Contents

General Introduction 1

Part I

The German Discussion 16

Introduction 16

Chapter 1

A Pseudoformalistic Position: Klug 18

- 1. The Concept of Legal Logic 18
- Discussion of Antilogical Doctrines. Legal Confirmation.
 The Background of Legal Logic 24
- 3. Analogical Inference. (Formal) Logic and Heuristic "Logic". Creative Judgment and Semantic Interpretation 32
- Legal Inference by Inversion.
 The Metalegal Character of Its Conclusion 44
- 5. Conversion of Law Into a Calculus. Legal "Teleologics" 48

Chapter 2

Two Nonformalistic Positions: Engisch and Simitis 53

- 1. Engisch on Law and Axiomatics 53
- 2. Engisch on the Nature of Legal Knowledge 54
- 3. Engisch's Concept of Material Legal Logic 56
- 4. Simitis on "the Problem of Legal Logic" 60

XIV

Chapter 3

An Axiologistic Position: Heller 65

1. The Logicians' and the Lawyers' Analogical Inference.

The Inductive Nature of Legal Argument 65

- 2. Legal Logic Is Essentially Deontic. The Problem of Subsumption. The Intuitive Character of Legal Argument in Practice 68
- 3. The Empirical Nature of Legal Confirmation 72

Conclusion and Supplementary Observations 77

Part II

The Belgian Discussion 83

Introduction 83

- 1. Perelman and Kazemier on the Logical Specificity of Law 88
- 2. Kalinowski's Denial of the Specificity of Legal Logic 91
- 3. Kalinowski on Interpretation: (i) Authenticity, Meaning, and the Resolution of Contradictions 93
- 4. Kalinowski on Interpretation: (ii) The Elimination of Lacunae 95
- 5. Feys and Motte on "Legal Logic, Legal Systems" 100
- 6. Perelman on "Formal Logic, Legal Logic" 105
- 7. Gregorowicz on "the Argument a Maiori ad Minus and the Problem of Legal Logic": (i) General Stand, and Views Disavowed 109
- 8. Gregorowicz on "the Argument a Maiori ad Minus and the Problem of Legal Logic": (ii) Views Avowed and Constructive Ideas 116

 Conclusion and Supplementary Observations 123

Part III

The Discussion in the English-Speaking Countries 134

Introduction 134

- Stone on "Uses and Limitations of Formal Logic in Legal Reasoning" 139
- 2. Levi: Legal Argument as a Reflection of Social Change 143
- 3. Hart on "the Ascription of Responsibility and Rights" 148
- 4. Hart on "Definition and Theory in Jurisprudence" 156
- 5. Jensen: Legal Argument as a Nonlogical Mode of Decision 160
- 6. Toulmin: Legal Argument as Archetype of Argument in General 167
- 7. Hart on "Formalism and Rule-Scepticism" 176

Conclusion and Supplementary Observations 187

General Conclusion 196

Appendix

Concerning the Third Edition of Klug's "Juristische Logik" 199

List of References 202

Index of Names 207

Subject Index 209