolegal studies continues to adopt a non flat anthropocentric and immaterial take on law the critique of this perspective is becoming more and more influential Engaging the increasing legal interest in flat ontologies this book offers an account of the main theoretical perspectives and their importance for law Covering the work of the five major theorists in the area Gabriel Tarde Bruno Latour Manuel DeLanda Karen Barad and Graham Harman the book aims to encourage this interest as well as to explicate the important problems of and differences between these perspectives

Flat ontologies the book demonstrates can offer a valuable new perspective for understanding and thinking about law This book will appeal mainly to scholars and students in legal theory and sociolegal studies as well as others with interests in the posthumanist turn in philosophy and social theory **The Oxford Handbook of the Sources of International Law** Jean d'Aspremont, Samantha Besson, Sévrine Knuchel, 2017-10-19 The question of the sources of international law inevitably raises some well known scholarly controversies where do the rules of international law come from And more precisely through which processes are they made how are they ascertained and where does the international legal order begin and end This is the static question of the pedigree of international legal rules and the boundaries of the international legal order Second what are the processes through which these rules are made This is the dynamic question of the making of these rules and of the exercise of public authority in international law The Oxford Handbook of the Sources of International Law is the very first comprehensive work of its kind devoted to the question of the sources of international law It provides an accessible and systematic overview of the key issues and debates around the sources of international law It also offers an authoritative theoretical guide for anyone studying or working within but also outside international law wishing to understand one of its most foundational questions This Handbook features original essays by leading international law scholars and theorists from a range of traditions nationalities and perspectives reflecting the richness and diversity of scholarship in this area

Property Law in a Globalizing World Amnon Lehavi, 2019-01-17 Property Law in a Globalizing World identifies the paramount challenges that contemporary processes of globalization pose for the study and practice of property law It offers a straightforward analysis of legal scenarios implicating cross border property rights covering a broad range of resources from land goods and intangible financial assets to intellectual property data and digital assets This is the first scholarly book offering a detailed study of legal strategies that can decrease the gap between the domestic tenets of property law and the cross border nature of markets interpersonal networks and technology It shows how strategies of soft law conflict of laws approximation and supranationalism rely to various degrees on cross border property norms and institutions and studies the proprietary features of security interests and priorities to assets in insolvency in a global setting It also shows how digital technology such as blockchain can revolutionize the system of cross border property rights The Rationality and Justification of Legislation Luc J. Wintgens, A. Daniel Oliver-Lalana, 2013-06-26 The essays collected in this book address legislation from the viewpoint of legal theory and provide an overview of current research in jurisprudence as a new scholarly approach to lawmaking The overall focus of the volume is on the justification of legislation with a special emphasis on the intricate notion of legislative rationality With the rational justification of legislation as their central theme the essays elaborate on the foundations and bounds of legislation and the search for a more principled lawmaking discuss the role of legislation within the framework of democratic constitutionalism analyze legislation as implementation of constitutional law and explore how legislative argumentation in parliament can be construed as a source of justification of laws **Searching**

for Contemporary Legal Thought Justin Desautels-Stein, Christopher Tomlins, 2017-12-28 For more than a century law schools have trained students to think like a lawyer In these times of legal crisis both in legal education and in global society what does that mean for the rest of us In this book thirty leading international scholars including Louis Assier Andrieu Marianne Constable Yves Dezalay Denise Ferreira da Silva Bryant Garth Peter Goodrich Duncan Kennedy Martti Koskenniemi Shaun McVeigh Samuel Moyn Annelise Riles Charles Sabel and William Simon examine what is distinctive about legal thought They probe the relation between law and time law and culture and legal thought and legal action the nature of current legal thought the geography of legal thought and the conditions for recognition of a new contemporary style of law This work will help theorists social scientists historians and students understand the intellectual context of legal problems legal doctrine and jurisprudential trends in the current conjuncture

The Constitutional Law of Bangladesh M Rafiqul Islam, Muhammad Ekramul Haque, 2023-07-25 This book provides a supportive lending hand to researchers of constitutional law worldwide about the constitutional law of Bangladesh Moreover this book discusses the evolution and development of the constitutional law of Bangladesh over 50 years from its embryonic stage with reference to comparative constitutional law This book is a very useful resource for the comparative constitutional researchers as readers will be able to easily interpret the constitutional law of Bangladesh from national regional and global constitutional law perspectives This book celebrates the fiftieth anniversary of the Constitution the first of its kind to portray the journey of constitutionalism in Bangladesh comprehensively with intellectual observations and palatable recommendations for improvement This book looks back to the constituent assembly debates intention of the constitution makers and how have those dreams and aspirations have come into realities what goals have been achieved what caused some failures and what should be its future directions At such a momentous point in history it is imperative that its native and foreign constitutional authoritative voices scholarly assess the constitutional design understand the reasons for its successes and occasional failures and ventilate their views towards its progressive development to elevate it to a new height in the 21st century and beyond The book chapters discuss not only the text of the constitution and some judicial precedents rather involve in a much larger task of unveiling the interpretative approach of the Constitution from a comparative constitutional law perspective This book shall project the future roadmap for the journey of constitutionalism in Bangladesh throughout all chapters offering policy recommendations for the revision of the Constitution

Central European Judges Under the European Influence Michal Bobek, 2015-11-19 The onset of the 2004 EU enlargement witnessed a number of predictions being made about the approaches capacity and ability of Central European judges who were soon to join the Union Optimistic voices foreshadowing the deep transformative power that Europe was bound to exercise with respect to the judicial mentality and practice in the new Member States were intertwined with gloomy pictures of post Communist limited formalism and mechanical jurisprudence that could not be reformed which were likely to undermine the very foundations of mutual trust and

recognition the judicial system of the Union is built upon Ten years later this volume revisits these predictions and critically assesses the evolution of Central European judicial mentality institutions and constitutionality under the influence of the EU membership Comparatively evaluating the situation in a number of Central European Member States in their socio legal contexts notably Poland the Czech Republic Slovakia Hungary Slovenia Bulgaria and Romania the volume offers unique insights into the process of non Europeanisation of national legal systems and cultures *International Legal Positivism in a Post-Modern World* Jörg Kammerhofer, Jean D'Aspremont, 2014-10-06 *International Legal Positivism in a Post Modern World* provides fresh perspectives on one of the most important and most controversial families of theoretical approaches to the study and practice of international law The contributors include leading experts on international legal theory who analyse and criticise positivism as a conceptual framework for international law explore its relationships with other approaches and apply it to current problems of international law Is legal positivism relevant to the theory and practice of international law today Have other answers to the problems of international law and the critique of positivism undermined the positivist project and its narratives Do modern forms of positivism inspired largely by the theoretically sophisticated jurisprudential concepts associated with Hans Kelsen and H L A Hart remain of any relevance for the international lawyer in this post modern age The authors provide a wide variety of views and a stimulating debate about this family of approaches

Authority in Transnational Legal Theory Roger Cotterrell, Maksymilian Del Mar, 2016-09-30 The increasing transnationalisation of regulation and social life more generally challenges the basic concepts of legal and political theory today One of the key concepts being so challenged is authority This discerning book offers a plenitude of resources and suggestions for meeting that challenge Courts and Judicial Activism under Crisis Conditions Martin Belov, 2021-09-22 This collection examines topical issues related to the impact of courts on constitutional politics during extreme conditions The book explores the impact of activist courts on democracy separation of powers and rule of law in times of emergency constitutionalism It starts with a theoretical explanation of the concept features and main manifestations of judicial activism and its impact in shaping the relationship between constitutional international and supranational law It then focuses on judicial activism in extreme conditions for example in times of emergencies and pandemics or in the context of democratic backsliding authoritarian constitutionalism and illiberal constitutionalism Thus the book may be considered as a contribution to the debates on judicial activism including the discussion of the impact of courts on certainty proportionality and balancing of rights as well as on revolutionary courts challenging authoritarian context and generally over the role of courts in the context of illiberalism and democratic backsliding The volume thus offers an explanation of the concept of judicial activism its impact on both the legal system and the political order and the role of courts in shaping the structures of the legal order These issues are explored in theoretical and comparative constitutional perspectives The book will be a valuable resource for academics and researchers working in the areas of courts constitutional law and constitutional politics **Interpreting**

Crimes in the Rome Statute of the International Criminal Court Leena Grover, 2014-10-16 The Rome Statute of the International Criminal Court defines more than ninety crimes that fall within the Court's jurisdiction: genocide, other crimes against humanity, war crimes, and aggression. How these crimes are interpreted contributes to findings of individual criminal liability and moreover affects the perceived legitimacy of the Court. And yet to date there is no agreed upon approach to interpreting these definitions. This book offers practitioners and scholars a guiding principle, arguments, and aids necessary for the interpretation of international crimes. Leena Grover surveys the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda before presenting a model of interpretive reasoning that integrates the guidance within the Rome Statute into articles 31-33 of the Vienna Convention on the Law of Treaties 1969. Law in Theory and History Maksymilian Del Mar, Michael Lobban, 2016-11-17 This collection of original essays brings together leading legal historians and theorists to explore the oft-neglected but important relationship between these two disciplines. Legal historians have often been sceptical of theory. The methodology which informs their own work is often said to be an empirical one of gathering information from the archives and presenting it in a narrative form. The narrative produced by history is often said to be provisional insofar as further research in the archives might falsify present understandings and demand revisions. On the other side, legal theorists are often dismissive of historical works. History itself seems to many theorists not to offer any jurisprudential insights of use for their projects at best; history is a repository of data and examples which may be drawn on by the theorist for her own purposes. The aim of this collection is to invite participants from both sides to ask what lessons legal history can bring to legal theory and what legal theory can bring to history. What is the theorist to do with the empirical data generated by archival research? What theories should drive the historical enterprise and what wider lessons can be learned from it? This collection brings together a number of major theorists and legal historians to debate these ideas.

Essays on the Doctrinal Study of Law Aulis Aarnio, 2011-07-10 *Essays on the Doctrinal Study of Law* is a summary of the author's 40 years of research in the fields of civil law and the philosophy of law. The main focus is on the two main tasks in the doctrinal study of law: the interpretation and systematisation of legal norms. In this regard, Professor Aarnio deals with the theory of argumentation as well as with its foundations, i.e. with the ontology, epistemology, and methodology of legal thinking and develops the ideas that were first presented in *The Rational as Reasonable* (Kluwer 1987) in all of these dimensions. The work includes an updated discussion on the writings of Robert Alexy, Jürgen Habermas, Ronald Dworkin, and Alf Ross. A focal point of view concerns the distinction between positivism and non-positivism in which the core of the criticism focuses on Scandinavian realism.

Form And Function In A Legal System A General Study Book Review: Unveiling the Power of Words

In some sort of driven by information and connectivity, the ability of words has be evident than ever. They have the capability to inspire, provoke, and ignite change. Such could be the essence of the book **Form And Function In A Legal System A General Study**, a literary masterpiece that delves deep to the significance of words and their impact on our lives. Compiled by a renowned author, this captivating work takes readers on a transformative journey, unraveling the secrets and potential behind every word. In this review, we will explore the book is key themes, examine its writing style, and analyze its overall effect on readers.

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