## **CONTENTS**

| 1 | Controversy over Legal Method in the Nineteenth     | 1  |
|---|---|----|
|   | and Twentieth Centuries                             |    |
|   | 1.1 Three Stances                                   | 1  |
|   | 1.1.1 The Rejection of Method                       | 1  |
|   | 1.1.2 Methodological Heteronomy                     | 2  |
|   | 1.1.3 Methodological Autonomy                       | 6  |
|   | 1.2 Methods of Legal Reasoning                      | 9  |
|   | 1.3 Logic – Analysis – Argumentation – Hermeneutics | 12 |
| 2 | Logic   | 17 |
|   | 2.1 Introduction                                    | 17 |
|   | 2.2 Classical Logic: Propositional Logic and First  |    |
| , | Order Predicate Logic                               | 20 |
|   | 2.2.1 Presentation of Calculi                       | 20 |
|   | 2.2.2 Paradoxes of Material Implication             | 23 |
|   | 2.2.3 Examples                                      | 24 |
|   | 2.3 Deontic Logic                                   | 29 |
|   | 2.3.1 Possible World Semantics                      | 29 |
|   | 2.3.2 Deontic Logic                                 | 30 |
|   | 2.3.3 Paradoxes of Deontic Logic                    | 33 |
|   | 2.3.4 Examples                                      | 35 |
|   | 2.4 Logic of Action and Logic of Norms              | 40 |
|   | 2.4.1 Two Types of Obligation                       | 40 |
|   | 2.4.2 Logic of Action                               | 41 |
|   | 2.4.3 Jørgensen Dilemma                             | 46 |
|   | 2.5 Defeasible Logic                                | 49 |
|   | 2.5.1 The Concept of Defeasibility                  | 49 |
|   | 2.5.2 Defeasible Logic                              | 51 |
|   | 2.5.3 Objections Against Nonmonotonic Logic         | 53 |
|   | 2.5.4 Examples                                      | 54 |
|   | 2.5.5 Two Remarks                                   | 63 |
|   | 2.6 Summary   | 63 |

## CONTENTS

| 3 | Ana | alysis   | 69  |
|---|-----|--|-----|
|   | 3.1 | Introduction   | 69  |
|   |     | 3.1.1 The Notion of Analysis                               | 69  |
|   |     | 3.1.2 History of the Concept                               | 70  |
|   |     | 3.1.3 Analytic Philosophy                                  | 72  |
|   | 3.2 | Linguistic Analysis  | 75  |
|   |     | 3.2.1 History and Basic Assumptions of Linguistic Analysis | 75  |
|   |     | 3.2.2 Legal Conceptual Scheme                              | 78  |
|   |     | 3.2.3 Speech Acts Theory                                   | 82  |
|   |     | 3.2.4 The Method and Its Limits                            | 89  |
|   | 3.3 | Economic Analysis of Law                                   | 92  |
|   |     | 3.3.1 Law and Economics                                    | 92  |
|   |     | 3.3.2 Idea of Economization                                | 94  |
|   |     | 3.3.3 Limits of the Method                                 | 97  |
|   |     | 3.3.4 Conclusions  | 104 |
|   | 3.4 | Summary  | 105 |
|   |     | 3.4.1 Features of Analysis                                 | 105 |
|   |     | 3.4.2 Analysis in Law                                      | 105 |
| 4 | Arg | gumentation  | 111 |
|   | 4.1 | Introduction   | 111 |
|   |     | 4.1.1 Philosophies of Argumentation                        | 112 |
|   |     | 4.1.2 Criteria of a Practical Discourse                    | 123 |
|   | 4.2 | Two Conceptions of a Legal Discourse                       | 130 |
|   |     | 4.2.1 The Topical–Rhetorical Conception                    |     |
|   |     | of Legal Discourse   | 132 |
|   |     | 4.2.2 Procedural Conception of Legal Discourse             | 139 |
|   | 4.3 | Legal Argumentation  | 145 |
|   |     | 4.3.1 Claim to Universality                                | 146 |
|   |     | 4.3.2 Structure of Legal Discourse                         | 147 |
|   |     | 4.3.3 Applications   | 163 |
| 5 | Hei | rmeneutics   | 167 |
|   | 5.1 | Introduction   | 167 |
|   |     | 5.1.1 The Beginnings of Hermeneutics                       | 167 |
|   |     | 5.1.2 What Do We Not Know About Hermeneutics?              | 173 |
|   | 5.2 | Hermeneutics as Epistemology                               | 175 |
|   |     | 5.2.1 Methodological Current in Philosophical              |     |
|   |     | Hermeneutics   | 176 |
|   |     | 5.2.2 Legal Receptions                                     | 183 |
|   | 5.3 | Hermeneutics as Ontology                                   | 187 |

| CONTENTS   | ix  |
|--|-----|
| 5.3.1 Ontology of Understanding                          | 188 |
| 5.3.2 Legal Receptions                                   | 193 |
| 5.4 The Understanding of the Law                         | 198 |
| 5.4.1 Claim to Universality                              | 199 |
| 5.4.2 The Nature of Hermeneutic Cognition                | 200 |
| 5.4.3 Applications                                       | 205 |
| Methods of Legal Reasoning from a Postmodern Perspective | 211 |
| 6.1 A Summary  | 211 |
| 6.2 Dilemmas of the Contemporary Philosophy of Law       | 214 |
| 6.3 The Epistemological Approach                         | 216 |
| 6.4 Unfinished Projects                                  | 219 |
| Index of Names   | 223 |
| Subject Index  |     |