

TABLE OF CONTENTS

A Note on the Authors

Preface

Chapter 1 - Introduction

Chapter 2 - Legislation

2.1. Introduction

2.2. Legislation as a Source of Law

2.2.1 Sources of Legislation vs. Legislation as a Source of Law

2.2.2. What Counts as Legislation?

2.2.3. Codification vs. Consolidation

2.2.4. Statutory Interpretation

2.2.5. Legislation and Common Law

2.2.6. Legislation vs. Adjudication

2.3. Legislation vs. Sovereignty

2.4. Taking Legislation Seriously

2.5. Conclusion

Chapter 3 - Precedent

3.1. A Characterization of Precedent

3.2. The Functioning of Precedent in Law

3.2.1. The Doctrine of *Stare Decisis*

3.2.2. Binding vs. Persuasive Precedent

3.2.3. The *Ratio Decidendi* of a Precedent

3.3. Precedent and Legislation

3.4. The Modalities of Binding Precedent

3.4.1. Precedent and Logical Necessity

3.4.2. Precedent and Rule-scepticism

3.4.3. Precedent and Judicial Comity

3.5. Precedent, Bindingness, and Ruleness

3.5.1 Precedent and Hart's Social Rules

3.5.2. Precedent, Wittgenstein and Rule-following

3.5.2.1. Wittgenstein and Following a Rule

3.5.2.2. Precedent and Following a Rule

3.6. The Justification of Precedent

3.6.1 Introduction

3.6.2. The Structure of *Stare Decisis*

3.6.3. The Justification of Precedent

Chapter 4 - Custom

4.1. Historical Foundations of Custom as a Source of Law

4.1.1. From Social Norm to Common Law

4.1.2. General Custom and Local Custom

4.2. The Conceptual Framework for Custom

4.3. The Common Law Rules for the Validity of Custom

4.4. Puzzles Concerning Custom as a Source of Law

- 4.4.1. Reasonableness
- 4.4.2. Derivation and Abrogation

Chapter 5 - Delegation

- 5.1. Introduction
- 5.2. Labour Arbitration
 - 5.2.1. A Sketch of Labour Arbitration Law
 - 5.2.2. *Res judicata* & Collateral Estoppel
 - 5.2.2.1. Statement of the Principle
 - 5.2.2.2. Status Under Arbitration Jurisprudence
 - 5.2.2.3. Emergence of the Principles
 - 5.2.2.4. Assessment
 - 5.2.3. Stare Decisis
 - 5.2.3.1. Statement of Principle
 - 5.2.3.2. Status Under Arbitration Jurisprudence
 - 5.2.3.3. Emergence of “Quasi-stare decisis”
in Arbitration jurisprudence
 - 5.2.3.4. Assessment
 - 5.2.4. Conclusion
- 5.3. Mediation
 - 5.3.1. Introduction
 - 5.3.2. The Saskatchewan Farm Security Act
 - 5.3.2.1. The Provisions of the Act
 - 5.3.2.2. Assessment
 - 5.3.3. The Alberta Human Rights Act
 - 5.3.3.1. The Provisions of the Act
 - 5.3.3.2. Assessment
 - 5.3.4. Other Examples of Mediation
- 5.4. Conclusion

Chapter 6 - Constitutions

- 6.1. Definitional Issues
 - 6.1.1. The “Thin” Sense of “Constitution”
 - 6.1.2. The “Thick” Sense of ‘Constitution’
 - 6.1.3. Constitutional Conventions
 - 6.1.4. *Prima Facie* Grounds for Constitutions as Sources of Law
 - 6.1.5. The Fundamental Challenge
- 6.2. The Supreme Court of Canada and “Reading in”
- 6.3. The High Court of Australia and Implied Rights
- 6.4. The Supreme Court of Canada and Unwritten Constitutional Law
 - 6.4.1. Unwritten Principles as Fundamental Law
 - 6.4.2. “New Brunswick Broadcasting”
 - 6.4.3. The “Provincial Judges” Case
 - 6.4.4. The “Quebec Secession” Case
- 6.5. Conclusions

Chapter 7 - Sources of Law in the Civil Law (by Antonino Rotolo)

- 7.1. Introduction. The Theoretical Framework: Basic Concepts

on the Sources of Law in Continental Legal Doctrine

7.2. Constitution and Legislation

7.2.1. The Historical Background. The *Rechtsstaat* and the Paradigm of Legislation in Continental Legal Doctrine

7.2.2. The Change of Paradigm: Contemporary Constitutional Democracies

7.3. Other Sources of Law

7.3.1. Some Notes on Private Autonomy and Precedent

7.3.1.1. Private Autonomy

7.3.1.2. Judicial Decision and Precedent

7.3.2. Custom

7.3.3. The Role of EC/EU Law: A Sketch

Chapter 8 International Law

8.1. Introduction

8.2. Article 38

8.3. Treaties

8.4. Customary International Law

8.4.1. Introduction

8.4.2. State Practice

8.4.3. *Opinio Juris*

8.5. General Principles

8.5.1. General Principles of Municipal Law

8.5.2. *Jus Cogens*

8.6. Conclusion

Chapter 9 - Authority

9.1. Deeply and Contextually Justified Authority: First Thoughts

9.2. The Authority of Ancient Manuscripts

9.3. Interpretive Authority

9.4. Ancient Authorities Revisited

9.5. Legal Authorities Revisited

9.6. Post-postmodernist Conclusions

Bibliography

Index of Subjects

Index of Names

A Treatise of Legal Philosophy and General
Jurisprudence

Volume 1: The Law and The Right, Volume 2:
Foundations of Law, Volume 3: Legal Institutions and
the Sources of Law, Volume 4: Scientia Juris, Legal
Doctrine as Knowledge of Law and as a Source of Law,
Volume 5: Legal Reasoning, A Cognitive Approach to
the Law

Pattaro, E. - Editor-in-chief: Pattaro, E.

2005, XCVIII, 1958 p. In 5 volumes, not available
separately., Hardcover

ISBN: 978-1-4020-3387-2