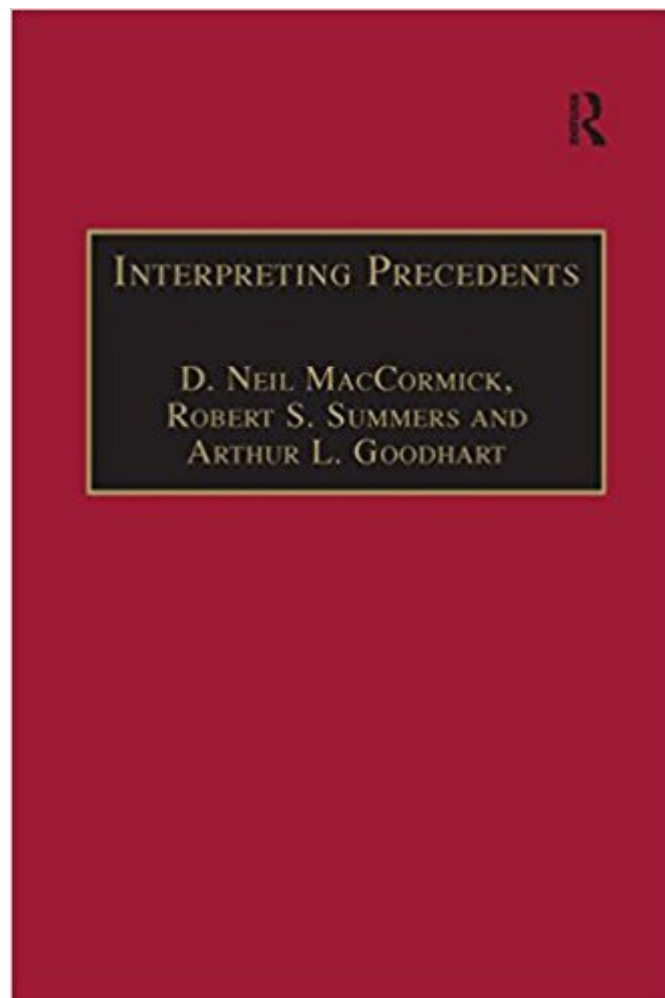




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Interpreting Precedents: A Comparative Study (Applied Legal Philosophy)



Synopsis

This book contains a series of essays discussing the uses of precedent as a source of law and a basis for legal arguments in nine different legal systems, representing a variety of legal traditions. Precedent is fundamental to law, yet theoretical and ideological as well as legal considerations lead to its being differently handled and rationalised in different places. Out of the comparative study come the six theoretical and synoptic essays that conclude the volume.

Book Information

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Customer Reviews

'...provides concise and accessible introductions...for anyone interested in exploring and stimulating any aspect of the reasoning with legal precedents that occur in law, *Interpreting Precedents* would be a valuable reference.' *Artificial Intelligence and Law* '...a highly important contribution to the theory of the sources of law. It is impossible to sum up in just a few lines the exceptional richness of this volume.' *International Journal of Comparative Law* --This text refers to the Hardcover edition.

D. Neil MacCormick, Regius Professor of Public Law and the Law of Nature and Nations, The University of Edinburgh, UK and Robert S. Summers, McRoberts Research Professor of Law, Cornell University, USA; Arthur L. Goodhart Visiting Professor of Legal Science, University of Cambridge, UK, 1991-92

"*Interpreting Precedents*" is an outstanding analytical work as well as a unique source for further

analysis. The majority of the book is devoted to separate chapters on the eleven jurisdictions studied by the group: the Federal Republic of Germany, Finland, France, Italy, Norway, Poland, Spain, Sweden, the United Kingdom, and the United States (State of New York), and the European Union. The jurisdictions can be roughly located on a continuum of approaches to determining the ratio decidendi, with fact-based holdings at one end and theoretical legal abstractions at the other. On this continuum, the approach followed in the United States belongs near the fact-based end of the spectrum, followed by the United Kingdom and the Scandinavian countries, and then perhaps Germany. The remaining jurisdictions, including France and the European Court of Justice, can be plotted or grouped near the other end. The eleven chapters on separate jurisdictions are followed by insightful studies on individual topics. Continental European reliance on precedent will increase in the coming years under the influence of at least five interrelated forces. The first force is the Europeanization of Europe. Citizens within the European Union are constantly being confronted with new, sometimes foreign legal norms and concepts. Second, the homogeneity of European courts and bars is eroding. Third, the proliferation of computers puts past decisions at the fingertips of judges and lawyers. Fourth, the ever increasing density of regulation, and the rapid changes in norms, mean more need for precedents, not less. Fifth, and most profoundly, legal realism, or some theory akin to it, is replacing positivism. This evolution reinforces the tendency to view judicial decisionmaking as something personal and individual, rather than as a component of a harmonious system of legislation. As judges become more self-conscious of their regulatory role, they will intensify their nascent, self-imposed adherence to precedent in order to reduce political disapproval, and to forestall legislative measures to restrict their ability to stray from precedent. For decades to come, "Interpreting Precedents" will serve as a benchmark in the Europeanization of precedent, and as a sourcebook for further research. But it is much more. It is a unique collection of outstanding insights into judicial structures and legitimacy, legal theory and reasoning, and comparative law. For further criticism and analysis see Professor Lundmark's review at 46 American Journal of Comparative Law 211 (1998).

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