# INTERPRETING PRECEDENTS A COMPARATIVE STUDY

Edited by
D. NEIL MacCORMICK
Regius Professor of Public Law and the Law of Nature and Nations
University of Edinburgh

and

#### ROBERT S. SUMMERS

McRoberts Research Professor of Law Cornell University; Arthur L. Goodhart Visiting Professor of Legal Science, University of Cambridge, 1991–92



1' .

First published 1997 by Ashgate Publishing

Published 2016 by Routledge 2 Park Square, Milton Park, Abingdon, Oxfordshire OX14 4RN 711 Third Avenue, New York, NY 10017, USA

First issued in paperback 2016

Routledge is an imprint of the Taylor & Francis Group, an informa business

Copyright © D. Neil MacCormick and Robert S. Summers 1997

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

#### Notice:

Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

#### British Library Cataloguing in Publication Data

Interpreting precedents: a comparative study. – (Applied legal philosophy)

1. Law – Interpretation and construction

I. MacCormick, Neil II. Summers, Robert S. (Robert Samuel), 1933-

340. 1'1

#### Library of Congress Cataloging-in-Publication Data

Interpreting precedents: a comparative study / edited by D. Neil MacCormick and Robert S. Summers.

p. cm. – (Applied legal philosophy)

1. Stare decisis. 2. Law-Interpretation and construction.

I. MacCormick, Neil. II. Summers, Robert S. III. Series. K574.I58 1997

340-dc21

96-39520

CIP

ISBN 13: 978-1-138-27024-4 (pbk) ISBN 13: 978-1-85521-686-0 (hbk)

Typeset by Manton Typesetters

## **Contents**

	face and Acknowledgements ies Preface	vii xi
JC71	2017Gucc	~1
1	Introduction D. Neil MacCormick, Edinburgh and Robert S. Summers, Ithaca	1
2	Precedent in the Federal Republic of Germany Robert Alexy, Kiel and Ralf Dreier, Göttingen	17
3	Precedent in Finland Aulis Aarnio, Tampere	65
4	Precedent in France Michel Troper, Paris and Christophe Grzegorczyk, Paris	103
5	Precedent in Italy Michele Taruffo, Pavia and Massimo La Torre, Florence	141
6	Precedent in Norway Svein Eng, Oslo	189
7	Precedent in Poland Lech Morawski, Toruń and Marek Zirk-Sadowski, Łódź	219
8	Precedent in Spain Alfonso Ruiz Miguel, Madrid and Francisco J. Laporta, Madrid	259
9	Precedent in Sweden Gunnar Bergholtz, Lund and Aleksander Peczenik, Lund	293
10	Precedent in the United Kingdom Zenon Bankowski, Edinburgh, D. Neil MacCormick, Edinburgh and Geoffrey Marshall, Oxford	315
11	Precedent in the United States (New York State) Robert S. Summers, Ithaca	355
12	Precedent in European Community Law John J. Barceló, Ithaca	407
13	Institutional Factors Influencing Precedents Michele Taruffo, Pavia	437
14	The Binding Force of Precedent Aleksander Peczenik Lund	461

### vi Contents

15	Rationales for Precedent Zenon Bankowski, Edinburgh, D. Neil MacCormick, Edinburgh, Lech Morawski, Torun and Alfonso Ruiz Miguel, Madrid	481
16	What is Binding in a Precedent	503
	Geoffrey Marshall, Oxford	
17	Departures from Precedent	519
40	Robert S. Summers, Ithaca and Svein Eng, Oslo	
18	Conclus and Conclusions	531
	D. Neil MacCormick, <i>Edinburgh</i> and Robert S. Summers, <i>Ithaca</i>	
Арр	pendix: Final Version of the Common Questions, Comparative	
	Legal Precedent Study, September 1994	551
About the Authors		
1100	ut the Authors	563
Index		567