

Analyzing Law New Essays In Legal Theory

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New Essays on the Nature of Legal Reasoning
The Planning Theory of Law
A Companion to Philosophy of Law and Legal Theory
The Theory of Contract Law
Reasonableness and Responsibility: A Theory of Contract Law
Philosophical Foundations of Contract Law
New Essays on the Normativity of Law
Analytical Legal Naturalism
Ten Great Religions: An essay in comparative theology
New Essays on the Nature of Rights
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this is the first book to bring together distinguished jurisprudential theorists as well as up and coming scholars to critically assess the nature of legal reasoning the volume is divided into 3 parts the first part general jurisprudence and legal reasoning addresses issues at the intersection of general jurisprudence those pertaining to the nature of law itself and legal reasoning the second part rules and reasons addresses two concepts central to two prominent types of theory of legal reasoning the essays in the third and final part doctrine and practice delve into the mechanics of legal practice and doctrine from a legal reasoning perspective

this collection of essays is the outcome of a workshop with scott shapiro on the planning theory of law that took place in december 2009 at bocconi university it brings together a group of scholars who wrote their contributions to the workshop on a preliminary draft of shapiro s legality then after the workshop they wrote their final essays on the published version of the book the contributions clearly highlight the difference of the continental and civil law perspective from the common law background of shapiro but at the same time the volume tries to bridge the gap between the two the essays provide a critical reading of the planning theory of law highlighting its merits on the one hand and objecting to some parts of it on the other hand each contribution discusses in detail a chapter of shapiro s book and together they cover the whole of shapiro s theory so the book presents a balanced and insightful discussion of the arguments of legality

the articles in this new edition of a companion to philosophy of law and legal theory have been updated throughout and the addition of ten new articles ensures that the volume continues to offer the most up to date coverage of current thinking in legal philosophy represents the definitive handbook of philosophy of law and contemporary legal theory invaluable to anyone with an interest in legal philosophy now features ten entirely new articles covering the areas of risk regulatory theory methodology overcriminalization intention coercion unjust enrichment the rule of law law and society and kantian legal philosophy essays are written by an international team of leading scholars

although the law of contract is largely settled there appears to be no widely accepted comprehensive theory of its main principles and doctrines or of its normative basis contract law theory raises issues concerning the relation between law and morality the role and the importance of rights the connection between justice and economics and the distinction between private and public law this collection of six full length essays written by some of the most eminent scholars in the field explores the general theory of contract law from a variety of theoretical perspectives the volume addresses a wide range of issues both methodological and substantive in the theory and practice of

contract law while the essays build upon past theoretical contributions they also attempt to take contract theory further and suggest promising ways to develop theory of contract law

if as john rawls famously suggests justice is the first virtue of social institutions how are we to understand the institution of contract law this book proposes a rawlsian theory of contract law it argues that justice requires that we understand contract rules in terms of the idea of reasonable terms of interaction that is terms that would be accepted by reasonable persons moved by a desire for a social world in which they as free and equal can cooperate with others on terms they accept on that basis the book explains the main doctrines of contract law including those governing third parties in both the common law and the civil law

in recent years there has been a revival of interest in the philosophical study of contract law in 1981 charles fried claimed that contract law is based on the philosophy of promise and this has generated what is today known as the contract and promise debate cutting to the heart of contemporary discussions this volume brings together leading philosophers legal theorists and contract lawyers to debate the philosophical foundations of this area of law divided into two parts the first explores general themes in the contract theory literature including the philosophy of promising the nature of contractual obligation economic accounts of contract law and the relationship between contract law and moral values such as personal autonomy and distributive justice the second part uses these philosophical ideas to make progress in doctrinal debates relating for example to contract interpretation unfair terms good faith vitiating factors and remedies together the essays provide a picture of the current state of research in this revitalized area of law and pave the way for future study and debate

an important part of the legal domain has to do with rule governed conduct and is expressed by the use of notions such as norm obligation duty and right these require us to acknowledge the normative dimension of law normativity is accordingly to be regarded as a central feature of law lying at the heart of any comprehensive legal theoretical project the essays collected in this book are meant to further our understanding of the normativity of law more specifically the book stages a thorough discussion of legal normativity as approached from three strands of legal thought that are particularly influential and which play a key role in shaping debates on the normative dimension of law the theory of planning agency legal conventionalism and the constitutivist approach while the essays presented here do not aspire to give an exhaustive picture of these debates an aspiration that would be by its very nature unrealistic they do provide the reader with some authoritative statements of some widely discussed

families of views of legal normativity in pursuing this objective these essays also encourage a dialogue between different traditions of study of legal normativity stimulating those who would not otherwise look outside their tradition of thought to engage with new ideas and ultimately to arrive at a more comprehensive account of the normativity of law

in legal jurisprudence the phenomenon of hard cases presents itself as a dilemma between the legal positivists and the natural law realists of the former without the metaphysical underpinnings of an objective legal or moral standard the legal positivists cannot supply convincing arguments to supplant the sovereign as the origin and authority of law the natural law realists face the problem of justifying the natural law against both views s zinaich jr defends a middle position analytical legal naturalism aln it represents an analytic norm both necessarily true and known a posteriori against the legal positivists it supplies an objective legal standard by removing at least for hard cases the necessity of the will of a sovereign authority against the natural law realists aln provides a nonmoral standard which because of its analyticity and necessity avoids the need for metaethical speculation finally aln provides a standard that not only supplies the universalizable punch to avoid political subjectivism but does so in a conventional manner thus aln does not require a moral or modal reality as truth making characteristics rather it makes what is legally valuable or disvaluable dependent upon empirically verifiable facts that are legally relevant

this original collection of jurisprudential essays furthers our understanding of the nature of rights in part 1 halpin considers the value of hohfeldian neutrality when theorising about law in general and legal rights in particular and kurki focuses on hohfeld's operative notion of power in part 2 kramer rebuts wenar's objections to his interest theory of rights and may provides a comparative defence of the interest theory against wenar's kind desire theory of claim rights penner then pursues legal doctrine focusing on whether judges hold the powers of their office as rights an issue over which wenar and kramer have clashed sreenivasan utilising a novel test case involving pure public goods argues that the third party beneficiary objection to the interest theory is fatal mcbride builds on sreenivasan's hybrid theory of claim rights to construct his new tracking theory of rights cruft then argues that the best extant versions of the interest and will theories of rights cannot avoid a form of circularity and van duffel argues that meeting four adequacy constraints which he proposes counts in favour of any theory of rights in part 3 andersson proposes a tie breaking procedure for rights conflicts in the applied realm of politics and steiner concludes by alleging that kant's principle of right a standard of corrective justice has distributive implications a

fine collection of cutting edge essays on the most important normative concept of modernity professor leif wenar king s college london this important collection proceeds much beyond the famous 1998 a debate over rights which sets the stage for the debates concerning rights since then it explores three aspects of rights first it re examines the hohfeldian classification and highlights its importance and relevance second it investigates and develops the debates between the interest and the will theory it includes essays by the main established proponents of these two positions as well as essays by newcomers to this field the different essays in this part address each other in ways which sharpen and clarify the disagreements and provide new original arguments for the contending views last it provides a new perspective on the debates concerning conflicts of rights and the ways to overcome them this collection will no doubt dominate the future conceptual discussions concerning the nature of rights and their role in political theory professor alon harel the hebrew university of jerusalem

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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 résumé de l éditeur

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Introduction

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