Modern Statutory Interpretation Problems Theories And Lawyering Strategies

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Law, Hermeneutics and Rhetoric Francis J. Mootz Iii 2016-04-22 Mootz offers an antidote to the fragmentation of contemporary legal theory with a collection of essays arguing that legal practice is a hermeneutical and rhetorical event that can best be understood and theorized in those terms. This is not a modern insight that wipes away centuries of dogmatic confusion; rather, Mootz draws on insights as old as the Western tradition itself. However, the essays are not antiquarian or merely descriptive, because hermeneutical and rhetorical philosophy have undergone important changes over the millennia. To "return" to hermeneutics and rhetoric as touchstones for law is to embrace dynamic traditions that provide the resources for theorists who seek to foster persuasion and understanding as an antidote to the emerging global order and the trend toward bureaucratization in accordance with expert administration, violent suppression, or both.

Literary Criticisms of Law Guyora Binder 2000-02-22 In this book, the first to offer a comprehensive examination of the emerging study of law as literature, Guyora Binder and Robert Weisberg show that law is not only a scheme of social order, but also a process of creating meaning, and a crucial dimension of modern culture. They present lawyers as literary innovators, who creatively interpret legal authority, narrate disputed facts and hypothetical fictions, represent persons before the law, move audiences with artful rhetoric, and invent new legal forms and concepts. Binder and Weisberg explain the literary theories and methods increasingly applied to law, and they introduce and synthesize the work of over a hundred authors in the fields of law, literature, philosophy, and cultural studies. Drawing on these disparate bodies of scholarship, Binder and Weisberg analyze law as interpretation, narration, rhetoric, language, and culture, placing each of these approaches within the history of literary and legal thought. They sort the styles of analysis most likely to sharpen critical understanding from those that risk self-indulgent sentimentalism or sterile skepticism, and they endorse a broadly

synthetic cultural criticism that views law as an arena for composing and contesting identity, status, and character. Such a cultural criticism would evaluate law not simply as a device for realizing rights and interests but also as the framework for a vibrant cultural life.

Houston Business and Tax Law Journal 2007

Reading Law Antonin Scalia 2012 In this groundbreaking book, Scalia and Garner systematically explain all the most important principles of constitutional, statutory, and contractual interpretation in an engaging and informative style with hundreds of illustrations from actual cases. Is a burrito a sandwich? Is a corporation entitled to personal privacy? If you trade a gun for drugs, are you using a gun in a drug transaction? The authors grapple with these and dozens of equally curious questions while explaining the most principled, lucid, and reliable techniques for deriving meaning from authoritative texts. Meanwhile, the book takes up some of the most controversial issues in modern jurisprudence. What, exactly, is "textualism?" Why is "strict construction" a bad thing? What is the true doctrine of "originalism?" And which is more important: the spirit of the law, or the letter? The authors write with a well-argued point of view that is definitive yet nuanced, straightforward yet sophisticated.

Elements of Legislation Neil Duxbury 2012-11-01 Neil Duxbury combines analytical legal philosophy and legal history to explore the concept of legislation.

International Dispute Resolution and the Public Policy Exception Farshad Ghodoosi 2016-06-10 Despite the unprecedented growth of arbitration and other means of ADR in treaties and transnational contracts in recent years, there remains no clearly defined mechanism for control of the system. One of the oldest yet largely marginalized concepts in law is the public policy exception. This doctrine grants discretion to courts to set aside private legal arrangements, including arbitration, which might be considered harmful to the "public". The exceptional and vague nature of the doctrine, along with the strong push of actors in dispute resolution, has transformed it, in certain jurisdictions, to a toothless doctrine. At the international level, the notion of transnational public policy has been devised in order to capture norms that are "truly" transnational and amenable for application in cross-border litigations. Yet, despite the importance of this discussion—a safety valve and a control mechanism for today's international and domestic international dispute resolution— no major study has ventured to review and analyze it. This book provides a historical, theoretical and practical background on public policy in dispute resolution with a focus on cross-border and transnational disputes. Farshad Ghodoosi argues that courts should adopt a more systemic approach to public policy while rejecting notions such as transnational public policy, which limits the application of those norms with mandatory nature. Contrary to the current trend, the book invites the reader to re-conceptualize the role of public policy, and transnational dispute resolution, in order to have more sustainable, fair and efficient mechanisms for resolving disputes outside of national courts. The book sheds light on one of the most important yet often-neglected control mechanisms of today's international dispute resolution and will be of particular interest to students and academics in the fields of International Investment Law, International Trade Law, Business and Economics.

Dynamic Statutory Interpretation William N. Eskridge 1994 Contrary to traditional theories of statutory interpretation, which ground statutes in the original legislative text or intent, legal scholar William Eskridge argues that statutory interpretation changes in response to new political alignments, new interpreters, and new ideologies. It does so, first of all, because it involves richer authoritative texts than does either common law or constitutional interpretation: statutes are often complex and have a detailed legislative history. Second, Congress can, and

often does, rewrite statutes when it disagrees with their interpretations; and agencies and courts attend to current as well as historical congressional preferences when they interpret statutes. Third, since statutory interpretation is as much agency-centered as judgecentered and since agency executives see their creativity as more legitimate than judges see theirs, statutory interpretation in the modern regulatory state is particularly dynamic. Eskridge also considers how different normative theories of jurisprudence--liberal, legal process, and antiliberal--inform debates about statutory interpretation. He explores what theory of statutory interpretation--if any--is required by the rule of law or by democratic theory. Finally, he provides an analytical and jurisprudential history of important debates on statutory interpretation.

Logic in the Theory and Practice of Lawmaking Michał Araszkiewicz 2015-10-05 This book presents the current state of the art regarding the application of logical tools to the problems of theory and practice of lawmaking. It shows how contemporary logic may be useful in the analysis of legislation, legislative drafting and legal reasoning concerning different contexts of law making. Elaborations of the process of law making have variously emphasised its political, social or economic aspects. Yet despite strong interest in logical analyses of law, questions remains about the role of logical tools in law making. This volume attempts to bridge that gap, or at least to narrow it, drawing together some important research problems—and some possible solutions—as seen through the work of leading contemporary academics. The volume encompasses 20 chapters written by authors from 16 countries and it presents diversified views on the understanding of logic (from strict mathematical approaches to the informal, argumentative ones) and differentiated choices concerning the aspects of law making taken into account. The book presents a broad set of perspectives, insights and results into the emerging field of research devoted to the logical analysis of the area of creation of law. How does logic inform lawmaking? Are legal systems consistent and complete? How can legal rules be represented by means of formal calculi and visualization techniques? Does the structure of statutes or of legal systems resemble the structure of deductive systems? What are the logical relations between the basic concepts of jurisprudence that constitute the system of law? How are theories of legal interpretation relevant to the process of legislation? How might the statutory text be analysed by means of contemporary computer programs? These and other questions, ranging from the theoretical to the immediately practical, are addressed in this definitive collection.

Qualified Domestic Relations Orders: Strategy and Liability for the Family Law Attorney Plus Military Retired Pay Primer, 2015 Edition Raymond S. Dietrich 2016-10-12 While many family law attorneys outsource preparation of QDROs to other professionals, the attorney still requires guidance on how to best protect his client's interests. Author Raymond S. Dietrich provides a tightly focused analysis, the necessary information and the strategies critical to properly positioning a case. Effective strategies in negotiating settlement of interests in retirement benefits are poorly understood partly because many family law attorneys send the task out to a specialist, use a form book to draft a QDRO or accept the pension plan administrator's offer of the "standard provisions." This book provides a succinct education regarding the structure of many pension plans, alerts the practitioner to unknown contingencies, empowers the attorney with negotiating strategies and warns of potential attorney liability. QDRO Strategy and Liability complements all state-specific and national dissolution practice sets and online family law menus in the handling of retirement benefits, one of the most common and important assets in marital dissolution proceedings. This top-of-the-line coverage is a necessary addition for all family law attorneys handling significant asset cases, as

well as forensic CPAs and pension plan administrators. A Table of Cases, a Table of Statutes and an Index complement the synopses at the beginning of each chapter to make analysis and authority easy to find.

Understanding Common Law Legislation F. A. R. Bennion 2001-10-18 Many countries use and apply the common law. The common law world largely operates through statutes enacted by a country's democratic legislature. These statutes are drafted and interpreted according to a uniform system of rules, presumptions, principles and canons evolved over centuries by common law judges. In this book, Francis Bennion distills forty years of his prolific writings on statute law and statutory interpretation to provide valuable guidance on statutory interpretation applicable to all common law jurisdictions.

Statutory Construction and Interpretation 2010-06-15 This book reviews the primary rules courts apply to discern a statute's meaning. However, each matter of interpretation before a court presents its own challenges, and there is no unified, systematic approach used in all cases. While schools of statutory interpretation may vary on what factors should be considered, all approaches start (if not necessarily end) with the language and structure of the statute itself. In analyzing a statute's text, courts are guided by the basic principle that a statute should be read as a harmonious whole, with its separate parts being interpreted within their broader statutory context.

Some Reflections on the Reading of Statutes Felix Frankfurter 1947

Qualified Domestic Relations Orders: Strategy and Liability for the Family Law Attorney Raymond S. Dietrich 2020-09-25 While many family law attorneys outsource preparation of QDROs to other professionals, the attorney still requires guidance on how to best protect his client's interests. Author Raymond S. Dietrich provides a tightly focused analysis, the necessary information and the strategies critical to properly positioning a case. Effective strategies in negotiating settlement of interests in retirement benefits are poorly understood partly because many family law attorneys send the task out to a specialist, use a form book to draft a QDRO or accept the pension plan administrator's offer of the "standard provisions." This book provides a succinct education regarding the structure of many pension plans, alerts the practitioner to unknown contingencies, empowers the attorney with negotiating strategies and warns of potential attorney liability. QDRO Strategy and Liability complements all state-specific and national dissolution practice sets and online family law menus in the handling of retirement benefits, one of the most common and important assets in marital dissolution proceedings. This top-of-the-line coverage is a necessary addition for all family law attorneys handling significant asset cases, as well as forensic CPAs and pension plan administrators. A Table of Cases, a Table of Statutes and an Index complement the synopses at the beginning of each chapter to make analysis and authority easy to find.

Misreading Law, Misreading Democracy Victoria Nourse 2016-09-12 Victoria Nourse argues that lawyers must be educated on the basic procedures that define how Congress operates today. Lawmaking creates winners and losers. If lawyers and judges do not understand this, they may embrace the meanings of those who opposed legislation, turning legislative losers into judicial winners and standing democracy on its head.

Professional Legal Ethics Donald Nicolson 2000-02-03 Ethics and regulation have become catchwords of the late 1990s, yet relatively little has been written about the ethical discourse and regulation of the legal professions in England and Wales. This book represents the first attempt to subject the ethical discourse of the English legal professions to in-depth analysis and sustained critique. Drawing on insights from moral philosophy, social theory, the sociology of the legal profession, public law theories of regulation, and the extensive American literature on lawyers'

ethics, it argues that, in seeking to provide definitive answers to particular problems of professional conduct, professional legal ethics has failed to deliver an approach which requires lawyers actively to engage with the ethical issues raised by legal practice. Through an analysis of the core issues facing lawyers, the authors locate this failure in the profession's reliance on a liberal and adversarial role morality that conceptualises the ethical values of human dignity, autonomy and equality in a formalistic and narrowly legalistic manner. This encourages lawyers to overlook the real invasions of these values so often wrought by upholding clients legal rights, and to ignore the competing claims of affected third parties, the wider community and the environment In seeking to move beyond critique, the authors develop throughout the book a contextual approach to individual ethical decision-making and outline a range of institutional, regulatory and educational reforms which, they suggest, could form the basis for a more ethical brand of professionalism. Professional Legal Ethics: Critical Interrogations is a wide-ranging and thought-provoking analysis written for lawyers, ethicists and policy-makers interested in this neglected area of professional ethics and regulation.

Stempel on Insurance Contracts Jeffrey W. Stempel 2005-12-30

Legal Theory and the Social Sciences MaksymilianDel Mar 2017-07-05 Ever since H.L.A. Hart's self-description of The Concept of Law as an 'exercise in descriptive sociology', contemporary legal theorists have been debating the relationship between legal theory and sociology, and between legal theory and social science more generally. There have been some who have insisted on a clear divide between legal theory and the social sciences, citing fundamental methodological differences. Others have attempted to bridge gaps, revealing common challenges and similar objects of inquiry. Collecting the work of authors such as Martin Krygier, David Nelken, Brian Tamanaha, Lewis Kornhauser, Gunther Teubner and Nicola Lacey, this volume - the second in a three volume series - provides an overview of the major developments in the last thirty years. The volume is divided into three sections, each discussing an aspect of the relationship of legal theory and the social sciences: 1) methodological disputes and collaboration; 2) common problems, especially as they concern different modes of explanation of social behaviour; and 3) common objects, including, most prominently, the study of language in its social context and normative pluralism.

Modern Statutory Interpretation Linda D. Jellum 2006 This book is designed to teach statutory interpretation skills. It uses a combination of traditional cases along with problems to accomplish that objective. Broadly organized around the process of interpretation, it focuses first on the plain meaning of the text and then addresses the question of whether and, if so, when courts will examine sources other than the text. The book addresses the various approaches and theories to interpretation and examines how those approaches have been applied to particular interpretative problems, such as implied rights, administrative interpretations, and the interpretation of ''uniform statutes.'' Within each chapter, subjects are introduced with concise summaries of the core concepts. After the introduction, a well-edited case explores the uncertainties and boundaries of those core concepts. The notes and questions following each principal case are designed to help focus the students' thoughts and understanding of the case before they come to class. Finally, problems are included to ensure that the students use the statutory interpretation skills they have just learned. Each problem lends itself to at least two arguments (often more) and allows for further inquiry into the concepts in the chapter. The second edition has been revised and updated to include more problems and a few new cases. Additionally, the legislative and administrative chapters have been substantially revised.

Mastering Legal Analysis and Communication David T. Ritchie 2008 Mastering Legal Analysis and Communication is

designed to help novices navigate the often difficult task of learning new ways of thinking and communicating. Law schools employ methodologies and pedagogical paradigms that law students find mystifying and hard to comprehend. This book aims to explain how these methodologies and paradigms function, why they are used, and what they are meant to accomplish. The topics covered range from the basic concepts of understanding what law is and what "thinking like a lawyer" means, to making sense out of the structural paradigms of legal writing and rhetoric. Mastering Legal Analysis and Communication will serve as a useful guide for students as they undertake their studies in both their casebook and practical skills courses. In fact, the themes discussed and explanations offered will help students better see that the analytical and communication skills utilized in all their classes fall upon the same continuum of professional competence. As such, this book is a vital reference work for students as they try to make sense of their law school studies in a more comprehensive and connected way. Mastering Legal Analysis and Communication is designed to help novices navigate the often difficult task of learning new ways of thinking and communicating. Law schools employ methodologies and pedagogical paradigms that law students find mystifying and hard to comprehend. This book aims to explain how these methodologies and paradigms function, why they are used, and what they are meant to accomplish. The topics covered range from the basic concepts of understanding what law is and what "thinking like a lawyer" means, to making sense out of the structural paradigms of legal writing and rhetoric. Mastering Legal Analysis and Communication will serve as a useful guide for students as they undertake their studies in both their casebook and practical skills courses. In fact, the themes discussed and explanations offered will help students better see that the analytical and communication skills utilized in all their classes fall upon the same continuum of professional competence. As such, this book is a vital reference work for students as they try to make sense of their law school studies in a more comprehensive and connected way.

A Dictionary of Statutory Interpretation William D. Popkin 2007 Statutory interpretation has become the most commonly-required skill of the modern lawyer. A Dictionary of Statutory Interpretation provides a ready reference to the important terms and ideas that arise in connection with determining the meaning of legislation. Chapter 1 includes over 100 entries, including the following: ambiguity the absurdity canon linguistic and substantive canons legislative intent legislative purpose legislative history textualism Legal Realism Law and Economics Each entry includes a definition, an explanation of the relevance of the term and ideas for statutory interpretation, some history about its use, and a concise discussion of contemporary issues. The author expresses his point of view in the discussion of these issues - which is generally skeptical about textualism - but presents all sides of the debate. A "reference" section allows for further research on each subject. Chapter 2 includes over 35 famous quotations dealing with the interpretation of statutes, along with historical and critical commentary. The entries include Learned Hand, Holmes, Calabresi, Posner, Easterbrook, Pound, Blackstone, etc. The book will be useful for lawyers, judges, law professors, and law students who want an entry into the contemporary debate about how to interpret legislation, along with an insight into what is at stake in those debates. "...filled with usefully extended treatments of important and interesting legal terms." -- The Green Bag "This book will be a useful tool for readers or libraries needing a good single-volume guide to statutory interpretation. Summing up: Highly recommended." -- CHOICE "Librarians and researchers . . . should consider A Dictionary of Statutory Interpretation an essential reference work (for a very affordable price). . . . [It] will likely become a go-to resource when quick but in-depth analysis of a statutory

interpretation question is sought." -- Legal Information Alert, (Volume 26, Issue #9), Alert Publications, Inc., Chicago, IL. www.alertpub.com

Stempel and Knutsen on Insurance Coverage Jeffrey W. Stempel 2015-12-15 Unlike most other books in the field, which slant toward either policyholder or insurer counsel, Stempel and Knutsen on Insurance Coverage takes an even-handed nonexcess and umbrella aking it useful to attorneys from all sides. Moreover, it's designed for practitioners from all professional backgrounds and insurance experience. Written in clear, jargon-free language, it covers everything from the basic insurance concepts, principles, and structure of insurance policies to today's most complex issues and disputes. The authors, Jeffrey W. Stempel and Erik S. Knutsen, are well-known authorities on the law of insurance coverage, and this new Fourth Edition of Stempel and Knutsen on Insurance Coverage is completely up-to-date on every aspect of its subject. This one-stop resource provides both a sound historical, theoretical and doctrinal grounding in insurance, as well being practice-oriented and packed with practical guidance. After providing information about insurance policies and issues in general, it focuses on specific types of policies and coverage such as property coverage, liability coverage, automobile coverage, excess and umbrella coverage, and reinsurance, plus such vital areas as employment, defective construction, and terrorism claims...Dandamp;O liability...ERISA...bad faith litigation...and much more. Plus, you'll find extensive examination of the commercial general liability (CGL) policy, the type of insurance involved in most major coverage cases. Among the most important CGL issues covered in Stempel and Knutsen on Insurance Coverage are: Pollution-related coverage Trigger of coverage Apportionment of insurer and policyholder responsibility Business risk exclusions Coverage under the andquot;personal injuryandquot; section of the CGL Coverage under andquot;advertising injuryandquot; Nowhere else will you find so much valuable current information, in-depth analysis, sharp insight, authoritative commentary, significant case law, and practical guidance on this critically important area. With its clear explanations and thorough, even-handed coverage, Stempel and Knutsen on Insurance Coverage is unlike any other resource in its field.

Modern Legal Interpretation Marko Novak 2019-01-24 Legalism or legal formalism usually depicts judges as resolving cases by allegedly merely applying pre-existing legal rules. They do not seem to legislate, exercise discretion, balance or pursue policies, and they definitely do not look outside of conventional legal texts for guidance in deciding new cases. For them, the law is an autonomous domain of knowledge and technique. What they follow are the maxims of clarity, determinacy, and coherence of law. This perception of law and adjudication is sometimes designated as “an orthodox lawyering”. However, at least in certain cases, it is very difficult to say that legalism is not an inappropriate theory or a method of legal interpretation. Different theories have attested that legal interpretation is much more than just legalism, which appears to be far too naïve. In the framework of modern legal interpretation, the following questions can be raised. Is it possible to integrate legalism in a coherent theory of legal interpretation? Is legalism as a distinctive theory of legal interpretation still a feasible theory of interpretation? How can such a formalist approach withstand a critique from Dworkinian moral interpretivism or accusations of being a myth, masking political preferences from legal realists? These and many other issues about legal interpretation are discussed in this book by prominent legal philosophers and legal theorists.

Lawyers' Language Alfred Phillips 2003-08-29 An interesting examination of law as language use or discourse, this study looks at the transformation of ordinary language into a special discourse for the purposes of the legal system. It is widely accepted that legal discourse is obscure, and often the public

resent the fact that access to the law of the land is obstructed by the opaqueness of legal language. This book argues that the development and maintenance of law's special language can be justified. The myth that law can be written in either plain' or ordinary' language is exploded, and the linguistic obscurity of law is traced to its necessary complexity. The notion of representation is applied to the relation that exists between legal language and ordinary language.

Interpretation and Legal Theory Andrei Marmor 2005-04-25 This is a revised and extensively rewritten edition of one of the most influential monographs on legal philosophy published in recent years. Writing in the introduction to the first edition the author characterized Anglophone philosophers as being ..."divided, and often waver[ing] between two main philosophical objectives: the moral evaluation of law and legal institutions, and an account of its actual nature." Questions of methodology have therefore tended to be sidelined, but were bound to surface sooner or later, as they have in the later work of Ronald Dworkin. The main purpose of this book is to provide a critical assessment of Dworkin's methodological turn, away from analytical jurisprudence towards a theory of interpretation, and the issues it gives rise to. The author argues that the importance of Dworkin's interpretative turn is not that it provides a substitute for 'semantic theories of law' (a dubious concept), but that it provides a new conception of jurisprudence, aiming to present itself as a comprehensive rival to the conventionalism manifest in legal positivism. Furthermore, once the interpretative turn is regarded as an overall challenge to conventionalism, it is easier to see why it does not confine itself to a critique of method. Law as interpretation calls into question the main tenets of its positivist rival, in substance as well as method. The book re-examines conventionalism in the light of this interpretative challenge.

The Japan Annual of Law and Politics 1966

Contemporary Perspectives On Constitutional Interpretation Susan J Brison 2018-03-08 Current controversies over abortion, affirmative action, school prayer, hate speech, and other issues have sparked considerable public debate about how the U.S. Constitution should be interpreted. Such controversies, along with the changing composition of an often deeply divided Supreme Court, have led to a resurgence of interest in theories of constitutional interpretation. This anthology, edited by Susan J. Brison and Walter Sinnott-Armstrong, presents some of the most exciting and influential contemporary work in this area. Written by ten of the country's most prominent legal scholars, the selections represent a wide variety of interpretive approaches, reflecting different political orientations from the far right to the far left. These theorists have drawn on a variety of other disciplines, including literature, economics, history, philosophy, and politics, and have in turn influenced these fields. The selections were chosen for their accessibility, originality, variety, and importance. Together they provide an excellent introduction to constitutional interpretation as well as a valuable collection for experienced scholars in the field.

Interpreting Statutes Suzanne Corcoran 2005 Interpreting Statutes was cited 4 times by the High Court in Momcilovic v The Queen [2011] HCA 34 (8 September 2011)Interpreting Statutes has been written for lawyers and judges who must interpret statutes on a daily basis, as well as for students and scholars who have their own responsibility for the future. This book takes a new approach to statutory interpretation. The authors consider the fundamental importance of context in statutory interpretation across various fields of regulation and explore the problems, which arise from the frequent disjunction between regulatory design and subsequent statutory interpretation. As a result, they bring to the fore fundamental theoretical questions underlying interpretive choice and expand our appreciation of how critical interpretive issues are to the proper functioning of our legal system. The book is divided into two parts. The first covers

several areas dealing with fundamental theoretical issues. The second deals with particular areas of the law, such as criminal law or corporate law, addressing the utility and functionality of the general theories from different legal perspectives and illustrating the fact that different interpretive principles may take precedence in different areas of the law. It reveals the complexity of statutory interpretation when applied to actual practice in a particular area of law. Despite this complexity and the unique problems of statutory interpretation within each area of law, some major themes emerge including: the strong influence of constitutional interpretation; tension between common law rights and statutory innovation; questions about the interaction of domestic law with international law; tension between settled judicial principles of interpretation and principles embedded in legislation; issues concerning the interpretation of delegated legislation; and questions about gap filling and discretion in the interpretation of statutes and codes.

Modern Criminal Law of Australia Jeremy Gans 2016-12-05 Modern Criminal Law of Australia, 2nd edition is a comprehensive guide to interpreting and understanding every statutory offence provision in every Australian jurisdiction. The text takes a unique approach to explaining Australian criminal law, emphasising the importance of statutory interpretation, official discretion, element analysis and sentencing, in order to appreciate the meaning and effect of any offence provision. This book sets out the rules and skills needed to advise clients on the potential application of criminal law throughout Australia. Its scope extends to both serious and minor regulatory regimes, as well as the entire contemporary breadth of criminal law, ranging from pollution to public order, traffic to trafficking, and domestic violence to work safety. It covers the common law, traditional code and model code systems, and includes detailed examples from all states. As such, this unique book provides students with the skills to practice law anywhere in Australia.

Current Publications in Legal and Related Fields 2009

The AALS Directory of Law Teachers 2007

Judging Statutes Robert A. Katzmann 2014-08-14 In an ideal world, the laws of Congress--known as federal statutes--would always be clearly worded and easily understood by the judges tasked with interpreting them. But many laws feature ambiguous or even contradictory wording. How, then, should judges divine their meaning? Should they stick only to the text? To what degree, if any, should they consult aids beyond the statutes themselves? Are the purposes of lawmakers in writing law relevant? Some judges, such as Supreme Court Justice Antonin Scalia, believe courts should look to the language of the statute and virtually nothing else. Chief Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit respectfully disagrees. In Judging Statutes, Katzmann, who is a trained political scientist as well as a judge, argues that our constitutional system charges Congress with enacting laws; therefore, how Congress makes its purposes known through both the laws themselves and reliable accompanying materials should be respected. He looks at how the American government works, including how laws come to be and how various agencies construe legislation. He then explains the judicial process of interpreting and applying these laws through the demonstration of two interpretative approaches, purposivism (focusing on the purpose of a law) and textualism (focusing solely on the text of the written law). Katzmann draws from his experience to show how this process plays out in the real world, and concludes with some suggestions to promote understanding between the courts and Congress. When courts interpret the laws of Congress, they should be mindful of how Congress actually functions, how lawmakers signal the meaning of statutes, and what those legislators expect of courts construing their laws. The legislative record behind a law is in truth part of its foundation, and therefore merits consideration.

Mastering Statutory Interpretation Linda D. Jellum 2008 Mastering Statutory Interpretation explains the methods of interpreting statutes, including a discussion of the various theories and canons of interpretation. The book begins by exploring these theories and identifying the sources of meaning the theorists use to interpret statutes, including intrinsic, extrinsic, and policy-based. Throughout, the text uses the major cases in each area of study to explain how the canons work in practice. Finally, each chapter provides a concise roadmap and summary to introduce and encapsulate the most important material.This book is part of the Carolina Academic Press Mastering Series edited by Russell L. Weaver, University of Louisville School of Law.

Legal Information Buyer's Guide and Reference Manual Kendall F. Svengalis 2008

A Matter of Interpretation Antonin Scalia 2018-01-30 We are all familiar with the image of the immensely clever judge who discerns the best rule of common law for the case at hand. According to U.S. Supreme Court Justice Antonin Scalia, a judge like this can maneuver through earlier cases to achieve the desired aim—"distinguishing one prior case on his left, straight-arming another one on his right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal—good law." But is this common-law mindset, which is appropriate in its place, suitable also in statutory and constitutional interpretation? In a witty and trenchant essay, Justice Scalia answers this question with a resounding negative. In exploring the neglected art of statutory interpretation, Scalia urges that judges resist the temptation to use legislative intention and legislative history. In his view, it is incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the lawgivers meant rather than by what the legislature actually promulgated. Eschewing the judicial lawmaking that is the essence of common law, judges should interpret statutes and regulations by focusing on the text itself. Scalia then extends this principle to constitutional law. He proposes that we abandon the notion of an everchanging Constitution and pay attention to the Constitution's original meaning. Although not subscribing to the “strict constructionism” that would prevent applying the Constitution to modern circumstances, Scalia emphatically rejects the idea that judges can properly “smuggle” in new rights or deny old rights by using the Due Process Clause, for instance. In fact, such judicial discretion might lead to the destruction of the Bill of Rights if a majority of the judges ever wished to reach that most undesirable of goals. This essay is followed by four commentaries by Professors Gordon Wood, Laurence Tribe, Mary Ann Glendon, and Ronald Dworkin, who engage Justice Scalia’s ideas about judicial interpretation from varying standpoints. In the spirit of debate, Justice Scalia responds to these critics. Featuring a new foreword that discusses Scalia’s impact, jurisprudence, and legacy, this witty and trenchant exchange illuminates the brilliance of one of the most influential legal minds of our time.

Statutory Interpretation Douglas Walton 2021-01-21 Combining pragmatics, dialectics, analytics, and legal theory, this work translates interpretative canons into patterns of natural argument.

Thinking Like a Lawyer Kenneth J. Vandevelde 2018-04-19 Law students, law professors, and lawyers frequently refer to the process of "thinking like a lawyer," but attempts to analyze in any systematic way what is meant by that phrase are rare. In his classic book, Kenneth J. Vandevelde defines this elusive phrase and identifies the techniques involved in thinking like a lawyer. Unlike most legal writings, which are plagued by difficult, virtually incomprehensible language, this book is accessible and clearly written and will help students, professionals, and general readers gain important insight into this well-developed and valuable way of thinking. Updated for a new generation of

lawyers, the second edition features a new chapter on contemporary perspectives on legal reasoning. A useful new appendix serves as a survival guide for current and prospective law students and describes how to apply the techniques in the book to excel in law school.

Qualified Domestic Relations Orders: Strategy and Liability for the Family Law Attorney 2021 Edition Raymond S. Dietrich 2021-10-01 While many family law attorneys outsource preparation of QDROs to other professionals, the attorney still requires guidance on how to best protect his client's interests. Author Raymond S. Dietrich provides a tightly focused analysis, the necessary information and the strategies critical to properly positioning a case. Effective strategies in negotiating settlement of interests in retirement benefits are poorly understood partly because many family law attorneys send the task out to a specialist, use a form book to draft a QDRO or accept the pension plan administrator's offer of the "standard provisions." This book provides a succinct education regarding the structure of many pension plans, alerts the practitioner to unknown contingencies, empowers the attorney with negotiating strategies and warns of potential attorney liability. QDRO Strategy and Liability complements all state-specific and national dissolution practice sets and online family law menus in the handling of retirement benefits, one of the most common and important assets in marital dissolution proceedings. This top-of-the-line coverage is a necessary addition for all family law attorneys handling significant asset cases, as well as forensic CPAs and pension plan administrators. A Table of Cases, a Table of Statutes and an Index complement the synopses at the beginning of each chapter to make analysis and authority easy to find.

Fictions, Lies, and the Authority of Law Steven D. Smith 2021-09-15 Fictions, Lies, and the Authority of Law discusses legal, political, and cultural difficulties that arise from the crisis of authority in the modern world. Is there any connection linking some of the maladies of modern life—“cancel culture,” the climate of mendacity in public and academic life, fierce conflicts over the Constitution, disputes over presidential authority? Fiction, Lies, and the Authority of Law argues that these diverse problems are all a consequence of what Hannah Arendt described as the disappearance of authority in the modern world. In this perceptive study, Steven D. Smith offers a diagnosis explaining how authority today is based in pervasive fictions and how this situation can amount to, as Arendt put it, “the loss of the groundwork of the world.” Fictions, Lies, and the Authority of Law considers a variety of problems posed by the paradoxical ubiquity and absence of authority in the modern world. Some of these problems are jurisprudential or philosophical in character; others are more practical and lawyerly—problems of presidential powers and statutory and constitutional interpretation; still others might be called existential. Smith’s use of fictions as his purchase for thinking about authority has the potential to bring together the descriptive and the normative and to think about authority as a useful hypothesis that helps us to make sense of the empirical world. This strikingly original book shows that theoretical issues of authority have important practical implications for the kinds of everyday issues confronted by judges, lawyers, and other members of society. The book is aimed at scholars and students of law, political science, and philosophy, but many of the topics it addresses will be of interest to politically engaged citizens.

Statutes and statutory construction J.G. Sutherland 1891 Including a discussion of legislative powers, constitutional regulations relative to the forms of legislation and to legislative procedure.

Statutes in Court William D. Popkin 1999 Popkin provides a survey of the history of American statutory interpretation and then offers his own theory of "ordinary judging" that defines the proper scope of judicial discretion."--BOOK JACKET.