

Analógia Legis Y Iuris

Manuel Segura Ortega

Iniciación al Derecho. Elvira López Díaz, 2005

Legal Knowledge and Analogy P.J. Nerhot, 2012-12-06 3 of law as an object that has always already been there, systematic and complete. Quite the contrary. Some, indeed practically all of us, reject this sort of epistemology of law, and where the hypothesis of the coherence of the legal universe is put forward, this is in order to define it in very noticeably different terms from those traditionally used in legal scholarly accounts. If this referent, the law presented as a full discourses, runs through all of the contributions, this is because reasoning by analogy has to be found its specific place within this legal culture. It is the place to locate the problem of lacunae in law, which at bottom allows our various contributions to be classified. With Zaccaria and Maris, the question of lacunae is accepted as such (this is, we might say, the traditionalist aspect of these two articles, which is counterbalanced by - keeping to the same terminology - modernist emphases, sometimes Dworkinian in nature), and becomes the backdrop for considerations of purely hermeneutic type, in Zaccaria, extended in Maris to the field of ethics. The papers from Lenoble and Jackson, the former philosophical and the latter semiological, take as their main target this legal knowledge where the theory of lacunae finds its place.

Hermenéutica analógica Jesús Antonio de la Torre Rangel, 2004

Systematic Approaches to Argument by Analogy Henrique Jales Ribeiro, 2014-07-09 The present volume assembles a relevant set of studies of argument by analogy, which address this topic in a systematic fashion, either from an essentially theoretical perspective or from the perspective of it being applied to different fields like politics, linguistics, literature, law, medicine, science in general and philosophy. All result from original research conducted by their authors for this publication. Thus, broadly speaking, this is an exception which we find worthy of occupying a special place in the sphere of the bibliography on the argument by analogy. In effect, most of the contexts of the publications on this topic focus on specific areas, for example everyday discourse, science or law theory, while underestimating or sometimes even ignoring other interdisciplinary scopes, as is the case of literature, medicine or philosophy. The idiosyncrasy of this volume is that the reader and the researcher may follow the development of different theoretical outlooks on argument by analogy, while measuring the scope of its (greater or lesser) application to the aforementioned areas as a whole.

Case Law in Roman, Anglosaxon and Continental Law María José Falcón y Tella, 2011-08-25 Case law is a widely

studied field, posing a series of questions. The first issue relates to the nature of case law itself, as the term cannot be given a single meaning. There is no one definition of case law, but rather a plurality of meanings depending on the historical period and legal system in question. After an analysis of Roman iurisprudentia and Anglo-Saxon case law, this work considers the Spanish legal system, as an example of a Continental jurisdiction, and distinguishes between the case laws of the Supreme and Constitutional Courts, the European courts, and the Superior Courts of Justice of the Autonomous Communities. The book analyses these issues, among many others, in a clear and in-depth manner, from an historical and comparative approach of great interest and academic value.

Equity and Law María José Falcón y Tella, 2008 Equity is a multi-faceted subject, an authentic crossroads of problems. The perspective of this study is, as a result, a mix of focuses, which includes: the philosophy of law, general legal theory, justice theory, the history of law, comparative law, legal dogma, etc. In this book, as in various earlier studies of the author, she uses the three-dimensional method, which facilitates a stratified focus in agreement with three levels: facts, norms, and values. The subject of equity has never been analysed as completely as in this work. It includes a dynamic study of the different types of equity throughout history and in the different legal systems; the concept, content, limits, functions and types of equity; the relationship between equity and related ideas, and equity in all the branches of the legal order.

Introducción Al Derecho ,

Analogía e interpretación en el Derecho tributario Siota Álvarez, Mónica, 2010-01-07 La presente obra constituye un estudio completo de la analogía en el Derecho tributario, por el que la autora ha obtenido el Premio del Instituto de Estudios Fiscales para tesis doctorales de Derecho Financiero y Tributario del año 2009. Hasta el momento, y a pesar de las diversas controversias doctrinales generadas en torno a la analogía, ha sido escasa la atención que se le ha prestado. Como regla general, se han aprovechado cuestiones colaterales, como su relación con el fraude a la ley o con la interpretación extensiva, para hacer un análisis parcial de esta figura. Con esta monografía, en cambio, el lector tendrá la oportunidad de examinar y conocer en profundidad los distintos problemas que presenta la analogía, tanto desde una perspectiva teórica como práctica. De ahí que, junto a las sólidas aportaciones realizadas por la doctrina científica, se revisen las resoluciones administrativas y los pronunciamientos judiciales en los que se ha abordado esta cuestión. La delimitación de la analogía de otras realidades conexas, el análisis de los fundamentos que se han utilizado tanto para aceptarla como para prohibirla, o su ámbito de aplicación #a partir de lo dispuesto en el art. 14 de la LGT, son sólo algunas de las cuestiones que se examinan a lo largo de los cuatro capítulos en los que se estructura la obra.

Analogical Reasoning in Law Maciej Koszowski, 2019-04-02 This work tackles the most intriguing type of reasoning which one may employ within the field of law. In addition to the merits and drawbacks of legal analogy, it discusses the orthodox approaches to it, together with their critical analysis, also posing challenges that these conceptions have difficulty

in managing. As an alternative, the book advances an account of legal analogical reasoning that correlates well with the division into rational and intuitive thinking that occurs in contemporary psychology. By doing so, many of the unique properties of legal analogy which have been traditionally associated with it and which have often been difficult to explain become readily understandable. Moreover, the very source of the almost mystical faith in power and infallibleness of such analogy is revealed here, while this faith—astonishing or not—not only escapes condemnation, but is shown to be warranted from a scientific point of view. Finally, the book also presents vast scope of application, premises, schematic structures and factors able to influence the force of legal analogy.

Los principios contenidos en el título preliminar del Código civil peruano de 1984 Juan Espinoza Espinoza, 2005

La jurisprudencia en los Derechos romanos, anglosajón y continental Falcón y Tella, M^a José, 2010-01-07 La jurisprudencia ha sido un tema ampliamente estudiado. Se plantean una serie de interrogantes. El primero de ellos es dar un concepto de la misma, puesto que de la jurisprudencia no se puede hablar en un solo sentido. No existe una única acepción del término, sino una pluralidad de significados dependiendo de la época histórica y del sistema jurídico de que se trate. Así, no significó lo mismo la jurisprudencia en el antiguo Derecho romano, en el que se concebía como Ciencia del Derecho, que en la actualidad. Tampoco son en absoluto equivalentes las nociones de jurisprudencia en los países anglosajones, en los que el precedente judicial es la principal fuente del Derecho, y en los sistemas de Derecho continental. En éstos resulta fundamental, a modo de segundo interrogante, dar respuesta a la intrincada cuestión de saber si la jurisprudencia es fuente del Derecho. En este sentido, en la presente obra, tras analizar los Derechos romano y anglosajón, se distingue, en lo que se refiere al ordenamiento jurídico español, entre la jurisprudencia del Tribunal Supremo y la del Tribunal Constitucional, sin olvidar el papel jugado en nuestro país por los Tribunales europeos el Tribunal Europeo de Derechos Humanos de Estrasburgo, el Tribunal de Justicia de las Comunidades Europeas de Luxemburgo y la Corte Penal Internacional, así como por los Tribunales Superiores de Justicia de las Comunidades Autónomas. Estas materias, entre otras muchas, son analizadas, de una manera a la vez clara y profunda, en este trabajo, siguiendo un enfoque histórico, de Derecho comparado y de Teoría general del Derecho, de gran interés y valor científico.

Analogía e interpretación: Sus confines conceptuales y su realidad práctica en derecho privado Guillermo Cerdeira Bravo de Mansilla, 2023-11-29 La presente obra no pretende ser un tratado sobre interpretación e integración del Derecho, sino tratar una cuestión, sin duda la más dramática, en la que, no obstante, puede que se encierre toda la teoría general sobre aplicación de las normas. Ni siquiera en el estudio de tan dramática cuestión pretendo dejarlo todo por terminado, o zanjado. Ilusión vana sería por mi parte pretenderlo, ante mi prudente, por humilde, contribución. Como yo mismo advierto al final del capítulo primero, el introductorio, “quede con esta obra —el camino abierto para que otros la completen”, o, por supuesto, la corrijan, o, simplemente, la arrojen al pozo del olvido. Quedo, así pues, querido posible lector,

en tus manos.

The Max Planck Handbooks in European Public Law Armin von Bogdandy, Peter M. Huber, Christoph Grabenwarter, 2023
The fourth volume of the Max Planck Handbooks in European Public Law series compares European constitutional jurisdiction in the perspective of the European legal space. It examines the structures of the organization, the appointment of judges, the procedures and the methods of argumentation and interpretation, their impact on state and society, their legitimacy or their role in the division of powers, and thus completes the picture following the country reports in Volume III. This comparative perspective is supplemented by an examination that illustrates the relationship to the ECJ, the ECtHR and the Venice Commission as well as their (constitutional) function. Finally, the volume is devoted to the challenges currently facing constitutional jurisdiction in the European Legal Space. The historical, political, and theoretical foundations as well as the basic doctrinal features of constitutional jurisdiction are presented in such a way that the discussion about its role and further development in this legal space is sustainably stimulated--

The Logic of Legal Requirements Jordi Ferrer Beltrán, Giovanni Battista Ratti, 2012-09-13
When a legal rule requires us to drive on the right, notarize our wills, or refrain from selling bootleg liquor, how are we to describe and understand that requirement? In particular, how does the logical form of such a requirement relate to the logical form of other requirements, such as moral requirements, or the requirements of logic itself? When a general legal rule is applied or distinguished in a particular case, how can we describe that process in logical form? Such questions have come to preoccupy modern legal philosophy as its methodology, drawing on the philosophy of logic, becomes ever more sophisticated. This collection gathers together some of the most prominent legal philosophers in the Anglo-American and civil law traditions to analyse the logical structure of legal norms. They focus on the issue of defeasibility, which has become a central concern for both logicians and legal philosophers in recent years. The book is divided into four parts. The first section is devoted to unravelling the basic concepts related to legal defeasibility and the logical structure of legal norms, focusing on the idea that law, or its components, are liable to implicit exceptions, which cannot be specified before the law's application to particular cases. Part two aims to disentangle the main relations between the issue of legal defeasibility and the issue of legal interpretation, exploring the topic of defeasibility as a product of certain argumentative techniques in the law. Section 3 of the volume is dedicated to one of the most problematic issues in the history of jurisprudence: the connections between law and morality. Finally, section 4 of the volume is devoted to analysing the relationships between defeasibility and legal adjudication.

Analogy and Value Robert Graydon Scofield, 2001

Interpreting Statutes D. Neil MacCormick, Robert S. Summers, 2016-12-05
This book is a work of outstanding importance for scholars of comparative law and jurisprudence and for lawyers engaged in EC law or other international forms of practice. It reviews, compares and analyses the practice of interpretation in nine countries representing Europe as

well as the US and Argentina in common and civil law; it also explores implications for general theories of interpretation and of justification. Its authors, who include Aulis Aarnio, Robert Alexy, Ralf Dreier, Enrique Zuleta-Puceiro, Michel Troper, Christophe Grzegorzczuk, Jean-Louis Gardes, Enrico Pattaro, Michele Taruffo, Massimo La Torre, Jerry Wroblewski, Aleksander Peczenik, Gunnar Bergholtz and Zenon Bankowski, as well as editors Robert S. Summers and D. Neil MacCormick, constitute an international team of great distinction; they have worked on this project for over seven years.

Introducción a la Teoría del Derecho Manuel Segura Ortega, 2022-07-07 El objetivo principal del autor con esta obra ha sido ofrecer al alumno un instrumento útil que facilite la comprensión de algunos de los temas más importantes de la asignatura Teoría del Derecho. Los primeros capítulos tratan de los problemas clásicos de la filosofía del Derecho, el resto de la obra ofrece una serie de conceptos jurídicos elementales que sirvan de base para la comprensión del fenómeno jurídico.

Curso de Derecho Civil patrimonial Carlos Lasarte, 2021-09-02 Como novedades legislativas contempladas en esta vigésimosexta edición, cabría citar: Ley 8/2021, de 2 de junio, por la que se reforma la legislación civil y procesal para el apoyo a las personas con discapacidad en el ejercicio de su capacidad jurídica (LAPCD); L.O. 3/2021, de 24 de marzo, de regulación de la eutanasia; L.O. 4/2021, de 29 de marzo, para el establecimiento del régimen jurídico aplicable al Consejo General del Poder Judicial en funciones; Ley 5/2021, de 12 de abril, por la que se modifica el texto refundido de la Ley de Sociedades de Capital, aprobado por el RD Legislativo 1/2010, de 2 de julio, y otras normas financieras, en lo que respecta al fomento de la implicación a largo plazo de los accionistas en las sociedades; Ley 6/2021, de 28 de abril que modifica la Ley del Registro Civil; Ley 3/2020, de 18 de septiembre, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la administración de justicia; Ley 6/2020, de 11 de noviembre, reguladora de determinados aspectos de los servicios electrónicos de confianza; RD-Ley 6/2020, de 10 de marzo, por el que se adoptan medidas urgentes en el ámbito económico y para la protección de la salud pública; RD 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19; RD-Ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del Covid-19; RD-Ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al Covid-19; RD Legislativo 1/2020, de 5 de mayo, se aprueba el Texto Refundido de la Ley Concursal; RD-Ley 24/2020, de 26 de junio, de medidas sociales de reactivación del empleo y protección del trabajo autónomo y de competitividad del sector industrial; RD 902/2020, de 13 de octubre, de igualdad retributiva entre hombres y mujeres.

Proceedings of the 21st IVR World Congress, Lund, Sweden, 12-17 August, 2003 International Association for Philosophy of Law and Social Philosophy. World Congress, 2004

Los principios jurídicos Alejandro Gonzalez Monzón, 2023-12-08 Los principios jurídicos: un estudio crítico y propositivo, es un libro que responde a un cuidadoso plan metodológico que viene a señalar, acertadamente, el camino para desplegar los

contenidos esenciales que abarca, apoyado en un buen conocimiento de la teoría y la filosofía del Derecho y de la práctica jurídica que ha tenido González Monzón como juez cubano, posición más que idónea para pulsar la realidad de las cosas que estudia. La estructura del texto se traza en dos grandes segmentos, ambos con sustancia y sentido propios, pero que deben verse articulados indisolublemente si se quiere comprender a cabalidad todo el estudio que nos propone su autor, en particular el lienzo que ahí compone sobre la temática en el Derecho cubano. Varios son los valores que se le pueden señalar a: la propia temática escogida; el plan metodológico utilizado; la seriedad y dominio con que son tratados sus contenidos; lo argumentado de los desarrollos que contiene; lo bien escrito que está el libro; el aparato bibliográfico en el que se apoya; la incorporación acertadísima de la perspectiva histórico-jurídica; la pluralidad de ideas que recogen sus páginas y que destilan sus análisis; el anclaje y análisis de la cuestión en un ordenamiento jurídico como el cubano, tan poco conocido en la temática que se aborda por propios y extraños. Dr. Andry Matilla Correa. El libro de Alejandro González Monzón es rico en todas las facetas de la teoría jurídica, lo cual evidentemente contribuye a que sea útil tanto para el teórico como para el jurista no especialista en teoría jurídica, puesto que no se limita a una discusión teórica, sino que muestra mediante el ejemplo, mediante el estudio, lo que la teoría del derecho permite comprender del derecho positivo. En primer lugar, encontraremos una comprensión crítica de la forma en que los juristas, a lo largo de la historia y según diversas tradiciones jurídicas y políticas, han entendido y puesto en movimiento los principios: una forma muy bien conducida de metajurisprudencia histórica. Por supuesto, en dicha comprensión encontraremos también un análisis conceptual (por ende, propiamente teórico) de los principios jurídicos, el cual asume posiciones filosóficas de manera coherente. Finalmente, encontraremos una movilización de este trabajo conceptual para comprender la situación del derecho positivo cubano contemporáneo, y particularmente la naturaleza y función de los principios en la nueva Constitución cubana. Dr. Eric Millard.

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