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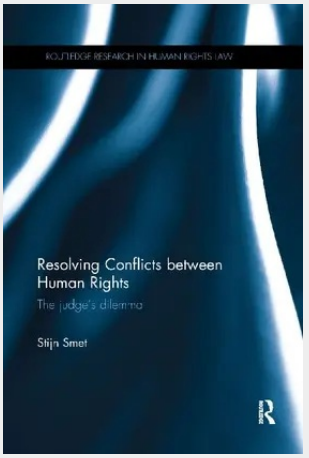
Resolving Conflicts between Human Rights

The Judge's Dilemma



Under the influence of the global spread of human rights, legal disputes are increasingly framed in human rights terms. Parties to a legal dispute can often invoke human rights norms in support of their competing claims. Yet, when confronted with cases in which human rights conflict, judges face a dilemma. They have to make difficult choices between superior norms that deserve equal respect. In this high-level book, the author sets out how judges the world over could resolve conflicts between human rights. He presents an innovative legal theoretical account of such conflicts, questioning the relevance of the influential proportionality test to their resolution. Instead, the author develops a novel resolution framework, specifically designed to tackle human rights conflicts. The book combines concerted normative theory with profound practical analysis, firmly rooting its theoretical arguments in human rights practice. Although the analysis draws primarily on the case law of the European Court of Human Rights, the book's core arguments are applicable to judicial practice in general. As such, the book should be of great interest to academics, postgraduate students and legal practitioners in Europe and beyond. The book is particularly suited for use in advanced courses on legal theory, human rights law and jurisprudence.

With the spread of human rights language and instruments, court cases that were previously dealt with in terms of national law are increasingly framed in human rights terms. In Europe both parties to a legal dispute at the national level can often rely on the human rights norms of the ECHR to support their competing claims. This book explores how such conflicts between human rights can be defined and considers whether such conflicts pose particular challenges in terms of their resolution. While analysis is largely drawn from the case law of the European Court of Human Rights its finding are applicable to judicial practice in general when it comes to resolving conflicts between human rights.

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