# The Principle Of Legality In International And Comparative Criminal Law

This collection presents a comparative analysis of the principle of effective legal protection in administrative law in Europe. It examines how European states consider and enforce the related requirements in their domestic administrative law. The book is divided into three parts: the first comprises a theoretical introductory chapter along with perspectives from International and European Law; part two presents 15 individual country reports on the principle of effective legal protection in mostly EU member states. The core function of the reports is to provide an analysis of the domestic instruments and procedures. Adopting a contextual approach, they consider the historical, political and legal circumstances as well as analysing the relevant case law of the domestic courts; the third part provides a comparative analysis of the country reports. The final chapter assesses the influence and relevance of EU law and the ECHR. The book thus identifies the most important trends and makes a valuable contribution to the debate around convergence and divergence in European national administrative systems.

This book fills a major gap in the scholarly literature concerning international criminal law, comparative criminal law, and human rights law. The principle of legality (non-retroactivity of crimes and punishments and related doctrines) is fundamental to criminal law and human rights law. Yet this is the first book-length study of the status of legality in international law - in international criminal law, international human rights law, and international humanitarian law. This is also the first book to survey legality/non-retroactivity in all national constitutions,

developing the patterns of implementation of legality in the various legal systems (e.g., Common Law, Civil Law, Islamic Law, Asian Law) around the world. This is a necessary book for any scholar, practitioner, and library in the area of international, criminal, comparative, human rights, or international humanitarian law.

The book provides a systematic and comprehensive study of the prevention principle in international environmental law.

Principles of International Criminal Law is one of the leading textbooks in the field of international criminal justice. This fourth edition retains the detailed and systematic approach of previous editions, whist adding substantial new material on new theories, laws, and prosecutions.

This book is a scientific treatise on the principle of legality in criminal law. It explores the relation between the principle of legality and the general theory of criminal law and contains definite rules emphasized for practitioners as well as academia.

The goal of this book is to minimize the misunderstandings and conflicts between International law and Islamic law. The objective is to bring peace into justice and justice into peace for the prevention of violations of human rights law, humanitarian law, international criminal law, and impunity.

Through the establishment of EU criminal law, EU actors have come to influence the definition and interpretation of domestic crimes and penalties. Both the EU legislature and the CJEU define and interpret provisions of EU law with relevance for the determination of criminal liability and the prescription of applicable penalties in the law of the Member States. This influence on substantive criminal law raises questions about the limits to these legislative and

interpretive activities, both at the EU level and at the level of the Member States.

Brian G. Slocum s "Ordinary Meaning "offers an extended legal-linguistic analysis of the eponymous interpretive doctrine. A centuries-old consensus exists among courts and legal scholars that words in legal texts should be interpreted in light of accepted standards of communication. Therefore the questions of what makes some meaning the ordinary one, and how the determinants of ordinary meaning are identified and conceptualized, are of crucial importance to the interpretation of legal texts. Arguing against reliance on acontextual dictionary definitions, "Ordinary Meaning" rigorously explores the contributions that specific context makes to meaning, along with linguistic phenomena such as indexicals and quantifiers. Slocum provides a theory and a robust general framework for how the determinants of ordinary meaning should be identified and developed."

The Ultimate Rule of Law examines judgments of leading courts around the world on issues such as religious freedom, sex discrimination, and social and economic rights. Beatty develops a radical alternative to the conventional view that in deciding these cases judges engage in an essentially interpretative, and thus subjective act, relying ultimately on their personal beliefs and political opinions. Beatty's analysis shows that it is possible to apply an impartial and objective method of judicial review, based on the principle of proportionality, which acts as an ultimate rule of law and is fully compatible with the ideals of democracy and popular sovereignty.

This study focuses on a rapidly developing, but still highly controversial, area of EU law: the emergence of general principles with constitutional relevance for EU civil law guiding its interpretation, gap filling, and legality control. The book brings to light seven principles in the case law of the Court of Justice of the European Union and in the Charter of Fundamental Rights. Principles 1, 2, and 3 on framed autonomy, protection of the weaker party, and non-discrimination are now part of substantive EU law, mainly contract law. Principle 4 on effectiveness, together with the principle of equivalence, is an "old acquaintance" of EU law and has mostly to do with procedures, but can also be extended to cover substantive and remedial matters. Principles 5 and 6 on balancing and proportionality are primarily concerned with methodological questions: the first has to do with judicial interpretation and application of EU civil law, the second with legal-political questions on the future of a (questionable) codified or optional EU civil law, in particular sales law. Finally, Principle 7 on good faith is still an emerging principle, but is gradually gaining importance. This book will allow the reader to understand and to assess the current evolution of EU civil law, in days where its autonomous character is increasingly recognized in the case law of the Court, and where the Charter is having a growing impact on its constitutional foundations.

This work offers a new theory of what it means to be a legal person and suggests that it is best understood as a cluster property. The book explores the origins of legal personhood, the issues afflicting a traditional understanding of the concept, and the numerous debates surrounding the topic.

This volume provides a framework for the doctrinal foundation of sustainable development as a principle of integration in international law. The work departs from the fragmented nature of the international legal system, a system that lacks integrative principles for creating coherent relations between, for example, the international trade regime of the WTO and multilateral environmental agreements. The specific focus is on a legal analysis of potential normative conflicts between climate measures as regulated by the UNFCCC and the Kyoto Protocol, in particular the flexibility instruments of international emissions trading and the Clean Development Mechanism, and the rules of the WTO. Attention is then given to the application of sustainable development as a principle of integration in relation to these conflicts. The book takes on several important, timely and demanding tasks related to the urgent global challenge of climate change and the capacity of international law to deal with complex and multifaceted issues. It addresses in particular: a [ The relations between various international legal regimes, especially between international trade law and

climate law, a [ The legal status of sustainable development as a principle of international law, and a [ The analysis of interpretative methods and of principles that may serve to address conflicts between rules pertaining to different legal regimes. Here, integration as part of legal reasoning becomes particularly relevant.

This book offers a set of essays, old and new, examining the positive obligations of individuals and the state in matters of criminal law. The centrepiece is a new, extended essay on the criminalisation of omissions-examining the duties to act imposed on individuals and organisations by the criminal law, and assessing their moral and social foundations. Alongside this is another new essay on the state's positive obligations to put in place criminal laws to protect certain individual rights. Introducing the volume is the author's much-cited essay on criminalisation, 'Is the Criminal Law a Lost Cause?'. The book sets out to shed new light on contemporary arguments about the proper boundaries of the criminal law, not least by exploring the justifications for imposing positive duties (reinforced by the criminal law) on individuals and their relation to the positive obligations of the state.

This book examines the rapid development of the fundamental concept of a crime in international criminal law from a comparative law perspective. In this

context, particular thought has been given to the catalyzing impact of the criminal law theory that has developed in major world legal systems upon the crystallization of the substantive part of international criminal law. This study offers a critical overview of international and domestic jurisprudence with regard to the construal of the concept of a crime (actus reus, mens rea, defences, modes of liability) and exposes roots of confusion in international criminal law through a comprehensive comparative analysis of substantive criminal laws in selected legal jurisdictions.

The Cambridge Companion to the Rule of Law introduces students, scholars, and practitioners to the theory and history of the rule of law, one of the most frequently invoked-and least understood-ideas of legal and political thought and policy practice. It offers a comprehensive re-assessment by leading scholars of one of the world's most cherished traditions. This high-profile collection provides the first global and interdisciplinary account of the histories, moralities, pathologies and trajectories of the rule of law. Unique in conception, and critical in its approach, it evaluates, breaks down, and subverts conventional wisdom about the rule of law for the twenty-first century.

The Principle of Legality in European Criminal Law

Foundational Principles of Contract Law not only sets out the principles and rules of contract

law, it places more emphasis on what the principles and rules of contract law should be, based on policy, morality, and experience. A major premise of the book is that the best way to grasp contract law is to understand it from a critical perspective as an organic, dynamic subject. When contract law is approached in this way it is much easier to grasp and learn than when it is presented simply as a static collection of principles and rules. Professor Eisenberg covers almost all areas of contract law, including the enforceability of promises, remedies for breach of contract, problems of assent, form contracts, the effect of mistake and changed circumstances, interpretation, and problems of performance. Although the emphasis of the book is on the principles and rules of contract law, it also covers important theories in contract law, such as the theory of efficient breach, the theory of overreliance, the normative theory of contracts, formalism, and theories of contract interpretation.

The intertwinement of EC law and national law may create unforeseeability in situations where EC law invades the national cases. This study contributes to the contemporary discussion, which wrestles with questions such as: What have been the visions and objectives for European integration in the last decades? How to describe European Union as a political entity and a legal system? What is the relationship between legal certainty, rule of law, various general principles and human rights?

This book examines the role played by domestic and international judges in the “flexibilization” of legal systems through general principles. It features revised papers that were presented at the Annual Conference of the European-American Consortium for Legal Education, held at the University of Parma, Italy, May 2014. This volume is organized in four sections, where the topic is mainly explored from a comparative perspective, and includes case studies. The first section

covers theoretical issues. It offers an analysis of principles in shaping Dworkin's theories about international law, a reflection on the role of procedural principles in defining the role of the judiciary, a view on the role of general principles in transnational judicial communication, a study on the recognition of international law from formal criteria to substantive principles, and an inquiry from the viewpoint of neo-constitutionalism. The second section contains studies on the role of general principles in selected legal systems, including International Law, European Union Law as well as Common Law systems. The third section features an analysis of select legal principles in a comparative perspective, with a particular focus on the comparison between European and American experiences. The fourth and last section explores selected principles in given areas of law, including the misuse of the lex specialis principle in the relationship between international human rights law and international humanitarian law, the role of the judiciary in Poland as regards discrimination for sexual orientation, and the impact of the ECtHR case law on Italian criminal law with regard to the principle of legality. Overall, the book offers readers a thoughtful reflection on how the interpretation, application, and development of general principles of law by the judiciary contribute to the evolution of legal systems at both the domestic and international levels as well as further their reciprocal interactions.

In his new book, Lewis D. Sargentich shows how two different kinds of legal argument - rule-based reasoning and reasoning based on principles and policies - share a surprising kinship and serve the same aspiration. He starts with the study of the rule of law in life, a condition of law that serves liberty - here called liberal legality. In pursuit of liberal legality, courts work to uphold people's legal entitlements and to confer evenhanded legal justice. Judges try to

achieve the control of reason in law, which is manifest in law's coherence, and to avoid forms of arbitrariness, such as personal moral judgment. Sargentich offers a unified theory of the diverse ways of doing law, and shows that they all arise from the same root, which is a commitment to liberal legality.

This book examines the simultaneous protection of fundamental rights by various norms and jurisdictional organs, focussing on the multilevel protection of the principle of legality in Criminal Law.Written by accredited specialists in criminal law, constitutional law, international public law, and the philosophy of law, the majority of them ex-Counsels of the Spanish Constitutional Court, it addresses various manifestations of the principle of legality: the requirement of precision, the judicial subjection to law and the prohibition of bis in idem. It does so not only from a theoretical perspective, but also through a comparative study of the jurisdiction of the European Court of Human Rights, the Inter-American Court of Human Rights, the Court of Justice of the European Union and state constitutional courts. This practical approach characterizes the book, which culminates in a detailed analysis of the relevant ECtHR Judgement Del Río Prada v. Spain on the retroactivity of unfavourable jurisprudence."Multilevel protection of the principle of legality in Criminal Law" is a useful instrument of reflection for scholars of both the principle of criminal legality and the problems that arise from the concurrency of protective jurisdictions of human rights.

PROPERTY LAW: IN PRINCIPLE, 2nd Edition has been thoroughly revised but retains the features that made the 1st edition so popular. Students will find this edition easy to relate to, with useful case summaries and succinct commentary on the history and context of principles of real and personal property. Chapters have been restructured, questions have been revised,

and additional points for discussion have been included to ensure the text remains current and relevant.

This book addresses issues concerning the shifting contemporary meaning of legal certainty. The book focuses on exploring the emerging tensions that exist between the demand for legal certainty and the challenges of regulating complex, late modern societies. The book is divided into two parts: the first part focusing on debates around legal certainty at the national level, with a primary emphasis on criminal law; and the second part focusing on debates at the transnational level, with a primary emphasis on the regulation of transnational commercial transactions. In the context of legal modernity, the principle of legal certainty—the idea that the law must be sufficiently clear to provide those subject to legal norms with the means to regulate their own conduct and to protect against the arbitrary use of public power—has operated as a foundational rule of law value. Even though it has not always been fully realized, legal certainty has functioned as a core value and aspiration that has structured normative debates throughout political modernity, both at a national and international level. In recent decades, however, legal certainty has come under increasing pressure from a number of competing demands that are made of contemporary law, in particular the demand that the law be more flexible and responsive to a social environment characterized by rapid social and technological change. The expectation that the law operates in new transnational contexts and regulates every widening sphere of social life has created a new degree of uncertainty, and this change raises difficult questions regarding both the possibility and desirability of legal certainty. This book compiles, in one edited volume, research from a range of substantive areas of civil and criminal law that shares a common interest in understanding the multi-

layered challenges of defining legal certainty in a late modern society. The book will be of interest both to lawyers interested in understanding the transformation of core rule of law values in the context of contemporary social change and to political scientists and social theorists.

Acquiring competences for the creation of criminal offences begs the question of legitimacy. The European criminal justice system already has such competences and many instruments define criminal offences. The legality principle is a cornerstone doctrine for legitimising criminal norms in Western legal systems. Despite already being part of the European legal order, this principle lacks a coherent theoretical and normative blueprint that shows how it should be conceived in European criminal law. This book develops such a theory for the principle of legality in European criminal law. The focus is on the legitimising and normative functions of this principle. The reader shall find a proposal for a theoretical framework that legitimises European criminal law and the accompanying normative requirements of criminal liability. Questions such as the precision of European and national implementing norms, the position of case law as a source of law and the scope of interpretative powers of European and national courts are addressed. The book uses comparative research into national systems and modern theories of criminal law to build a framework for the principle of legality. This is then instilled with special characteristics of the European legal order, such as the multi-level system of authorities and sources, pluralism and freedom of movement. (Series: School of Human Rights Research - Vol. 75) [Subject: Criminal Law, European Law]

1982.

This book identifies the rights of stateless people and outlines the major legal obstacles preventing the eradication of statelessness.

Since its formation the European Union has expanded beyond all expectations, and this expansion seems set to continue as more countries seek accession and the scope of EU law expands, touching more and more aspects of its citizens' lives. The EU has never been stronger and yet it now appears to be reaching a crisis point, beset on all sides by conflict and challenges to its legitimacy. Nationalist sentiment is on the rise and the Eurozone crisis has had a deep and lasting impact. EU law, always controversial, continues to perplex, not least because it remains difficult to analyse. What is the EU? An international organization, or a federation? Should its legal concepts be measured against national standards, or another norm? The Oxford Handbook of European Union Law illuminates the richness and complexity of the debates surrounding the law and policies of the EU. Comprising eight sections, it examines how we are to conceptualize EU law; the architecture of EU law; making and administering EU law; the economic constitution and the citizen; regulation of the market place; economic, monetary, and fiscal union; the Area of Freedom, Security, and Justice; and what lies beyond the regulatory state. Each chapter summarizes, analyses, and reflects on the state of play in a given area, and suggests how it is

likely to develop in the foreseeable future. Written by an international team of leading commentators, this Oxford Handbook creates a vivid and provocative tapestry of the key issues shaping the laws of the European Union.

Classic Books Library presents this brand new edition of “The Federalist Papers”, a collection of separate essays and articles compiled in 1788 by Alexander Hamilton. Following the United States Declaration of Independence in 1776, the governing doctrines and policies of the States lacked cohesion. “The Federalist”, as it was previously known, was constructed by American statesman Alexander Hamilton, and was intended to catalyse the ratification of the United States Constitution. Hamilton recruited fellow statesmen James Madison Jr., and John Jay to write papers for the compendium, and the three are known as some of the Founding Fathers of the United States. Alexander Hamilton (c. 1755–1804) was an American lawyer, journalist and highly influential government official. He also served as a Senior Officer in the Army between 1799-1800 and founded the Federalist Party, the system that governed the nation’s finances. His contributions to the Constitution and leadership made a significant and lasting impact on the early development of the nation of the United States.

Dyzenhaus deals with the urgent question of how governments should respond to emergencies and terrorism by exploring the idea that there is an unwritten

constitution of law, exemplified in the common law constitution of Commonwealth countries. He looks mainly to cases decided in the United Kingdom, Australia and Canada to demonstrate that even in the absence of an entrenched bill of rights, the law provides a moral resource that can inform a rule-of-law project capable of responding to situations which place legal and political order under great stress. Those cases are discussed against a backdrop of recent writing and judicial decisions in the United States of America in order to show that the issues are not confined to the Commonwealth. The author argues that the rule-of-law project is one in which judges play an important role, but which also requires the participation of the legislature and the executive.

Respect for the 'rule of law' is, according to Article 2 of the Treaty on European Union, a value on which the Union is founded and a prerequisite for the accession of new Member States. However in some Member States there are deficiencies as regards the independence of the justice system or other aspects of the rule of law, and on several occasions the Union has been confronted with a rule of law crisis. In order to address this problem the book elucidates the principal elements of a common European rule of law in a global context, and explores the different mechanisms and instruments appropriate to safeguard the rule of law and to address future rule of law crises in the Member States.The

book brings together contributions from renowned academics, high-ranking professionals and experts in the fields of European law, public international law and constitutional law.

This book brings together contributions from seventeen of the world's foremost legal and political philosophers to examine the lasting influence of H.L.A. Hart. The essays explore the major subjects of Hart's work: general jurisprudence, criminal responsibility, rights, justice, causation and the foundations of liberalism.

In this age of statutes and human rights the common law principle of legality has assumed a central importance. The principle holds that unless Parliament makes unmistakably clear its intention to curtail or abrogate a common law right, freedom or principle, the courts will not construe a statute as having that operation. As Lord Hoffmann famously observed, this "means that Parliament must squarely confront what it is doing and accept the political cost".The principle of legality is now central to the operation of Australian and New Zealand public law. Yet its content, methodology and scope remain elusive and has never been examined in detail. This book fills that gap by drawing together leading judges, practitioners and scholars to explore a range of interesting issues and challenges for the application of the principle of legality and its future trajectory: How does the principle operate? Which rights and freedoms fall within its scope and why?

What is its relationship to the (so-called) common law bill of rights? Has proportionality a role to play in its application? How, if at all, does it differ from the presumption with international law? And in the construction of statutes does the principle serve to fulfil or frustrate the will of Parliament?

The legal principle of ne bis in idem restricts the possibility of a defendant being prosecuted repeatedly on the basis of the same offence, act, or facts. This book describes obstacles that stand in the way of a single, autonomous, and uniformly applicable general ne bis in idem principle of EU law.

This book offers a unique critical analysis of the legal nature, effects and limits of UN Security Council referrals to the International Criminal Court (ICC). Alexandre Skander Galand provides, for the first time, a full picture of two competing understandings of the nature of the Security Council referrals to the ICC, and their respective normative interplay with legal barriers to the exercise of universal prescriptive and adjudicative jurisdiction. The book shows that the application of the Rome Statute through a Security Council referral is inherently limited by the UN Charter as well as the Rome Statute, and can conflict with other branches of international law, including international human rights law, the law on immunities and the law of treaties. Hence, it spells out a conception of the nature and effects of Security Council referrals that responds to these limits and, in turn, informs the reader on the nature of the ICC itself.

Hall, Jerome. General Principles of Criminal Law. Second Edition. Indianapolis: The

Bobbs Merrill Company, [1960]. xii, 642 pp. Reprint available January, 2005 by the Lawbook Exchange, Ltd. ISBN 1-58477-498-3. Cloth. $125. * The standard one-volume treatise based on classic legal-realist principles. As its title suggests, Hall provides more than a thorough overview of the subject; he analyzes the principles that comprise its foundations with an emphasis on their creation and definition by officials. This process is explored in its chapters on legality, mens rea, harm, causation, punishment, strict liability, ignorance and mistake, necessity and coercion, mental disease, intoxication and criminal attempt, as well as its general chapters on criminology, criminal theory and penal theory. Acclaimed when its first edition appeared in 1947, it has been cited regularly ever since.

This thesis examines the principle of purpose limitation in data protection law from the perspective of regulating data-driven innovation. According to this approach, the principle of purpose limitation not only protects an individual's autonomy but simultaneously leaves sufficient room for data controllers to innovate when finding the best solution for protection. The first component of the principle of purpose limitation (i.e. to specify the purpose of data processing) is a precautionary protection instrument which obliges the controller to identify specific risks arising from its processing against all fundamental rights of the data subject. In contrast, the second component (i.e. the requirement to limit data processing to the preceding purpose) aims to control the risk caused by data processing that occurred at a later stage and adds to the risks which

were previously identified. This approach provides an answer to the question of how the General Data Protection Regulation which does not only effectively protect an individual's autonomy but also helps controllers to turn their legal compliance into a mechanism that enhances innovation, should be interpreted with regard to all the fundamental rights of the data subject.