Judicial Creativity The Law Explained Volume 8

Copyright law regulates creativity. It affects the way people create works of authorship ex-ante and affects the status of works of authorship significantly ex-post. But does copyright law really understand creativity? Should legal theories alone inform our regulation of the creative process? This book views copyright law as a law of creativity. It asks whether copyright law understands authorship as other creativity studies fields do. It considers whether copyright law should incorporate non-legal theories, and if so, how it should be adjusted in their light. For this purpose, the book focuses on one of the many rights that copyright law regulates – the right to make a derivative work. A work is considered derivative when it is based on one or more preexisting works. Today, the owner of a work of authorship has the exclusive right to make derivative works based on her original work or to allow others to do so. The book suggests a new way to think about both the right, the tension, and copyright law at large. It proposes relying on non-legal fields like cognitive psychology and genre theories, and offers new legal-theoretical justifications for the right to make derivative works. As the first book to consider the intersection between copyright law, creativity and derivative works, this will be a valuable resource for students, scholars, and practitioners interested in intellectual property and copyright law.
This book comprehensively analyses the foundations of judicial review.

The book offers contributions to a philosophical and realistic approach to the place of adjudication in contemporary constitutional democracies. Bringing together scholars from different legal and philosophical backgrounds, the book purports to cast light on the role(s) of judges and the function of judicial interpretation inside of constitutional states, from the standpoint of legal realism as a revisited and sophisticated jurisprudential outlook. In so doing, the book also copes with a few major jurisprudential issues, like, e.g., determining the ideas that make up the core of legal realism, exploring the relation between legal realism and legal positivism, identifying the boundaries of judicial interpretation as they appear from a realist standpoint, as well as considering some skeptical outlooks on the very claims of contemporary legal realism.

A distinguished and experienced appellate court judge, Posner offers in this new book a unique and, to orthodox legal thinkers, a startling perspective on how judges and justices decide cases.

In Judges and the Making of International Criminal Law Joseph Powderly explores the role of judicial creativity in the progressive development of international criminal law. This wide-ranging work unpacks the nature and contours of the international criminal judicial function.

This collection explores how creators extend the commercial life of their creative endeavours, and the impact of these legal developments.

ONLY BUY WHAT YOU NEED! If you want information and tasks on a particular topic 'The Law Explained' series is for you. Written in a lively, clear

and accessible way and fully updated for 2014, each covers a single area of law and includes Plenty of stimulating tasks & self-test questions (complete with answers)Diagrams and numerous examples to bring the subject to lifeKey cases highlighted plus 'clue spotting' task to help prepare for problem questions Essay pointers and key criticisms to help prepare for evaluation questionsSummaries, revision, examination tips and examination practice These booklets can be used as self-study guides as well as in the classroom. They are designed to help students of all learning styles to understand the subject by providing clear explanations with plenty of tasks and examples, and guidance on how to do well in examinationsThey are aimed at A-level but are suitable for many other law courses. They offer a useful introduction to the law needed for higher-level courses, including various Law degree courses. In particular, the five 'Concepts of law booklets' provide a basic understanding of jurisprudence, which is a compulsory requirement of most degree courses.Also available by Sally RussellAQA Unit 3A Criminal law, Offences against the person: Updated in 2013Revision for Criminal law, Offences against the person: New for 2013The Law Explained series: Individual booklets covering specific topics of law (from January 2014)A2 Law for AQA and A2 Law for OCR 2007 editions All these titles are available in Kindle formatSally Russell has an LLB (Hons) from

the University of London, and a Postgraduate Certificate in Education. She was formerly Head of Law at Sussex Downs College and a Senior Examiner with AQA. She has also written various study and teaching materials for the National Extension College and Hodder education. For more information visit www.drsr.org

Accessible and clearly structured, this is the first book to include examinations of public and private law in the discussion about access to foreign laws. With commentaries by an international collection of leading judges in the field, it looks at the practice in a range of countries spread across the globe. In jurisprudence an exchange of ideas is essential, as there is no monopoly of wisdom. Legal convergence is particularly beneficial to both public law, as constitution building is done in so many parts of the world, and to commercial law, where enhanced communication, trade and information mean that people have to work more closely together. This book: examines the theme of judicial mentality and how it helps or hinders recourse to foreign ideas raises and addresses the dangers that accompany comparative law and judicial creativity looks at the practice in America, Canada, England, France, Germany, Italy, Israel, South Africa and at the European Court of Justice. Ideal for practitioners and academics, it is an essential read for those working in or studying jurisprudence at undergraduate or

postgraduate level.

This impressive and unique collection of essays covers important aspects of the legal regime of the International Criminal Court (ICC). The volume begins with an analysis of the historical development of the ICC, the progressive development of international humanitarian and international criminal law by the ad hoc Tribunals and the work of mixed national/international jurisdictions. The legal and institutional basis of the ICC is then dealt with in detail, including the organs of the ICC, war crimes, crimes against humanity and crimes of aggression, modes of liability before the ICC and defences before the ICC. Part III focuses on the court at work, including its procedural rules, criminal proceedings at the ICC, penalties and appeal and revision procedures. Part IV deals with the relationship of the ICC with states and international organizations. The contributors are established scholars in the field of international criminal and humanitarian law, many of whom are practitioners in the various tribunals.

Selected by Choice magazine as an Outstanding Academic Title In The Politics of Jurisprudence, Roger Cotterrell offers a concise introduction to and commentary on Anglo-American jurisprudence, and a contribution to the study of the development of American and English general conceptions of law since the establishment of modern legal professions in the U.S. and Britain.

Authors from 13 countries come together in this edited volume, Common Law and Civil Law Today: Convergence and Divergence, to present different aspects of the relationship and intersections between common and civil law. Approaching the relationship between common and civil law from different perspectives and from different fields of law, this book offers an intriguing insight into the similarities, differences and connections between these two major legal traditions. This volume is divided into 3 parts and consists of 22 articles. The first part discusses the common law/civil law dichotomy in the international legal systems and theory. The second focuses on case-law and arbitration, while the third part analyses elements of common and civil law in various legal systems. By offering such a variety of approaches and voices, this book allows the reader to gain an invaluable insight into the historical, comparative and theoretical contexts of this legal dichotomy. From its carefully selected authors to its comprehensive collection of articles, this edited volume is an essential resource for students, researchers and practitioners working or studying within both legal systems.

The interpretive process in International Criminal Law (›ICL‹) is characterised by a conflict between the requirements for stability and change. On the one hand, ICL provides for the ›criminal‹

responsibility of individuals. Thus, there is an enhanced requirement for legal certainty: According to the principle of legality, the addressee of the law must be able to identify the prohibited conduct in advance in order to be able to avoid criminal sanctions. On the other hand, however, ICL forms part of ›international‹ law. Hence, it derives to some extent from international treaties. Whereas the forms of criminal conduct are continuously evolving, treaties are rather static instruments – they cannot be adapted to a changing environment within a short period of time. Thus, reality is developing at a pace that the law cannot always match. In consequence, there is a certain need to account for evolving circumstances within the framework of interpretation. The aim of this book is to review the consequences of this conflict for the interpretation of ICL. How can the conflicting requirements be brought into balance? Can substantive rules of ICL be interpreted in a ›dynamic‹ fashion to the detriment of the accused without violating the principle of legality? How do international criminal courts and tribunals deal with this issue?

Moving away from conventional approaches to the study of the subject, the Oxford Handbook of International Criminal Law draws on insights from disciplines both outside of criminal law and outside of law itself to critically examine issues such as international criminal law's actors, rationales,

boundaries, and narratives

The Ninth Amendment holds that every right not explicitly granted to the federal government by the Constitution belongs to the states or to the individual. Further, those rights held by the government should not be construed to deny or disparage other rights held by the people. As in other areas of contention between federal power and states' rights, the Ninth Amendment has become subject to activist Supreme Court interpretation whereby the traditional model of federalism, in which states had meaningful public policy prerogatives, has given way to a model in which states become mere extensions of the U. S. government. In this volume, Marshall DeRosa provides a thorough analysis of Supreme Court unenumerated rights policy and offers suggestions toward reestablishing American federalism as envisioned by the framers of the Constitution. The book opens with a review and analysis of current debates over Ninth Amendment rights and then utilizes the privileges and immunities clauses as demonstrative of the traditional relationship between the states' police powers and unenumerated fundamental rights. DeRosa then considers the critical role of academia in shifting public policy away from popular control and toward the judiciary. Later chapters include national and state case studies as instances of judicial creativity, an examination of the effects of Ninth Amendment jurisprudence on the

Second Amendment as it bears on the gun control debate, and a comparative analysis of contrasting theories on the status of unenumerated rights. In his conclusion DeRosa offers some prescriptive thoughts on how to restore the original constitutional concept of popular consent as a remedy to an increasingly unaccountable federal judiciary. By restoring the Ninth Amendment to the context of American federalism, this volume constitutes a major contribution to contemporary scholarship, challenging a corpus of commentary that either ignores, misunderstands, or misrepresents the relevance of popular control in the articulation of unenumerated rights. "The Ninth Amendment and the Politics of Creative Jurisprudence "will be of interest to political scientists, historians, legal theorists, and political practitioners.

Judicial Creativity the Law ExplainedCreateSpace

Intellectual property law, or IP law, is based on certain assumptions about creative behavior. The case for regulation assumes that creators have a fundamental legal right to prevent copying, and without this right they will under-invest in new work. But this premise fails to fully capture the reality of creative production. It ignores the range of powerful non-economic motivations that compel creativity, and it overlooks the capacity of creative industries for self-governance and innovative social and market responses to appropriation. This book reveals the on-

the-ground practices of a range of creators and innovators. In doing so, it challenges intellectual property orthodoxy by showing that incentives for creative production often exist in the absence of, or in disregard for, formal legal protections. Instead, these communities rely on evolving social norms and market responses—sensitive to their particular cultural, competitive, and technological circumstances—to ensure creative incentives. From tattoo artists to medical researchers, Nigerian filmmakers to roller derby players, the communities illustrated in this book demonstrate that creativity can thrive without legal incentives, and perhaps more strikingly, that some creative communities prefer, and thrive, in environments defined by self-regulation rather than legal rules. Beyond their value as descriptions of specific industries and communities, the accounts collected here help to ground debates over IP policy in the empirical realities of the creative process. Their parallels and divergences also highlight the value of rules that are sensitive to the unique mix of conditions and motivations of particular industries and communities, rather than the monoculture of uniform regulation of the current IP system.

This book looks at how the legal provisions of the European Convention on Human Rights emerged into a vast body of European human rights law. It presents a creative and thorough analysis of the

case law of the European Court of Human Rights and shows how the Court manages to bring and hold together judges coming from a great number of diverse legal and cultural traditions. The analysis of key issues - such as creativity, binding force of precedence, and interpretation - illustrate the complexity of the case-by-case international protection of human rights. This analysis will give both scholars and practitioners insight into a prudent and innovative construct of opinions on the Court's jurisprudence. The book is a valuable contribution to emerging European human rights law.

The present generation lives in a time of transition. The isolated national legal order, the supreme idea of 19th Century legal science, begins to be superseded by the evolution of a wider international and transnational net work of legal rules and conceptions. With the recognition of a fundamental guarantee of human rights as a binding ingredient of the framework of inter national law, the strict separation of the internal system of the states from the international community is transcended. To this extent, the rules of international law now exercise a direct influence upon the national legal order. In some conventional arrangements safeguarding human rights, the individual is given direct access to international protection against his own state. The piercing of national borders by transnational norms finds its strongest expression in the formation of

regional communities of states which seek to develop a common fund of legal rules, concepts and principles among their members. The leading role in this direction lies with European organizations. In the Community formed by the signatories of the European Convention on Human Rights, the members accept for themselves a stan dard of legal guarantees for fundamental rights of the individual laid down in the Convention. The organs of the Convention, including the Court and foremost the Commission, fulfill their tasks by measuring the national laws of the member states against the basic requirements embodied in the Euro pean Convention.

Nathan Roscoe Pound (1870-1964) was an American legal scholar and jurist who held the position of Dean of Harvard Law School from 1916 to 1936. Originally published in 1923, this book presents a critical history of various aspects of juristic thought as it developed in England and other countries. The text was based upon a series of lectures delivered by Pound at Trinity College, Cambridge during the Lent Term of 1922. Detailed notes are included in the main body of the text. This book will be of value to anyone with an interest in Pound and perspectives on legal history.

First published in 2013. Routledge is an imprint of Taylor & Francis, an informa company.

This book engages in an analytical and realistic enquiry into legal interpretation and a selection of related matters including legal gaps, judicial fictions, judicial precedent,

legal defeasibility, and legislation. Chapter 1 provides an outline of the central theoretical and methodological tenets of analytical realism. Chapter 2 presents a conceptual apparatus concerning the phenomenon of legal interpretation, which it subsequently applies to investigate the truth-in-legal-interpretation issue. Chapters 3 to 6 argue for a theory of legal interpretation - pragmatic realism - by outlining a theory of interpretive games, revisiting the debate between literalism and contextualism in contemporary philosophy of language, and underscoring the many shortcomings of the container-retrieval view and pragmatic formalism. In turn, Chapter 7, focusing on comparative legal theory, advocates an interpretation-sensitive theory of legal gaps, as opposed to purely normativist ones. Chapter 8 explores the connection between judicial reasoning and judicial fictions, casting light on the structure and purpose of fictional reasoning. Chapter 9 provides an analytical enquiry into judicial precedent, examining a variety of ideal-typical systems in terms of their normative or de iure relevance. Chapter 10 addresses defeasibility and legal indeterminacy. In closing, Chapter 11 highlights the central tenets of a realistic theory of legislation.

This book is an edited collection of 44 U.S. Supreme Court opinions that include the word "creativity." All Supreme Court cases are important cases in American law and these are no exception. These cases provide perspective from the highest jurists about the meaning of creativity in American law. The "feeling of creativity" is amongst the goals of American democracy but also a

judicial slur. Copyright protects artistic creativity for publishers and innovators but judicial creativity is to be restrained. Creativity "is fostered by a rule of law." Creativity may be most creative in the ways it restrains itself. For advanced English language readers interested in law or creativity. Reading case law can improve your ability to read law.

A novel and incisive investigation of the role of judicial precedents and customs in Russian law, this book examines the trends in the development of judge-made law in Russian civil law since the demise of the Soviet Union. Exploring the interrelated propositions that a certain creative element is intrinsic to the judicial function in modern legal systems, which are normally shaped by both legislators and judges and that the Russian legal system is not an exception to this rule, the author argues that the rejection or acceptance of judge-made law can no longer be sufficient grounds for distinguishing between common law and civil law systems for the purposes of comparative analysis. Divided into six chapters, it covers: the principles applied by judges when interpreting legal acts; analyzing a number of academic writings on this subject the boundaries of the realm of judge-made law and the problem of 'hard cases' and the factors, which make them 'hard' a taxonomy of forms in which Russian courts effectuate their law-creation functions current policies of courts in legal and socio-political matters joint-stock societies and arbitrazh courts. Estimating the degree of creativity within different branches of the Russian judiciary and explaining the difference in the approaches of various courts as well as

setting-out proposals as to how the discrepancies in judicial practice can be avoided, Judicial Law-Making in Post-Soviet Russia is invaluable reading for all students of international law, comparative law, legal skills, method and systems and jurisprudence and philosophy of law. This book covers all the law needed for AQA A2 Law Unit 3A Criminal law (offences against the person). It can be used as a self-study guide as well as in the classroom, and is designed to help students of all learning styles to understand the subject. Written in a lively, clear and accessible way and fully updated in 2013 with recent cases and laws, the book includes: Key case boxes, stimulating tasks & self-test questions, exam tips, diagrams and examples to bring the subject to life (Answers to tasks & self-test questions are at www.drsr.org) 'Food for thought' boxes to stimulate thought and help prepare for evaluation questions Ideas for connecting the substantive law to the various concepts of law covered in Unit 4C Examination practice, complete with example examination scripts and guidance Other courses Although written for the AQA specifications, it covers much of the OCR criminal law content and is a useful introduction to the law needed for higher-level courses such as the Institute of Legal Executives course and various Law degree courses. Also available by Sally Russell Revision for Criminal law, Offences against the person: AQA A2 Law Unit 4C: Concepts of Law A2 Law for AQA and A2 Law for OCR 2007 editions THE LAW EXPLAINED SERIES: Individual booklets covering specific topics of law from 2014 Murder (including actus reus and mens rea) Voluntary

manslaughter (loss of control and diminished responsibility) Involuntary manslaughter (gross negligence and unlawful act manslaughter) Non-fatal offences against the person (assault, battery, ABH, GBH and wounding) Defences (Insanity, automatism, intoxication, self-defence and consent) Law and Morals Law and Justice Judicial Creativity Fault Balancing Conflicting Interests For more information visit www.drsr.org

The Author Sanjit Kumar Naskar in this book titled A CRITICAL ANALYSIS OF JUDICIAL APPOINTMENTS IN INDIA has referred a wide range of resources viz. books, online law journals, articles from authoritative online resources. Firstly, the Author would review the book written by Prof. Madhav Godbole. In his book titled 'The Judiciary and Governance in India', he advocates for the Judicial Accountability in the higher judiciary and the need for such judicial accountability in India. However, Prof. Madhav Godbole though touched the aspect of accountability of lower judiciary in the form of transfers made by the higher judiciary and also had discussed the politicization of the judiciary in this regard, he completely ignores the transparency in the appointment process regarding the lower judiciary. Secondly, another important literary source which the Author has referred is regarding the Phd.thesis by Prof. V.R. Jayadevan entitled 'Judicial Creativity in Constitutional Interpretation'. The Author

has referred this thesis in light of explaining the historical background of system of appointments of judges in the higher judiciary as well as to support the arguments being raised by the Author in relation to the selection of judges and their condition of services in the higher judiciary. Although the research work done by Prof. Jayadevan is detail oriented and well established and argumentative, still the Author finds the holding of Prof. Jayadevan regarding the adoption of seniority rule in the matter of the appointment of CJI in India not proper and has referred the argument of Justice Katju (Refer Chapter II of Dissertation) in order to counter the argument put forward by Prof. Jayadevan in his work. Thirdly, another major literary resource referred by the Author in the current dissertation is of the article 'The NJAC Act - Is it the perfect remedy?' written by Vikram Mishra and Ananth Balaji. In their article, the writers have focused on the NJAC Act, 2014 and analyzed the Act in a critical manner. The Author while critically analyzing the NJAC, Act, 2014 in the Chapter - III of the dissertation has referred to this article and supported his arguments based on the arguments proposed by the writers in the abovementioned article. Though, this article is argumentative and represents the shortcomings of the NJAC Act, 2014 in a plain and language which is easily comprehensible yet this article fails to appreciate the salient features of the NJAC Act,

2014. Although it explains in a precise manner the shift from the collegium system of selection of judges in the higher judiciary to system of appointment of judges in the higher judiciary by the commission established under the NJAC Act, 2014. Lastly, the Author has referred the work of Prof. Tom S. Clark in his book titled 'The Limits of Judicial Independence' which deals with the limits of judicial independence where the author holds that in order to see whether the judiciary is independent or not depends upon the judicial behaviour of the judges of a particular legal system. Although the judicial behaviour holds the key to bring desirable results in the legal system of a particular country still the Author feels that somewhere down the line Prof. Tom S. Clark is not able to justify the significance of the role of judicial behaviour as an additional criteria of selection of judges in the higher judiciary besides measuring the judicial independence of a particular legal system.

As the work of the International Criminal Tribunals for the Former Yogoslavia and Rwanda draws to a close, this edited collection appraises their impact. It particularly focuses on the position of judges as lawmakers within these tribunals, shedding light on the profound changes in international criminal law which these judges have instigated.

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.

This book is for anyone invested in the future of the legal profession, be it someone tasked with transforming their practice, someone looking to approach their work in a new way, someone looking for a fresh approach to client relations, or someone

new to the field interested in a forecast of the world to come.

This is the English version of Jerzy Wroblewski's major work in Polish, S~dowe Stosowania Prawa (translated in his own preferred terms as 'The Judicial Application of Law'). The present translation arose out of a visit by the author to Scotland in 1989. In that year, the Carnegie Trust for the Universities of Scotland made it possible for Jerzy Wroblewski to spend six months as a Carnegie Fellow in the Centre for Criminology and the Social and Philosophical Study of Law at the University of Edinburgh. During that time he took a notably active part in the intellectual life of the Centre and the Faculty of Law. He gave freely of his time in teaching and advising students and also produced a series of original articles on topics connected with legal reasoning and law and computers. His major task while he was here, however, was to prepare a translation of S~dowe Stosowania Prawa, and this he accomplished to the extent of completing a preliminary draft. Zenon Bankowski and Neil MacCormick were to help him in improving this linguistically and preparing the final text for publication. Wroblewski warned us, having finished his draft with great labour, that the greater labour would be in the polishing of it. For we would have, as he joked, 'to translate my English into English'. And certainly, we found it extremely time-consuming, so

as to defy completion during his stay in Edinburgh.