The Concept Of Law Clarendon Series Hla Hart

A comprehensive, stimulating introduction to trusts law, which provides readers with a clear conceptual framework to aid understanding of this challenging area of the law. Aimed at readers studying trusts at an undergraduate level, it provides a succinct and enlightening account of this area of the law. Concise and clear, this book also identifies and discusses many analytical perspectives, encouraging a deeper understanding of the issues at hand. It offers an outstanding treatment of specific areas, in particular remedial constructive trusts and trusts of family homes. Ideal for providing a broad background to the issues before embarking on an in-depth study of trusts, it can also be used to help the reader to develop their understanding. For those looking to challenge themselves, detailed footnotes highlight further issues and point the direction for future reading. Fully revised to take into account the Charities Act 2006, judicial developments through case law, and recent academic work in this area, this new edition in the renowned Clarendon Law Series offers a well-written, careful, and insightful introduction to the law of trusts.
These essays seek to re-locate the relationship between the traditional concerns of legal theory and the sociology of law by establishing a consistent theoretical approach to the analysis of law in contemporary Western societies.
This work explores the relationship between Bentham's utilitarian practical philosophy and his positivist jurisprudence. These theories appear to be in tension because his utilitarian commitment to the sovereignty of utility as a practical decision principle seems inconsistent with his positivist insistence on the sovereignty of the will of the lawmaker. Two themes emerge from the attempt in this work to reconcile these two core elements of Bentham's practical thought. First, Bentham's conception of law does not fit the conventional model of legal positivism. Bentham was not just a utilitarian and a positivist; he was a positivist by virtue of his commitment to a utilitarian understanding of the fundamental task of law. Moreover, his emphasis on the necessary publicity and the systemic character of law, led him to insist on an essential role for utilitarian reasons in the regular public functioning of law. Second, Bentham's radical critique of common law theory and practice convinced him of the necessity to reconcile the need for certainty of law with an equally great need for its flexibility. He eventually developed a constitutional framework for adjudication in the shadow of codified law that accorded to judges discretion to decide particular cases according to their best judgment of the balance of utilities, guaranteeing the accountability and appropriate motivation of judicial decision-making through institutional incentives. The original text of this work, first published in 1986, remains largely unchanged, but an afterword reconsiders and revises some themes in response to criticism.
What role does gender play in shaping the law and legal thinking? This book provides an answer to this question, examining the historical role of gender in law and the relevance of gender to modern jurisprudence. It presents a clear, concise introduction to thinking about gender issues for lawyers and law students.
Here is an introduction to the intellectual challenges presented by law in the western secular tradition. Treating not just British law, but the whole western tradition of law, Professor Honore guides the reader through eleven topics which straddle various branches of the law, including constitutional and criminal law, property, and contracts. He also explores moral and historical aspects of the law, including a discussion of justice and the difference between civil and common law systems. The law, Honore argues, is mainly concerned with the question of obedience to authority, and establishing the situations in which obedience is required and those in which it may be waived ought to be the central concern of all legal theorists.
Fifty years on from its original publication, HLA Hart's The Concept of Law is widely recognized as the most important work of legal philosophy published in the twentieth century, and remains the starting point for most students coming to the subject for the first time. In this third edition, Leslie Green provides a new introduction that sets the book in the context of subsequent developments in social and political philosophy, clarifying misunderstandings of Hart's project and highlighting central tensions and problems in the work.
In a book written while the events were unfolding, Richard Posner presents a balanced and scholarly understanding of President Clinton's year of crisis which began when his affair with Monica Lewinsky hit the front pages in January 1998. With the freshness and immediacy of journalism, Posner clarifies the issues involved, carefully assesses the conduct of Independent Counsel Kenneth Starr, and examines the pros and cons of impeaching President Clinton as well as the major procedural issues raised by both the impeachment in the House and the trial in the Senate. This book, reflecting the breadth of Posner's experience and expertise, will be the essential foundation for anyone who wants to understand President Clinton's impeachment ordeal.
This important collection of essays includes Professor Hart's first defense of legal positivism; his discussion of the distinctive teaching of American and Scandinavian jurisprudence; an examination of theories of basic human rights and the notion of "social solidarity," and essays on Jhering, Kelsen, Holmes, and Lon Fuller.
In this book, Buckle provides a historical perspective on the political philosophies of Locke and Hume, arguing that there are continuities in the development of seventeenth and eighteenth-century political theory which have often gone unrecognized. He begins with a detailed exposition of Grotius's and Pufendorf's modern natural law theory, focussing on their accounts of the nature of natural law, human sociability, the development of forms of property, and the question of slavery. He then shows that Locke's political theory takes up and develops these basic themes of natural law. The author argues further that, rather than being a departure from this tradition, the moral sense theory of Hutcheson and Hume represents a not entirely successful attempt to underpin the natural law theory with an adequate moral psychology.
Susan Sauvé Meyer presents a new translation of Laws, 1 and 2: the opening books of Plato's last work, which discuss legislative theory, moral psychology, and aesthetics. This fluent, readable, and authoritative translation is accompanied by a critical commentary which explores the argument's structure, and the philosophical issues at stake.
You find yourself in a court of law, accused of having hit someone. What can you do to avoid conviction? You could simply deny the accusation: 'No, I didn't do it'. But suppose you did do it. You may then give a different answer. 'Yes, I hit him', you grant, 'but it was self-defence'; or 'Yes, but I was acting under duress'. To answer in this way-to offer a 'Yes, but. . .' reply-is to hold that your particular wrong was committed in exceptional circumstances. Perhaps it is true that, as a rule, wrongdoers ought to be convicted. But in your case the court should set the rule aside. You should be acquitted. Within limits, the law allows for exceptions. Or so we tend to think. In fact, the line between rules and exceptions is harder to draw than it seems. How are we to determine what counts as an exception and what as part of the relevant rule? The

distinction has important practical implications. But legal theorists have found the notion of an exception surprisingly difficult to explain. This is the longstanding jurisprudential problem that this book seeks to solve. The book is divided into three parts. Part I, Defeasibility in Question, introduces the topic and articulates the core puzzle of defeasibility in law. Part II, Defeasibility in Theory, develops a comprehensive proof-based account of legal exceptions. Part III, Defeasibility in Action, looks more closely into the workings of exceptions in accusatory contexts, including the criminal trial.

In this book Joseph Raz develops his views on some of the central questions in practical philosophy: legal, political, and moral. The book provides an overview of Raz's work on jurisprudence and the nature of law in the context of broader questions in the philosophy of practical reason. The book opens with a discussion of methodological issues, focusing on understanding the nature of jurisprudence. It asks how the nature of law can be explained, and how the success of a legal theory can be established. The book then addresses central questions on the nature of law, its relation to morality, the nature and justification of authority, and the nature of legal reasoning. It explains how legitimate law, while being a branch of applied morality, is also a relatively autonomous system, which has the potential to bridge moral differences among its subjects. Raz offers responses to some critical reactions to his theory of authority, adumbrating, and modifying the theory to meet some of them. The final part of the book brings together for the first time Raz's work on the nature of interpretation in law and the humanities. It includes a new essay explaining interpretive pluralism and the possibility of interpretive innovation. Taken together, the essays in the volume offer a valuable introduction for students coming for the first time to Raz's work in the philosophy of law, and an original contribution to many of the current debates in practical philosophy.

Questions about the nature of law, its relationship with custom, and the distinctive form of legal rules, categories, and reasoning, are placed at the centre of this introduction to the anthropology of law. It brings empirical scholarship within the scope of legal philosophy, while suggesting new avenues of inquiry for the anthropologist. Going beyond the functional and instrumental aspects of law that underlie traditional ethnographic studies of order and conflict resolution, The Anthropology of Law considers contemporary debates on human rights and new forms of property, but also delves into the rich corpus of texts and codes studied by legal historians, classicists, and orientalist scholars. Studies of the great legal systems of ancient China, India, and the Islamic world, unjustly neglected by anthropologists, are examined alongside forms of law created on their peripheries. The coutumes of medieval Europe, the codes drawn up by tribal groups in Tibet and the Yemen, village laws on both sides of the Mediterranean, and the intricate codes of saga in Iceland provide rich empirical detail for the author's analysis of the cross-cultural importance of the form of law, as text or rule, and the relative marginality of its functions as an instrument of government or foundation of social order. Carefully-selected examples shed new light upon the interrelations and distinctions between law, custom, and justice. Gradually an argument unfolds concerning the tensions between legalistic thought and argument, and the ideological or aspirational claims to embody justice, morality, and religious truth which lie at the heart of what we think of as law.

This book provides an accessible and engaging account of the contemporary laws of war. It highlights how, even though war has been outlawed and should be finished as an institution, states continue to claim that they can wage necessary wars of self-defence, engage in lawful killings in war, and imprison law-of-war detainees.

This fourth edition of Precedent in English Law presents a basic guide to the current doctrine of precedent in England, set in the wider context of the jurisprudential problems which any treatment of this topic involves. Such problems include the nature of _ratio_ _decidendi_ of a precedent and of its binding force, the significance of precedents alongside other sources of law, their role in legal reasoning, and the account which must be taken of them by any general theory of law. Considerable re-writing has been undertaken to update case-law and take account of the possible implications for the doctrine of precedent of the impact of European Community law, making it an indispensable work of reference for readers interested in the past history, present state, and future developments of English rules of precedent.

Clarendon Reconsidered reassesses a figure of major importance in seventeenth-century British politics, constitutional history and literature. Despite his influence in these and other fields, Edward Hyde, first Earl of Clarendon (1609–1674) remains comparatively neglected. However, the recent surge of interest in royalists and royalism, and the new theoretical strategies it has employed, make this a propitious moment to re-examine his influencecontribution. Chancellor of the Exchequer, Lord Chancellor and author of the History of the Rebellion (1702–1704), then and for long afterwards the most sophisticated history written in English, his long career in the service of the Caroline court spanned the English Revolution and Restoration. The original essays in this interdisciplinary collection shine a torch on key aspects of Clarendon’s life and works: his role as a political propagandist, his family and friendship networks, his religious and philosophical inclinations, his history- and essay-writing, his influence on other forms of writing, and the personal, political and literary repercussions of his two long exiles. Pushing the boundaries of the new royalist scholarship, this fresh account of Clarendon reveals a multifaceted man who challenges as often as he justifies traditional characterisations of detached historian and secular statesman.

The Concept of Law is one of the most influential texts in English-language jurisprudence. 50 years after its first publication its relevance has not diminished and in this third edition, Leslie Green adds an introduction that places the book in a contemporary context, highlighting key questions about Hart's arguments and outlining the main debates it has prompted in the field. The complete text of the second edition is replicated here, including Hart'sPostscript, with fully updated notes to include modern references and further reading.

What makes an argument in a law case good or bad? Can legal decisions be justified by purely rational argument or are they ultimately determined by more subjective influences? These questions are central to the study of jurisprudence, and are thoroughly and critically examined in Legal Reasoning and Legal Theory, now with a new and up-to-date foreword. Its clarity of explanation and argument make this classic legal text readily accessible to lawyers, philosophers, and any general reader

interested in legal processes, human reasoning, or practical logic.

This volume presents twelve original essays by contemporary natural law theorists and their critics. Natural law theory is enjoying a revival of interest today in a variety of disciplines, including law, philosophy, political science, and theology and religious studies. These essays offer readers a sense of the lively contemporary debate among natural law theorists of different schools, as well as between natual law theorists and their critics.

Many legal theorists maintain that laws are effective because we internalize them, obeying even when not compelled to do so. In a comprehensive reassessment of the role of force in law, Frederick Schauer disagrees, demonstrating that coercion, more than internalized thinking and behaving, distinguishes law from society’s other rules.

The Concept of LawOxford University Press

More than 50 years after it was first published, The Concept of Law remains the most important work of legal philosophy in the English-speaking world. In this volume, written for both students and specialists, 13 leading scholars look afresh at Hart's great book. Unique in format, the volume proceeds sequentially through all the main ideas in The Concept of Law: each contributor addresses a single chapter of Hart's book, critically discussing its arguments in light of subsequent developments in the field. Four concluding essays assess the continued relevance for jurisprudence of the 'persistent questions' identified by Hart at the beginning of The Concept of Law. The collection also includes Hart's 'Answers to Eight Questions', written in 1988 and never before published in English. Contributors include Timothy Endicott, Richard HS Tur, Pavlos Eleftheriadis, John Gardner, Grant Lamond, Nicos Stavropoulos, Leslie Green, John Tasioulas, Jeremy Waldron, John Finnis, Frederick Schauer, Pierluigi Chiassoni and Nicola Lacey.

Kelsen, Hans. Pure Theory of Law. Translation from the Second German Edition by Max Knight. Berkeley: University of California Press, 1967. x, 356 pp. Reprinted 2005 by The Lawbook Exchange, Ltd. ISBN 1-58477-578-5. Paperbound. $36.95 * Second revised and enlarged edition, a complete revision of the first edition published in 1934. A landmark in the development of modern jurisprudence, the pure theory of law defines law as a system of coercive norms created by the state that rests on the validity of a generally accepted Grundnorm, or basic norm, such as the supremacy of the Constitution. Entirely self-supporting, it rejects any concept derived from metaphysics, politics, ethics, sociology, or the natural sciences. Beginning with the medieval reception of Roman law, traditional jurisprudence has maintained a dual system of "subjective" law (the rights of a person) and "objective" law (the system of norms). Throughout history this dualism has been a useful tool for putting the law in the service of politics, especially by rulers or dominant political parties. The pure theory of law destroys this dualism by replacing it with a unitary system of objective positive law that is insulated from political manipulation. Possibly the most influential jurisprudent of the twentieth century, Hans Kelsen [1881-1973] was legal adviser to Austria's last emperor and its first republican government, the founder and permanent advisor of the Supreme Constitutional Court of Austria, and the author of Austria's Constitution, which was enacted in 1920, abolished during the Anschluss, and restored in 1945. The author of more than forty books on law and legal philosophy, he is best known for this work and General Theory of Law and State. Also active as a teacher in Europe and the United States, he was Dean of the Law Faculty of the University of Vienna and taught at the universities of Cologne and Prague, the Institute of International Studies in Geneva, Harvard, Wellesley, the University of California at Berkeley, and the Naval War College.Also available in cloth.

This work deals with the traditional conflict in legal philosophy between positivistic and anti-positivistic theories of law. It examines the conflict with respect to seven central issues in legal philosophy and argues that the true nature of law is revealed, not obscured, by this situation.

A highly readable introduction to equality law and how it has adjusted to new and complex problems. Including an historical overview and comparative analysis, it thematically illuminates and discusses the major issues in discrimination law. This edition incorporates recent changes to the law, most importantly the Equality Act 2010.

Providing an introduction to law in modern society, D. J. Galligan considers how legal theory, and particularly H. L. A Hart's The Concept of Law, has developed the idea of law as a highly developed social system, which has a distinctive character and structure, and which shapes and influences people's behaviour. The concept of law as a distinct social phenomenon is examined through reference to, and analysis of, the work of prominent legal and social theorists, in particular M. Weber, E. Durkheim, and N. Luhmann. Galligan's approach is guided by two main ideas: that the law is a social formation with its own character and features, and that at the same time it interacts with, and is affected by, other aspects of society. In analysing these two ideas, Galligan develops a general framework for law and society within which he considers various aspects including: the nature of social rules and the concept of law as a system of rules; whether law has particular social functions and how legal orders run in parallel; the place of coercion; the characteristic form of modern law and the social conditions that support it; implementation and compliance; and what happens when laws are used to change society. Law in Modern Society encourages legal scholars to consider the law as an expression of social relations, examining the connections and tensions between the positive law of modern society and the spontaneous relations they often try to direct or change.

Using newly translated papers and some of the best extant writings on Kelsen's theory, this volume covers topics including competing ideas on the nature of law, legal validity, legal powers and the unity of municipal and international law.

This is a reprint of Anthony Ogus' classic study of regulation,first published in the 1990s. It examines how, since the last decades of the twentieth century there have been fundamental changes in the relationship between the state and industry. With the aid of economic theory Anthony Ogus critically examines the ways in which public law has been adapted to the task of regulating industrial activity and provides a systematic overview of the theory and forms of social and economic regulation. In particular, he explores the reasons why governments regulate, for which, broadly speaking, two theoretical frameworks exist. First 'public interest' theories determine that regulation should aim to improve social and economic welfare. Second, 'economic' theories suggest that regulation should aim to satisfy the demands of private interests. The book also looks at the evolution of the forms of regulation in Britain, extending to the policies of privatization and deregulation which were so characteristic of the period. The author skilfully evaluates the advantages and disadvantages of the different forms of regulation, particularly in the light of the two theoretical frameworks, but also by involving an analysis of how firms respond to the various kinds of incentives and controls offered by government. A significant feature of the book is its analysis of the choices made by governments between the different forms of regulation and the influence exerted by interest groups (including bureaucrats) and EC law.

H. L. A. Hart's The Concept of Law is without question the most important work of legal philosophy written this century; no other

study has made such an important contribution to the study of jurisprudence and legal philosophy. Since it was first published in 1961 its elegant language and balanced arguments have inspired generations of students to address the wider problems associated with the study of law. In this long awaited new edition Hart presents a postscript in which he re-examines the foundations of his philosophy of law, with special attention to Professor Dworkin's criticism of it. With dispassionate lucidity he shows how much of the criticism stems from misunderstanding and confusion of thought. The postscript provides a clarification and a restatement of the fundamental tenets of his position. This thought-provoking new edition will re-open a wide range of debates and will be welcomed by all those with an interest in legal philosophy and jurisprudence.

Legality is a profound work in analytical jurisprudence, the branch of legal philosophy which deals with metaphysical questions about the law. In the twentieth century, there have been two major approaches to the nature of law. The first and most prominent is legal positivism, which draws a sharp distinction between law as it is and law as it might be or ought to be. The second are theories that view law as embedded in a moral framework. Scott Shapiro is a positivist, but one who tries to bridge the differences between the two approaches. In Legality, he shows how law can be thought of as a set of plans to achieve complex human goals. His new “planning” theory of law is a way to solve the “possibility problem”, which is the problem of how law can be authoritative without referring to higher laws.

This classic collection of essays, first published in 1968, has had an enduring impact on academic and public debates about criminal responsibility and criminal punishment. Forty years on, its arguments are as powerful as ever. H.L.A. Hart offers an alternative to retributive thinking about criminal punishment that nevertheless preserves the central distinction between guilt and innocence. He also provides an account of criminal responsibility that links the distinction between guilt and innocence closely to the ideal of the rule of law, and thereby attempts to by-pass unnerving debates about free will and determinism. Always engaged with live issues of law and public policy, Hart makes difficult philosophical puzzles accessible and immediate to a wide range of readers. For this new edition, otherwise a reproduction of the original, John Gardner adds an introduction engaging critically with Hart's arguments, and explaining the continuing importance of Hart's ideas in spite of the intervening revival of retributive thinking in both academic and policy circles. Unavailable for ten years, the new edition of Punishment and Responsibility makes available again the central text in the field for a new generation of academics, students and professionals engaged in criminal justice and penal policy.

Providing a theoretical examination of the concept of arbitration, this book explores the place of arbitration in the legal process and examines the ethical challenges to arbitral authority and its moral hazards.

This book presents an alternative viewpoint in the ongoing dialogue on property. Dr Penner places the idea of property within the broader system of rules, rights and powers which make up the legal system.

Adrian Briggs' invaluable introduction to the study of the conflict of laws provides a survey and analysis of the rules of private international law as they apply in England. The volume covers general principles, jurisdiction, and the effect of foreign judgments; choice of law for contractual and non-contractual obligations, the private international law of property, of persons, and of corporations. It does so in a manner which explains and illuminates the principles which underpin the subject in a clear and coherent fashion, as the wealth of literature, case law, and legislation often obscures the architecture of the subject and unnecessarily complicates study. This new edition organizes its material in light of European legislation on private international law, reflecting the shift towards understanding private international law as European law with a common law background instead of common law with European legislative influences. The author's approach is focused on the law and avoids the more abstract theory; as the theory of the conflict of laws is actually to be found in and by applying the legislation and jurisprudence to the cases and issues which arise in private international litigation and legal advice.

Written in the well-established tradition of the Clarendon Law Series, Public Law offers a stimulating re-interpretation of the central themes and problems of English constitutional law. It offers full consideration of the historical development of public law. This book is an introduction that will be especially appealing to the enquiring student who is looking to reflect critically on the assumptions underpinning the standard presentation of the subject. Written throughout in an engaging and accessible style, Public Law examines the issues of power and accountability that are central to constitutional and administrative law. Among the topics considered are the unwritten nature of the constitution, the changing relationship between the law and the politics of the constitution, the separation of powers, the enduring influence of the crown, the role and functions of Parliament, questions of responsible government, and the law of judicial review and human rights.

This second edition of Sarah Worthington's Equity maintains the clear ambitions of the first. It sets out the basic principles of equity, and illustrates them by reference to commercial and domestic examples of their operation. The book comprehensively and succinctly describes the role of equity in creating and developing rights and obligations, remedies and procedures that differ in important ways from those provided by the common law itself. Worthington delivers a complete reworking of the material traditionally described as equity. In doing this, she provides a thorough examination of the fundamental principles underpinning equity's most significant incursions into the modern law of property, contract, tort, and unjust enrichment. In addition, she exposes the possibilities, and the need, for coherent substantive integration of common law and equity. Such integration she perceives as crucial to the continuing success of the modern common law legal system. This book provides an accessible and elementary exploration of equity's place in our modern legal system, whilst also tackling the most taxing and controversial questions which our dual system of law and equity raises.

How do laws resemble rules of games, moral rules, personal rules, rules found in religious teachings, school rules, and so on? Are laws rules at all? Are they all made by human beings? And if so how should we go about interpreting them? How are they organized into systems, and what does it mean for these systems to have 'constitutions'? Should everyone want to live under a system of law? Is there a special kind of 'legal justice'? Does it consist simply in applying the law of the system? And how does it relate to the ideal of 'the rule of law'? These and other classic questions in the philosophy of law form the subject-matter of Law as a Leap of Faith. In this book John Gardner collects, revisits, and supplements fifteen years of celebrated writings on general questions about law and legal systems - writings in which he attempts, without loss of philosophical finesse or insight, to cut through some of the technicalities with which the subject has become encrusted in the late twentieth century. Taking his agenda broadly from H.L.A. Hart's The Concept of Law (1961), Gardner shows how the key ideas in that work live on, and how they have been and can still be improved in modest ways to meet important criticisms - in some cases by concession, in some cases by circumvention, and in some cases by restatement. In the process Gardner engages with key ideas of other modern giants of the

subject including Kelsen, Holmes, Raz, and Dworkin. Most importantly he presents the main elements of his own unique and refreshingly direct way of thinking about law, brought together in one place for the first time.