TABLE OF CONTENTS

PREFACE				X	
INTRODU	JCTIO	N		1	
	Argui	mentation and legal justification			
			are of this book		
CHAPTER	ONE				
RESEARC	H INT	O LEG	AL ARGUMENTATION	5	
	1.1	Introdu	action	5	
	1.2	Argum	Argumentation and the interpretation of legal rules		
	1.3		l research questions in theories of legal		
		argume	entation	10	
CHAPTER	TWC				
A SURVE	YOF	APPRO.	ACHES AND TOPICS	13	
	2.1	Introdu	action	13	
	2.2	Researc	ch of legal argumentation	13	
	2.3	Approa	aches in research of legal argumentation	15	
		2.3.1	The logical approach	15	
		2.3.2	The rhetorical approach	16	
		2.3.3	The dialogical approach	19	
	2.4		in research of legal argumentation	21	
		The state of the s	The philosophical component	21	
		2.4.2	The theoretical component	21	
		2.4.3	The reconstruction component	22	
		2.4.4	The empirical component	24	
		2.4.5	The practical component	24	
CHAPTER					
THE LOG				26	
		Introdu		26	
	3.2	Logical	validity and acceptability of legal		
		0	entation	26	
	3.3		s logical theories	28	
	3.4		analysis of legal argumentation	32	
	3.5		scussion of the importance of logic for legal		
		•	entation	34	
	3.6	Conclu	ision	38	

CHAPTER	FOU	3	
TOULMIN	'S AR	GUMENTATION MODEL	40
	4.1	Introduction	40
	4.2	Toulmin's argumentation model and the analysis	
		and evaluation of legal argumentation	41
	4.3	Applications of Toulmin's model in the theoretical	
		and practical literature on legal argumentation	44
	4.4	Conclusion	46
CHAPTER	CIVE		
		EW RHETORIC	48
		Introduction	48
3		Perelman's general argumentation theory	49
		Perelman's legal argumentation theory	52
		Applications of Perelman's New Rhetoric in	32
		the literature of legal argumentation	56
		Conclusion	59
CHAPTER	SIX		
HABERMA	S' TH	EORY OF COMMUNICATIVE RATIONALITY	62
	6.1	Introduction	62
	6.2	Communicative rationality and the ideal speech	
		situation	62
		6.2.1 Discussions and the ideal speech situation	62
		6.2.2 Levels of communicative rationality	64
		6.2.3 The structure of argumentation	66
		The ideal speech situation and legal discussions	67
		Applications of Habermas' theory in law	69
	6.5	Conclusion	71
CHAPTER	CEME.	NT	
		S THEORY OF THE JUSTIFICATION	
OF LEGAL			73
		Introduction	73
		Deductive justification	74
		Second-order justification	78
		Consequentialist arguments	83
		Arguments of coherence	85
		Arguments of consistency	87
	7.7	Conclusion	88

CHAPTER	EIGH	T		
ALEXY'S F	PROCE	EDURA	L THEORY OF	
LEGAL AR	GUM	ENTA	rion	92
	8.1	Introdu	action	92
	8.2	The th	eory of general practical discourse	93
		8.2.1	The rules of general practical discourse	93
		8.2.2	The principles of practical rationality	100
		8.2.3	The justification of rules of discourse	102
	8.3	The th	eory of legal argumentation	102
		8.3.1	The rules of the internal justification	103
		8.3.2	The rules of the external justification	107
	8.4	Legal a	and general practical discourse	114
	8.5	Conclu	ision	116
CHAPTER	NINE			
The state of the s			F THE JUSTIFICATION OF	
LEGAL IN				119
	9.1	Introdu	action	119
	9.2	The in	terpretation of legal norms	120
	9.3	The jus	stification of an interpretation standpoint	122
		9.3.1	The structure of the justification	122
		9.3.2	Internal and external justification	125
	9.4	The ra	tionality and acceptability of legal	
		interpr	etations	127
	9.5	The ra	tionality of legal interpretations	127
		9.5.1	The rules concerning the rationality of	
			discussions	128
		9.5.2	The rules concerning the burden of proof	129
			ceptability of legal interpretations	131
			Forms of life and the acceptability of legal	
			interpretations	131
		9.6.2	The audience and the form of life	132
	9.7	Conclu	ision	134

e

CHAPTER 7	ΓEN			
		EORY	OF TRANSFORMATIONS	
IN THE LA				139
1	10.1	Introdu	iction	139
1	10.2	Transfo	ormations and the justification of legal	
		decision	ns ·	140
1	10.3	The leg	gal justification	144
		10.3.1	The transformation into the law	144
		10.3.2	The transformation inside the law	146
1	10.4	The de	ep justification	154
		10.4.1	The rationality of legal argumentation	154
		10.4.2	Legal ideology	156
1	10.5	Conclu	sion	158
CHAPTER I	ELEV	EN		
THE PRAGI	MA-D	IALEC	TICAL THEORY OF LEGAL	
ARGUMEN'	TATI	ON IN	THE CONTEXT OF A	
CRITICAL I	DISCU	JSSION	1	163
1	11.1	Introdu	iction	163
1	11.2	A prag	ma-dialectical approach of argumentation as	
		part of	a critical discussion	163
		11.2.1	The pragma-dialectical theory of	
			argumentative discussions	163
		11.2.2	The analysis and evaluation of argumen-	
			tative discussions	167
1	11.3	Pragma	a-dialectical analysis of legal argumentation	171
		11.3.1	Legal argumentation as part of a critical	
			discussion	171
			The analysis of legal disputes	174
		11.3.3	Single and complex argumentation in legal	
			discussions	175
	,		Clear cases and hard cases: single argumen-	
*			tation and complex argumentation	176
		11.3.5	Clues for the reconstruction of the argu-	
			mentation structure	178
		11.3.6	Missing premises and complex	
			argumentation	179
	11.4	_	a-dialectical evaluation of legal argumentation	
			Norms for the evaluation of the content	
			Norms for the evaluation of the discuss	
		-2	procedure	184
	11.5	Conclu	ision	187

CHAPTER	TWE	LVE	
TOWARD	SAT	HEORY OF LEGAL ARGUMENTATION	
		EXT OF A CRITICAL DISCUSSION	189
		Introduction	189
	12.2	Approaches to legal argumentation in logic,	
		argumentation theory and philosophy	189
	12.3	Approaches to legal argumentation	
		in legal theory	193
	12.4	A model for the analysis and evaluation of legal	
		argumentation: five components of a dialogical	
		theory of legal argumentation	197
DIDITOOD	A DITS	7	205
BIBLIOGR	APHI		205
AUTHOR	TNIDE		210
AUITOR	IIIDE		210
SUBJECT	INDE	X	221
JUDJICI .			