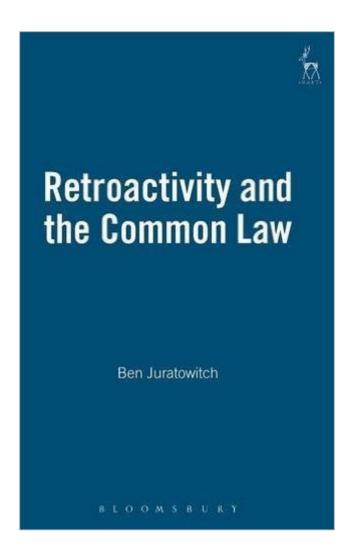
## The book was found

## **Retroactivity And The Common Law**





## **Synopsis**

The central claim of this book is that when a court considers whether to develop or change a common law rule, the retroactive effect of doing so should explicitly be considered and, informed by the common law's approach to statutory construction, presumptively be resisted. As a platform for this claim, a definition of 'retroactivity' is established and a review of the history of retroactivity in the common law is provided. The argument is then that certainty - particularly in the form of an ability to rely on the law - and a conception of negative liberty constitute rationales for a general presumption against retroactivity, at a level of abstraction applicable both to the construction of statutes and to developing or changing common law rules. The presumption against retroactivity in the construction of statutes is analyzed. One conclusion reached is that the presumption is a principle of the common law independent of legislative intent. Across private, public, and criminal law, the retroactive effect of judicial decisions that develop or change common law rules is then considered in detail. 'Prospective overruling' is considered as a potential means to control the retroactive effect of some judicial decisions, but it is argued that prospective overruling is constitutionally impermissible. The book is primarily concerned with English and Australian law, although cases from other common law jurisdictions, mostly Canada and New Zealand, are also discussed. The conclusion is that in statutory construction and the adjudication of common law rules, there should be a consistently strong presumption against retroactivity, motivated by the common law's concern for certainty and liberty, and defeasible only to strong reasons.

## **Book Information**

Hardcover: 239 pages

Publisher: Hart Publishing (February 1, 2008)

Language: English

ISBN-10: 1841137618

ISBN-13: 978-1841137612

Product Dimensions: 6.4 x 0.9 x 9.2 inches

Shipping Weight: 1.3 pounds (View shipping rates and policies)

Average Customer Review: Be the first to review this item

Best Sellers Rank: #4,706,221 in Books (See Top 100 in Books) #43 in Books > Law > Legal

Theory & Systems > Customary #3163 in Books > Textbooks > Law > Constitutional Law #6535

in Books > Law > Constitutional Law > General

Download to continue reading...

Retroactivity and the Common Law Common Core Assessments and Online Workbooks: Grade 4 Language Arts and Literacy, PARCC Edition: Common Core State Standards Aligned Reading, Thinking, and Writing About History: Teaching Argument Writing to Diverse Learners in the Common Core Classroom, Grades 6-12 (Common Core State Standards for Literacy) United: Thoughts on Finding Common Ground and Advancing the Common Good Polish: Learn Polish Bundle 2-1 (Polish: Learn Polish in a Week! &Polish: 95 Most Common Phrases & 1000 Most Common Words): Polish Language for Beginners (Learn Polish, Polish, Polish Learning) Common Core Math 4 Today, Grade 5 (Common Core 4 Today) Common Core Science 4 Today, Grade 4: Daily Skill Practice (Common Core 4 Today) Common Core Math 4 Today, Grade K: Daily Skill Practice (Common Core 4 Today) Common Core Language Arts 4 Today, Grade 1: Daily Skill Practice (Common Core 4 Today) Common Core Kindergarten 4 Today: Daily Skill Practice (Common Core 4 Today) Common Core Science 4 Today, Grade 5: Daily Skill Practice (Common Core 4 Today) Common Core Math 4 Today, Grade 3: Daily Skill Practice (Common Core 4 Today) Common Core Science 4 Today, Grade 3: Daily Skill Practice (Common Core 4 Today) Common Core Science 4 Today, Grade 2: Daily Skill Practice (Common Core 4 Today) Common Core Fourth Grade 4 Today: Daily Skill Pracitce (Common Core 4 Today) Good Faith in European Contract Law (The Common Core of European Private Law) Precontractual Liability in European Private Law (The Common Core of European Private Law) The Common Law Abroad: Constitutional and Legal Legacy of the British Empire Smith, Currie & Hancock's Common Sense Construction Law: A Practical Guide for the Construction Professional K: A Common Law Approach to Contracts (Aspen Casebooks)

**Dmca**