# TABLE OF CONTENTS

A Note on the Author
Preface

**Chapter 1 - Legal Doctrine and Legal Theory**

1.1. Introduction
   - 1.1.1. The Purpose, Method, and Materials of This Volume
   - 1.1.2. Legal Doctrine and Legal Dogmatics
   - 1.1.3. Particular and General Doctrine
   - 1.1.4. Justification, Description, Explanation
   - 1.1.5. Influence of Legal Doctrine
   - 1.1.6. Kinds of Legal Research

1.2. General Legal Doctrine
   - 1.2.1. General Legal Doctrine and Normative Legal Theory
   - 1.2.2. Defeasible Norms of General Legal Doctrine

1.3. The Sources of Law
   - 1.3.1. Causal Factors, Legal Justification, and Sources of Law
   - 1.3.2. Classification of the Sources of Law
   - 1.3.3. Legal Doctrine as a Source of Law

1.4. Statutory Interpretation
   - 1.4.1. Types of Argument in Statutory Interpretation
   - 1.4.2. Systemic Arguments
   - 1.4.3. Restricting and Extending a Norm’s Area of Application
   - 1.4.4. Analogy
   - 1.4.5. Teleological Construction of Statutes

1.5. Interpreting Precedents
   - 1.5.1. What Is Binding in a Precedent?
   - 1.5.2. The Binding Force of Precedent
   - 1.5.3. Justification of Precedent

1.6. The Doctrine of Fact-Finding

**Chapter 2 - Particular Legal Doctrine**

2.1. Preliminary Remarks
   - 2.1.1. Juristic Theories
   - 2.1.2. The Distinction between Public and Private Law
   - 2.1.3. Inner and Outer System in Private Law
   - 2.1.4. Principles of Private Law

2.2. Philosophical and Juristic Theories of Property
   - 2.2.1. Philosophical Theories of Property
   - 2.2.2. Juristic Theories—Transfer of the Right of Ownership
   - 2.2.3. Benson’s Formalistic Analysis of Property
   - 2.2.4. Philosophy as a Tool of the Doctrine of Property

2.3. Juristic Theories in Contracts
   - 2.3.1. What Justice? What Freedom?
   - 2.3.2. The Binding Force of Contracts
   - 2.3.3. Moral Philosophy, Economics, Legal Research
   - 2.3.4. Good Faith
   - 2.3.5. The Theory of Assumptions

2.4. Juristic Theories in Torts
   - 2.4.1. Philosophical Theories of Justification in Tort Law
2.4.2. Ernest Weinrib’s Theory of Corrective Justice in Torts
2.4.3. The Pro Tanto Locality of Corrective Justice in Torts
2.4.4. Three Intellectual Moves of Legal Doctrine
2.4.5. Theories of Negligence
2.4.6. Theories on Adequacy in Torts
2.5. Some Theories of Criminal Law
2.5.1 Philosophical Justification of Punishment
2.5.2. Some Juristic Questions
2.5.3. Dolus Crimes and Culpa Crimes
2.5.4. Causation in Criminal Law
2.6. Law and Economics as the Main Juristic Theory?

Chapter 3 - Criticism and Defence of Legal Doctrine
3.1. Criticism
  3.1.1. Reform Movements and the Alleged Deficiencies Of Legal Doctrine
  3.1.2. The Alleged Irrationality of All Normative Theories
  3.1.3. Indeterminacy and Façade Legitimation
  3.1.4. Ontological Obscurity
  3.1.5. Unjustified Normative Claims
  3.1.6. The Risk of Fragmentation
  3.1.7. Unscientific Character
  3.1.8. Philosophical Background of the Criticism
3.2. Defence of Legal Doctrine
  3.2.1. The Copernican Turn: Philosophy Tailored to Legal Doctrine
  3.2.2. Saying and Doing in Legal Doctrine
  3.2.3. The Philosophical Background of Anti-Critique
  3.2.4. Contextually Sufficient Justification and Preference for Weak Theories

Chapter 4 - Law and Morality
4.1. Links between Morality and Law
4.2. Natural Law
  4.2.1. Strong Natural Law
  4.2.2. A Recent Development: Weak Theories of National Law
  4.2.3. The Claim to Correctness
4.3. Exclusive Legal Positivism
  4.3.1 Exclusive Legal Positivism—The Normative-Meaning Component
  4.3.2. Defeasible Grundnorm, Conditional Grundnorm, and Transformation into Law
  4.3.1 Positivist and Non-Positivist Criteria of Valid Law
  4.3.4. Progressing Sophistication
  4.3.5. Political Legitimacy instead of Philosophical Justification
4.4. Inclusive Positivism and Propositions de Lege Lata
  4.4.1. Legal Positivism Inherent in Legal Doctrine?
  4.4.2. Inclusive Legal Positivism and Tuori’s Critical Legal
Positivism

4.4.3. Criteria of Validity and Hypothetical Imperatives
4.4.4. The Fused Descriptive and Normative Modality
   of Propositions de Lege Lata

4.5. The Justification of Morality
   4.5.1. Positivism, Natural Law, and Moral Theory
   4.5.2. The Controversialism of Strong Moral Theories
   4.5.3. Strong Contractarianism
   4.5.4. Weak Contractarianism
   4.5.5. Society-Centred Moral Normativity

4.6. Pluralism and Common Ground in the Law
   4.6.1. The One-Right-Answer Ideal and Moral Relativism
   4.6.2. Plurality of Cultures
   4.6.3. The Plurality of Objective Values in General
      and the Common Core

Chapter 5 Coherence in Legal Doctrine
5.1. Weighing and Defeasibility
   5.1.1. Space for Defeasibility and Weighing in Legal Justification
   5.1.2. General Theories of Weighing
   5.1.3. Extending the Domain of Reason
   5.1.4. Decisive Reasons, Defeasible Reasons, Rules, Principles
   5.1.5. Defeasibility, Not Indeterminacy
   5.1.6. Logic and Rhetoric in Legal Argumentation

5.2. Reflective Equilibrium in Legal Doctrine
   5.2.1. Wide, Constrained, and Segmented Reflective
      Equilibrium in Legal Doctrine
   5.2.2. Equilibrium around Platitudes—Philosophical Background
   5.2.3. The Philosophy of Platitudes for Legal Doctrine
   5.2.4. Reflective Equilibrium and Society-Centred Morality

5.3. The Coherence of Legal Knowledge
   5.3.1. Aspects of Coherence in Legal Doctrine
   5.3.2. Foundationalism, Scepticism, and Coherentism
   5.3.3. Conceptions of Coherence
   5.3.4. A Complex Web of Big Circles
   5.3.5. Epistemic Coherence, Truth, Knowledge,
      and Segmented Coherence
   5.3.6. Criteria of Coherence in Legal Doctrine
   5.3.7. Coherence over Time

5.4. Coherence and Justice in Law
   5.4.1. Coherence in Practices and Norms, Not Only
      in Knowledge
   5.4.2. Justice as the Weighing of All Considerations
   5.4.3. Different Justice in Different Contexts?
   5.4.4. Procedural Justice?
   5.4.5. Justice, Coherence, Law, and Morality
   5.4.6. The Importance of Justice for Judges, Legal Scholars,
      and Politicians

5.5. Coherence and Concepts in Legal Doctrine
5.5.1. Value-Open Legal Concepts and the Nature of Things
5.5.2. Intermediate Concepts
5.5.3. Concepts and System
5.6. Is Coherence Contrary to Facts?

Chapter 6 - Metatheory and Ontology for Legal Doctrine
6.1. The Question of Cognitivism
   6.1.1. The Controversy over the Truth of Normative and Evaluative Statements
   6.1.2. Normative and Descriptive Meaning
   6.1.3. Four Possibilities
6.2. Ontology for Legal Doctrine
   6.2.1. The Problem of the Ontology of Law
   6.2.2. Law as a Dependent Entity
   6.2.3. A Theory of Legal Conventions and Institutions
   6.2.4. The Law as a Product of Convention and Morality

Chapter 7 - Conclusions
Bibliography
Index of Subjects
Index of Names
A Treatise of Legal Philosophy and General Jurisprudence
Pattaro, E. - Editor-in-chief: Pattaro, E.
2005, XCVIII, 1958 p. In 5 volumes, not available separately., Hardcover