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Fábio P. Shecaira

Legal Scholarship as a Source of Law

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Jan M. Smits



Legal Scholarship As A Source Of Law Springerbriefs In Law:

Legal Scholarship as a Source of Law Fábio P. Shecaira, 2013-07-09 This book is about the use of legal scholarship by judges It discusses the possibility that legal scholarship may function as a genuine source of law in modern municipal legal systems The book advances a number of claims some conceptual some empirical some normative The major conceptual claims are found in Chapters 2 and 3 where a general account of the notion of a source of law is provided Roughly sources of law are documents or practices e g statutes judicial decisions official customs from which norms can be derived that function as sources of content independent reasons for judges to decide legal cases one way or another The relevant notion of content independence is derived with qualifications from H L A Hart s jurisprudence Indeed the book s analysis of the concept of a source of law relies at various points on Hartian insights about law and legal reasoning Chapter 4 argues that legal scholarship or more precisely a particular type of legal scholarship that might be described as standard or doctrinal can be and indeed is used as a source of law in modern legal systems The conclusion that legal scholarship is used as a source of law and thus as a source of content independent reasons for action may come as a surprise to those who associate judicial recourse to legal scholarship with judicial activism This association is discussed and criticized in Chapters 5 and 6 It is argued that in spite of a relatively common opinion to the contrary legal scholarship can be used to mitigate discretion In fact it is precisely because it can be used in this way that judges sometimes refer to scholarship deceptively and suggest that it limits discretion in situations in which it really does not The concluding chapter addresses potential objections not explicitly discussed in earlier chapters

Direito Privado na Lei da Liberdade Econômica Guilherme Carneiro Monteiro Nitschke, Judith Martins-Costa, 2022-08-01 Direito Privado na Lei da Liberdade Econômica Comentaristas visa a suprir uma insuficiência e fazer um balanço da inserção da Lei Federal nº 13.874/2019 no ordenamento jurídico preenche-se a ausência de uma abordagem estrita de direito privado e altera as produzidas pelo diploma que afetou institutos importantes do direito civil e empresarial e faz-se um balanço que compreende tanto a prática consolidada nos tribunais após quase trinta anos de sua vigência quanto as repercussões da pandemia de Covid-19 evento que colocou abaixo vidas economias empresas contratos certezas jurídicas na base ideológica da Lei a saber a intervenção mínima do Estado Para tanto o livro coletivo se debruça sobre seis grandes temas do Direito Privado alterados pela Lei da Liberdade Econômica a sua principiologia os direitos de liberdade econômica a pessoa jurídica o direito contratual o direito da empresa e os fundos de investimento

Transnational Evaluation of Constitutions Ali Shirvani, 2021-07-09 This book provides a hypothetical classification of constitutions through international law and human rights values used in any constitution which draws connections between the inclusive standards of international law and human rights contained in the constitutions Consequently an evaluation method will be available for users to rank any constitution potentiality of analysis for grounds of any commitment and responsibility of the states concerning international law and human rights This important study uses novel quantitative and qualitative methods to

explore the relationship between constitutional and international law It is a significant contribution to the literature and pushes us further toward rigorous analysis of transnational legal regimes Tom Ginsburg Professor of Political Science Chicago Law School Collective Actions in Europe Csongor István Nagy,2019-08-19 This open access book offers an analytical presentation of how Europe has created its own version of collective actions In the last three decades Europe has seen a remarkable proliferation of collective action legislation making class actions the most successful export product of the American legal scholarship While its spread has been surrounded by distrust and suspiciousness today more than half of the EU Member States have introduced collective actions for damages and from those who did more than half chose to some extent the opt out system This book demonstrates why collective actions have been felt needed from the perspective of access to justice and effectiveness of law the European debate and the deep layers of the European reaction and resistance revealing how the Copernican turn of class actions questions the fundamentals of the European thinking about market and public interest Using a transsystemic presentation of the European national models it analyzes the way collective actions were accommodated with the European regulatory environment the novel and peculiar regulatory questions they had to address and how and why they work differently on this side of the Atlantic *Rethinking Legal Scholarship* Rob van Gestel,Hans-W. Micklitz,Edward L. Rubin,2017-02-02 Although American scholars sometimes consider European legal scholarship as old fashioned and inward looking and Europeans often perceive American legal scholarship as amateur social science both traditions share a joint challenge If legal scholarship becomes too much separated from practice legal scholars will ultimately make themselves superfluous If legal scholars on the other hand cannot explain to other disciplines what is academic about their research which methodologies are typical and what separates proper research from mediocre or poor research they will probably end up in a similar situation Therefore we need a debate on what unites legal academics on both sides of the Atlantic Should legal scholarship aspire to the status of a science and gradually adopt more and more of the methods quality standards and practices of other social sciences What sort of methods do we need to study law in its social context and how should legal scholarship deal with the challenges posed by globalization **Rethinking Legal Scholarship** Rob Van Gestel,Hans-W. Micklitz,Edward L. Rubin,2017 Rethinking Legal Scholarship bridges the gap between American and European legal scholarship by looking at underlying methodological challenges **Rethinking Legal Scholarship** Rob van Gestel,Hans-W. Micklitz,Edward L. Rubin,2017 Rethinking Legal Scholarship bridges the gap between American and European legal scholarship by looking at underlying methodological challenges Legal Scholarship and the Political Adam Sulikowski,Rafał Mańko,Jakub Łakomy,Wydawnictwo C.H. Beck,2020 Legal Scholarship and Education Mark Tushnet,Taylor & Francis Group,2019-06-09 This book collects Mark Tushnet s essays on legal scholarship and legal education written between the 1970s and the end of the twentieth century The essays deal with the development of critical legal studies and its current state with persistent questions about the intellectual status of legal scholarship with

interdisciplinary legal scholarship including law and economics and with selected topics in legal pedagogy Taken as a whole the essays provide a good overview of Professor Tushnet s contributions to the intellectual history of legal scholarship and education in the United States **Legal Scholarship in the Common Law World** ,1987 **Final Report on Law Publishing and Legal Scholarship** Society of Public Teachers of Law (London, England). Working Party on Law Publishing,1977 Final Report on Law Publishing and Legal Scholarship Society of Public Teachers of Law (London, England). Working Party on Law Publishing,1977 Legal Scholarship at the Capstone University of Alabama. School of Law,1985* *The Nature and Sources of the Law* John Chipman Gray,1963 **Legal Doctrinal Scholarship** Mátyás Bódog,2021-07-20 Providing a comprehensive account of the often misunderstood area of legal doctrinal scholarship this incisive book offers a novel framing for conceptual legal theory and the functions of conceptual theorising in legal studies It explores the ways in which a doctrinally oriented legal theory may provide methodological support to legal scholars arguing that making adequate sense of the rational reconstruction of law is pivotal in delivering such active support The epistemological key to the central themes of the book is the idea that doctrinal disciplines are anchored in the concept of doctrinal knowledge the practice specific normative knowledge used to navigate institutionalised social practices The distinctive epistemological and political philosophical grounding for legal doctrinal scholarship demonstrated in this book facilitates a rich analysis of the three core models of interdisciplinary engagement characteristic of legal scholarship Considering how legal doctrinal scholarship cultivates doctrinal knowledge by way of hermeneutic engagement with positive law this thought provoking book will be a key resource for students and scholars of constitutional law criminal law private law and international law It will also be of benefit to legal theorists philosophers and practitioners *The Direction of Legal Scholarship* Columbia University. School of Law,1998 *Sources of Law* Thomas O'Malley,2001 The Round Hall Guide to Sources of Law An Introduction to Legal Research and Writing American Legal Scholarship and Administrative Law William Clinton Chase,1978 **The Mind and Method of the Legal Academic** Jan M. Smits,2012 Jan Smits assesses the recent turn away from doctrinal research towards a more empirical and theoretical way of legal investigation and offers a fresh perspective on what it is that legal academics should deal with and how they should do it The book also considers the consequences which follow for the organization of the legal discipline by universities and uses this context to discuss the key questions of the internationalization of law schools quality assessments legal education and the research culture **The Nature and Sources of the Law** John Chipman Gray,1909

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