

# Beiträge zum ausländischen und internationalen Privatrecht

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Directors: Holger Fleischer, Ralf Michaels, and Reinhard Zimmermann

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Bueren, Eckart

## Short-termism im Aktien- und Kapitalmarktrecht

Ideengeschichte, Rechtsvergleichung, Rechtsökonomie

2021. Approx. 1400 pages.  
forthcoming in February

ISBN 9783161582257  
cloth approx. 170,00 €

ISBN 9783161582264  
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The most basic and distinctive function of the stock company is to transform private savings into permanent investment capital. However, ever since the advent of the modern publicly traded company, jurisprudence, economics and politics have been concerned that this fundamental feature is being put under excessive short-term pressures, to the detriment of both economy and society. The controversy over *short-termism* – one of company law's biggest debates – is covered here by Eckart Bueren in his comprehensive study of it, combining the history of law and ideas, comparative law, and law and economics. How the topos developed and which legal questions, matters and interests it has served past and present are all charted in this prize-winning work.

## Die Frühehe im Recht

Praxis, Rechtsvergleich, Kollisionsrecht, höherrangiges Recht

Herausgegeben von Nadjma Yassari und Ralf Michaels

2021. Approx. 700 pages.  
forthcoming in January

ISBN 9783161598777  
cloth approx. 125,00 €

ISBN 9783161598784  
eBook PDF approx. 125,00 €

Who enters into early marriages and why? Where early marriage is allowed, what conditions must be met? Will an early marriage which takes place abroad be recognized domestically? What rights and limits are prescribed by constitutional law, European law and international law? This edited volume examines these questions across four continents and in doing so facilitates a critical analysis of German law.

Survey of contents

*Nadjma Yassari/Ralf Michaels:* Vorwort – *dies.:* Die Frühehe im Rechtsvergleich: Praxis, Sachrecht, Kollisionsrecht

### Völker- und europarechtliche Vorgaben

*Antonia Sommerfeld:* Völkerrechtliche Anforderungen an die Frühehe – *Raphael de Barros Fritz:* Art. 13 Abs. 3 Nr. 1 EGBGB aus der Perspektive des Europarechts

### Vorgaben des deutschen Verfassungsrechts

*Dieter Martiny:* Die ausländische Frühehe und der Schutz der Ehe nach Art. 6 Abs. 1 GG – *Christoph Schoppe:* Art. 13 Abs. 3 Nr. 1 EGBGB und die kinderspezifischen Gewährleistungen der Verfassung. Frühehe, Kindeswohl und Persönlichkeitsentwicklung – *Christine Toman/Jakob Olbing:* Die ausländische Frühehe vor dem allgemeinen Gleichheitssatz – *Samuel Zeh:* Die ausländische Frühehe und das Rückwirkungsverbot

### Praxis, Sachrecht und Kollisionsrecht in verschiedenen Rechtsordnungen

*Dörthe Engelcke/Dominik Krell/Nadjma Yassari:* Die Frühehe in der MENA-Region – *Denise Wiedemann:* Die Frühehe in Lateinamerika – *Rainer Kulms:* Die Frühehe in den Vereinigten Staaten von Amerika – *Reinhard Ellger:* Die Frühehe im Vereinigten Königreich und Nordirland – *Gunnar Franck:* Die Frühehe in Dänemark – *dies.:* Die Frühehe in Schweden – *dies.:* Die Frühehe in Norwegen – *Christa Jessel-Holst:* Die Frühehe in Bulgarien – *dies.:* Die Frühehe in Bosnien und Herzegowina – *Konrad Duden:* Zur Unwirksamkeit der Frühehe in Deutschland. Differenzierte Anwendung des Art. 13 Abs. 3 Nr. 1 EGBGB – *Shéhérazade Elyazidi/Dorothee Perrouin-Verbe:* Die Frühehe in Frankreich – *Evelyn Ederveen/Ralf Michaels:* Die Frühehe in den Niederlanden – *Kurt Siehr:* Die Frühehe in Österreich – *dies.:* Die Frühehe in der Schweiz – *dies.:* Die Frühehe in Italien – *Harald Baum:* Die Frühehe in Japan

## Causa contractus

Auf der Suche nach den Bedingungen der Wirksamkeit des vertraglichen Willens / Alla ricerca delle condizioni dell'efficacia della volontà contrattuale / À la recherche des conditions de l'efficacité de la volonté contractuelle

Hrsg. v. Gregor Albers, Francesco Paolo Patti u. Dorothee Perrouin-Verbe

2020. Approx. 600 pages.  
forthcoming in January

ISBN 9783161582448  
cloth 109,00 €

ISBN 9783161582455  
eBook PDF 109,00 €

European legal tradition uses the notion of *causa* or *la cause* both to identify a contract's underlying purpose and to address the reasons for its enforcement. By combining a historical analysis of the *causa* doctrine with comparative studies of various national systems, this volume seeks to promote a common understanding of Europe's legal heritage and to present proposals for its further development. Contributions are in German, French, Italian and English, summarized by introductory chapters in English.

Survey of contents

*Gregor Albers/Francesco Patti/Dorothee Perrouin-Verbe:* Introduction – *Gregor Albers:* Warum heute noch über *causa* sprechen?

Teil 1: Dogmengeschichte / The History of an Idea



*Gregor Albers*: Introduction – *Tommaso dalla Massara*: Die causa des Vertrages im Denken des Aristo: zu den Ursprüngen einer Idee – *Arnaud Paturet*: Réflexions sur des archétypes socio-anthropologique de la cause contractuelle – *Martin Schermaier*: Die Rolle der *causa* bei der Überwindung des Typenzwangs durch die mittelalterlichen Juristen – *Klaus Kowalski*: Die *causa* des Vertrags im frühen Naturrecht – *Céline Combette*: La cause de Grotius au Code Napoléon – *Emmanuelle Chevreau*: La cause du Code civil de 1804 à la réforme du droit des obligations de 2016 – *Andrea Maria Garofalo*: Il ruolo della causa del contratto in Italia tra il 1865 e il 1942 – *Francesca Bartolini*: La causa dal codice del 1942 ai giorni nostri – *Gregor Albers*: Deutschland und die *causa* des Vertrages: vom Code Civil bis zum BGB – *Birke Häcker*: *Causa* und *Consideration* – ein historischer Dialog

## Teil 2: Vergleich / Comparison

### 1. Wirksamkeitsvoraussetzungen / Requirements of Valid Contracts

*Dorothee Perrouin-Verbe*: Introduction – *Elena Giannozzi*: Le caractère contraignant des contrats en droit romain classique – *Samuel Fulli-Lemaire*: Le rôle de la cause au sein des conditions d'efficacité de la volonté contractuelle – *Ralf Treibmann*: Wirksamkeitsvoraussetzungen des Vertrags im deutschen Recht – *Andrea Maria Garofalo/Francesco Paolo Patti*: La causa come requisito essenziale del contratto – *Kristin Boosfeld*: Äquivalente der *causa* beim Vertragsschluss im englischen Recht

### 2. Unerwartete Umstände / Unexpected Circumstances

*Francesco Paolo Patti*: Introduction – *Manuel Grasso*: Accordo, *causa* e sopravvenienze: contratto e realtà nel diritto romano – *Dorothee Perrouin-Verbe*, L'événement imprévu et le bouleversement de l'équilibre contractuel en droit français – *Gregor Albers*: Der Einfluss unerwarteter Ereignisse auf den Vertrag nach deutschem Recht – *Francesco Paolo Patti*: Causa e sopravvenienze nel diritto italiano – *Francesco Mezzanotte*: Scopo del contratto e doctrine of frustration

## Teil 3: Europäisches Vertragsrecht der Zukunft / Future European Contract Law

### 1. Nationale Aussichten / National Prospects

*Gregor Albers/Francesco Paolo Patti/Dorothee Perrouin-Verbe*: Introduction – *Thomas Genicon*, L'avenir de la cause – *Elena Bargelli*, Il futuro della causa. Prospettiva italiana – *Horst Ehmann*, Eine deutsche *causa* -Lehre – *Simon Whittaker*, Purpose of contract

### 2. Proposals

*Gregor Albers/Francesco Paolo Patti/Dorothee Perrouin-Verbe*: Introduction – *Samuel Fulli-Lemaire*: La cause comme raison d'être du contrat, entre finalité et équilibre – *Andrea Maria Garofalo*: Speech acts e *causa* concreta – *Ralf Treibmann*, Assumer les *causae* – pour une analyse vectorielle en droit comparé

## Juristische Kommentare: Ein internationaler Vergleich

Herausgegeben von David Kästle-Lamparter, Nils Jansen und Reinhard Zimmermann

Volume 133  
2020. XII, 520 pages.  
forthcoming in November

ISBN 9783161583384  
cloth 104,00 €

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From a comparative perspective, legal commentaries may be considered an intrinsically German type of legal literature. However, that is only half the truth. In this volume, authors from several jurisdictions analyze the existence and importance of commentaries in different legal systems and in transnational legal literature.

### Survey of contents

*David Kästle-Lamparter*: Kommentarkulturen? Einführung und historische Einordnung – *Nils Jansen*: Vom Aufstieg des Kommentars und Niedergang des Lehrbuchs: Fünfzehn Beobachtungen zur Entwicklung juristischer Literaturformen in Deutschland im 20. Jahrhundert – *Jean-Sébastien Borghetti*: Legal Commentaries in French Law: Will Mammoths Come Back to Life? – *Francesco Paolo Patti*: Kommentare zum italienischen Zivilgesetzbuch: Geschichte, Struktur und Funktion – *Jelle Jansen*: Der Blaue Engel und die Grüne Reihe: Die Rolle des Kommentars in der niederländischen privatrechtlichen Publikationskultur – *Bruno Rodríguez-Rosado*: Juristische Kommentare in Spanien, mit besonderer Berücksichtigung des Zivilrechts: Erfolg und Misserfolg eines Modells – *Jakob Fortunat Stagl*: Juristische Kommentare in Lateinamerika: Behagen und Unbehagen in der Kodifikation – *Fumihiko Nagano*: Entwicklung und Stellenwert juristischer Kommentare in Japan: Literaturformen als Spiegel juristischer Denkweise – *Wojciech Dajczak*: Juristische Kommentare in Polen: Ausländische Standards und die Suche nach einem eigenen Stil – *Andrey M. Shirvindt*: Die juristische Literaturlandschaft Russlands: Eine Kommentarwüste – *Stefan Enchelmaier*: Juristische Kommentare in England: False Friends – or Mates? – *Mathias Reimann*: Legal «Commentaries» in the United States: Division of Labor – *Helge Dedek*: Der Zugang zu kolonialem Recht: Rechtsliteratur und Kommentare in Kanada – *Alistair Price*: Commentaries in South African Private Law: An Indispensable yet Insufficient Form of Scholarship – *Talia Einhorn*: Commentaries in Israeli Law: Foundations and Future of a Mixed Legal System – *Jens Kleinschmidt*: Kommentare im europäischen Privatrecht: Rezeption einer Literaturform – *Ralf Michaels*: Kommentare zum transnationalen Privatrecht: Grenzen der Entnationalisierung eines nationalen Modells – *Christian Djeffal*: Kommentarpraxis und Kommentarkultur im Völkerrecht: Einheit, Vielheit, Besonderheit – *Reinhard Zimmermann*: Privatrechtliche Kommentare im internationalen Vergleich: Verbreitung, Varianz, Verwandtschaft

Laimer, Simon

## Beschränkung rechtsgeschäftlicher Erfüllungsverpflichtungen

Eine rechtsvergleichende Untersuchung zur vertraglichen Leistungsbegrenzung am Beispiel von  
Qualitätsvereinbarungen beim Warenkauf sowie anhand der Definition des  
Haftpflichtversicherungsfalles

Volume 132  
2020. XXIX, 551 pages.  
forthcoming in October

ISBN 9783161557088  
cloth 99,00 €

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eBook PDF 99,00 €

Based on the examples of restrictive quality agreements for the sale of goods and the definition of the insured event in liability insurance Simon Laimer analyses the limits and interpretation of contractual restrictions to perform. Relying on a comparative approach, he is able to critically assess the different national, international and soft law sources and to offer two concrete regulatory proposals.

## Protagonisten im Gesellschaftsrecht

Zehntes deutsch-österreichisch-schweizerisches Symposium, Zürich, 6.-7. Juni 2019

Herausgegeben von Hans-Ueli Vogt, Holger Fleischer und Susanne Kalss

Volume 131  
2020. XVI, 230 pages.

ISBN 9783161595387  
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ISBN 9783161595394  
eBook PDF 79,00 €

The present volume takes up the trail of the key actors and players in German, Austrian, and Swiss company and capital market laws. Nine contributions assess the influence of courts, corporate counsel, and auditors, while also monitoring the activities of takeover commissions and the role of legislators.

## German and East Asian Perspectives on Corporate and Capital Market Law: Investors versus Companies

Edited by Holger Fleischer, Hideki Kanda, Kon Sik Kim and Peter Mülbert

Volume 130  
2019. XI, 259 pages.

ISBN 9783161591020  
cloth 79,00 €

ISBN 9783161591037  
eBook PDF 79,00 €

This volume is based on updated presentations delivered at a symposium held in 2017 at Seoul National University. It follows two earlier conference volumes and shares their goal to stimulate the scholarly exchange between company law academics in Germany, China, Japan and South Korea which can be traced back to the late nineteenth century. Contributions from all four jurisdictions include papers on shareholder activism and the disclosure of substantial shareholdings as well as studies on takeover law addressing key questions such as the mandatory bid rule, control premiums, hostile takeovers and pre- and post-bid defences.

Survey of contents

### I. Shareholder Activism

*Andreas Engert*: Shareholder Activism in Germany – *Akira Tokutsu*: Shareholder Activism in Japan. Chick Sexing or Tautology? – *Ruoying Chen*: Shareholder Activism in China. A Special Case for a State-affiliated Service Center for Medium and Small Investors – *Kyung-Hoon Chun*: Shareholder Activism in Korea. The Cases of PSPD and NPS

### II. Disclosure of Substantial Holdings

*Gregor Bachmann*: Disclosure of Substantial Shareholdings in Stock Corporations. A German and European Perspective – *Li Guo*: Disclosure of Substantial Holdings in China. A Realm of Order or a Realm of Chaos? – *Sunseop Jung*: Disclosure of Substantial Shareholdings. A Korean Perspective

### III. Takeovers in General

*Dirk A. Verse*: Selected Issues in German Takeover Law. Mandatory Bids, Minimum Pricing Rules – *Masakazu Shirai*: Characteristics of the Japanese Tender Offer System and its Rationale – *Yon Mi Kim*: Korean Takeover Laws. Focusing on the Control Premium – *Masafumi Nakahigashi/Alan K. Koh/Dan W. Puchniak*: Anti-Takeover Defensive Measures in Japan – *Robin Hui Huang/Juan Chen/Pin Lyu*: Hostile Takeovers in China. Recent Developments and Regulatory Challenges – *Ok-Rial Song*: Pre- and Post-Bid Defenses in Korea. Overview and Recent Doctrinal Development

## Der Staat als Aktionär

Neuntes deutsch-österreichisch-schweizerisches Symposium, Wien, 17.-18. Mai 2018

Hrsg. v. Susanne Kalss, Holger Fleischer u. Hans-Ueli Vogt

Volume 129  
2019. XV, 212 pages.

ISBN 9783161588860  
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ISBN 9783161588877  
eBook PDF 69,00 €

State ownership of public and private companies plays an important role in Germany, Austria and Switzerland, and is something which often results in tensions between company law and public law requirements. The contributions in this conference volume shed light on problematic areas from a variety of perspectives. Dealing with the constitutional framework for such constellations, they address the duties of directors delegated by the State and discuss public corporate governance codes and the European Court of Justice case law on golden shares as well as the role of the state as a parent company in a group structure.

Survey of contents

*Hans-Ueli Vogt*: Öffentlich-rechtliche Organisationsform vs. staatliche Beteiligung an einer Aktiengesellschaft – Prolegomena zum »Staat als Aktionär«: Die Rolle von Aktiengesellschaften in der Corporate Governance des Staates . Diskussion (Sebastian Brehm) – *Michael Holoubek*: Der Staat als Aktionär – Verfassungsrechtliche Vorgaben aus österreichischer Sicht – *Thomas Mann*: Der Staat als Aktionär – Öffentlich-rechtliche Besonderheiten in Deutschland . Diskussion (Sophie Natlacen) – *Michael Gruber*: Der Beamte als Aufsichtsratsmitglied – *Klaus Ulrich Schmolke*: Vertreter von Gebietskörperschaften im Aufsichtsrat – Fragen der Information, Verschwiegenheit und Bewältigung von Interessenkonflikten . Diskussion (Florian Ebner/Alexander Leohnartsberger) – *Walter Bayer*: Der Staat als Spitze eines Konzerns – Was kann das Aktiengesetz leisten? – *Peter V. Kunz*: Staatsbeteiligungen und ausgewählte Verantwortlichkeiten . Diskussion (Veronika Kubasta/Sebastian Brehm) – *Susanne Kalss*: Der Bundes Public Corporate Governance Kodex . Diskussion (Veronika Kubasta) – *Jessica Schmidt*: VW and Beyond – *Christoph B. Bühler*: Spezialgesetzliche Aktiengesellschaften – Regelungsanliegen und -instrumente . Diskussion (Veronika Kubasta/Sophie Natlacen)

Oster, Jan

## Kommunikationsdeliktsrecht

### Eine transnationale Untersuchung am Beispiel des Ehrschutzes

Volume 128  
2019. XXII, 490 pages.

ISBN 9783161569364  
cloth 99,00 €  
ISBN 9783161569371  
eBook PDF 99,00 €

Why is there not just one single global law for cases of defamation in cross-border communication mediums such as the internet? Which courts are to be called on in such cases? And is it permissible to hold an intermediary instead of a content provider liable? Jan Oster examines these questions in light of German, English, and American law.

## Ukrainian Private Law and the European Area of Justice

Ed. by Eugenia Kurzynsky-Singer and Rainer Kulms

Volume 127  
2019. XI, 321 pages.

ISBN 9783161562051  
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The present collection of essays addresses the development of Ukrainian private law in the course of its ongoing Europeanization. This process is determined by the Association Agreement between the EU and Ukraine, which was concluded in 2014 and obliges Ukraine to implement a diverse number of European legal acts in its national legal system, aiming to achieve the economic integration of Ukraine into the EU internal market. Nevertheless, it would be inaccurate to describe the process of integrating Ukrainian private law into the European Area of Justice as solely the implementation of the Community *acquis*. Rather, the Europeanization of Ukrainian private law is part of a value-based Europeanization of the entire Ukrainian society.

Survey of contents

### I. From Association to Harmonisation

*Jürgen Basedow*: EU Private Law in Ukraine. The Impact of the Association Agreement – *Eugenia Kurzynsky-Singer*: The Implementation of the EU *Acquis* in Ukraine: Lessons from Legal Transplants – *Natalia Pankevich*: EU-Ukraine Association: An Asymmetrical Partnership – *Daniilo Flores*: Allure and Rejection: Legal Frameworks Governing EU-Ukraine Relations before the Association Agreement

### II. Reform of Ukrainian Justice

*Vitaliy Korolenko*: The reform of the Ukrainian judicial system and the civil proceedings in the context of the Association Agreement – *Caroline von Gall*: Beyond legal amendment. Ukrainian judiciary needs more than a change of laws

### III. Modernisation of Ukrainian Private Law

*Roman Majdanyk*: Development of Ukrainian private law in the context of its Europeanization – *Volodymyr Korol*: Modernization of Ukrainian Cross-border Litigation and Conflict Law relating to contractual disputes in commercial matters on the way towards European Area of Justice – *Volodymyr Kochyn*: Non-Entrepreneurial Legal Entities in Ukraine: the Application of the European Experience

### IV. EU and Eastern Europe

*Natalia Pankevich*: Eastern Neighbourhood of the EU: Alternatives for Integrative Projects – *Rainer Kulms*: (Private) Law in Transition: The *Acquis Communautaire* as a Challenge for East European Law Makers – *Christa Jessel-Holst*: Harmonization of Private Law as Exemplified in South East European Countries

Kurzynsky-Singer, Eugenia

## Transformation der russischen Eigentumsordnung

Eine vergleichende Analyse aus der Sicht des deutschen Rechts

Volume 126  
2019. XXVII, 470 pages.

ISBN 9783161565694  
cloth 89,00 €

ISBN 9783161565700  
eBook PDF 89,00 €

Eugenia Kurzynsky-Singer examines how the notion of property has developed in Russian law from a comparative point of view. Analysing the continuity of Russian legal thinking from the Tsarist Empire to the current day, she is able to trace its impact on modern property law.

Wagner, Stephan

## Interzession naher Angehöriger

Eine Untersuchung in historischer und vergleichender Perspektive

Volume 125  
2018. XX, 639 pages.

ISBN 9783161554506  
cloth 99,00 €

ISBN 9783161554513  
eBook PDF 99,00 €

The creation of securities of credit (so-called *intercessio*) by close relatives imposes a difficult task on every legal system. Stephan Wagner's study analyses the development of the corresponding legal institutions in Continental and English law from a historical and comparative perspective.

## »Mehr Freiheit wagen« – Beiträge zur Emeritierung von Jürgen Basedow

Hrsg. im Auftrag seiner Schülerinnen u. Schüler v. Anatol Dutta u. Christian Heinze

Volume 124  
2018. XXV, 483 pages.

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In autumn 2017, Jürgen Basedow retired as Director at the Max Planck Institute for Comparative and International Private Law in Hamburg, occasion for the institute and his students to reflect on central themes taken up in Basedow's broad field of research. The symposium in his honour, entitled »Risking More Freedom«, recounted his seminal book »Mehr Freiheit wagen – Über Deregulierung und Wettbewerb«, which was published by Mohr Siebeck in 2002. In addition to the keynote address and the symposium's introductory and concluding remarks, the present volume includes contributions from adherents of the »Basedow School« on the topics of private law, insurance law, labour law, commercial law, conflict of laws, procedural law and the foundations of law and comparative law.

Survey of contents

### Geleitworte

*Reinhard Zimmermann*: »Mehr Freiheit wagen« – Jürgen Basedow zum Abschied aus dem aktiven Dienst am Hamburger Max-Planck-Institut – *Holger Fleischer*: Dinner Speech

### Eröffnungsbeitrag

*Vassilios Skouris*: Das Prinzip Vertragsfreiheit aus der Sicht eines Außenseiters

### Teil I: Bürgerliches Recht und Versicherungsrecht

*Giesela Rühl*: Mehr Freiheit wagen im Vertragsrecht. Zur Inhaltskontrolle von AGB im unternehmerischen Geschäftsverkehr – *Jan Lüttringhaus*: Mehr Freiheit wagen im Versicherungsrecht durch daten- und risikoadjustierte Versicherungstarife. »Pay-as-you-drive«, »Pay-as-you-live« und »Smart-Home«-Tarife als Herausforderung für das Versicherungsvertragsrecht – *Jens Scherpe*: Mehr Freiheit wagen im Familienrecht. Entgeschlechtlichung des Rechts – *Konrad Duden*: Freiheit und Verantwortung im Abstammungsrecht – *Anatol Dutta*: Mehr Testierfreiheit wagen? Ein Streifzug durch Roland Donaths unveröffentlichte Habilitationsschrift

### Teil II: Arbeitsrecht und Wirtschaftsrecht

*Axel Metzger*: Mehr Freiheit wagen auf dem Markt der Daten. Voraussetzungen und Grenzen eines Marktmodells für »big data« – *Matteo Fornasier*: Mehr Freiheit wagen im Arbeitsrecht? – *Jan Kleinheisterkamp*: Mehr Freiheit wagen mit Menschenrechten. Ein Versuch zur Rechtssicherheit durch Investitionsschutzrecht – *Duygu Damar*: Mehr Freiheit wagen im Transportrecht – *Wolfgang Wurmnest*: Mehr Freiheit wagen im Kartell- und Marktregulierungsrecht

### Teil III: Kollisionsrecht und Verfahrensrecht

*Ralf Michaels*: Mehr Freiheit wagen im Recht der Privatautonomie? Rechtswahlfreiheit und religiöse Rechte – *Hannes Rösler*: Mehr Freiheit wagen im Kollisionsrecht. Zur Zulässigkeit von floating choice of law clauses im Wirtschafts-, Familien- und Erbkollisionsrecht der Europäischen Union – *Christian Heinze*: Mehr Freiheit wagen in der Zwangsvollstreckung. Ein Plädoyer für eine Neuordnung und Neubewertung von Vollstreckungsvereinbarungen – *Moritz Bälz*: Mehr Freiheit wagen



im japanischen Recht. Die Folgen für das Justizsystem – *Franco Ferrari/Friedrich Rosenfeld*: Mehr Freiheit wagen in der internationalen Handelsschiedsgerichtsbarkeit. Schranken der Parteiautonomie in der Schiedsgerichtsbarkeit

#### Teil IV: Grundlagen und Rechtsvergleichung

*Nadja Yassari*: Mehr Freiheit wagen im religiösen Recht. Formfreiheit im iranischen Testamentsrecht – *Eugenia Kurzynsky-Singer*: Mehr Freiheit wagen im Recht der Transformationsstaaten? Zur Vertragsfreiheit im russischen Recht – *Eva-Maria Kieninger*: Mehr Offenheit wagen. Von den Niederungen der Empirie zur Kraft der Visionen  
Schlusswort von *Jürgen Basedow*

## Corporate Social Responsibility

Achtes deutsch-österreichisch-schweizerisches Symposium, Hamburg 1.-2. Juni 2017

Hrsg. v. **Holger Fleischer, Susanne Kalss u. Hans-Ueli Vogt**

Volume 123  
2018. XV, 344 pages.

ISBN 9783161562112  
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This volume offers an introduction to the foundational issues of corporate social responsibility (CSR), an emerging field of research in company, accounting and capital market law. Taking questions of CSR in stock corporations, international standards, reporting obligations, the parent company's liability for violations of human rights by its foreign subsidiaries, employee participation, sustainable executive compensation, and the political engagement of companies, the contributions tap into the latest research in Germany, Austria, and Switzerland.

Survey of contents

*Holger Fleischer*: Corporate Social Responsibility: Vermessung eines Forschungsfeldes aus rechtlicher Sicht – *Daniel M. Häusermann*: Corporate Social Responsibility: Aktienrechtliche Grundfragen und Zweck des Gesellschaftsrechts – *Eva Micheler*: Corporate Social Responsibility: Gesellschaftstheoretische Überlegungen – *Petra Buck-Heeb*: Internationale Regel- und Standardsetzung im Bereich Corporate Social Responsibility – *Sebastian Mock*: Berichterstattung über Corporate Social Responsibility im Bilanzrecht – *Andreas Bohrer*: Die Haftung schweizerischer Unternehmen für Menschenrechtsverletzungen im Ausland? – Überlegungen zur »Konzern-Initiative« – *Patrick Wartsch*: Die Haftung österreichischer Unternehmen für Menschenrechtsverletzungen im Ausland – *Rüdiger Krause*: Corporate Social Responsibility und Arbeitnehmerbeteiligung: zwei Welten? – *Janine Wendt*: Corporate Social Responsibility: Anreizmechanismus Vergütung – *Karin Müller*: Corporate Social Responsibility: Politisches Engagement von Unternehmen

## Europäisches Privat- und Wirtschaftsrecht in der Krise

Hrsg. v. **Jens-Hinrich Binder u. Georgios Psaroudakis**

Volume 122  
2018. XX, 370 pages.

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During the economic and sovereign debt crisis in the Eurozone, both European and national commercial and economic laws have undergone a severe stress test – and often passed this test only because of significant *ad hoc* changes to existing legal frameworks and underlying legal principles. The present volume collects the perspectives of German and Greek jurisprudence on the relevant phenomena. It covers a wide spectrum of substantive problems, ranging from questions of European monetary law and the regulation of the banking sector to matters of public economic law, contract and consumer law, insolvency and restructuring law, corporate and securities and labour law.

Survey of contents

*Harm Peter Westermann*: Europäisches Privat- und Wirtschaftsrecht im Spiegel deutsch-griechischer Symposien

### 1. Europäisches Währungs- und Finanzrecht in der Krise

*Martin Nettesheim*: Die Legitimität der EU-Governance in der europäischen Währungsunion – Herausforderungen und Lösungsansätze – *Jens-Hinrich Binder*: Systemkrisenbewältigung durch Bankenabwicklung? – Einige Bemerkungen zu unrealistischen Erwartungen

### 2. Öffentliche Haushalte und Privatisierung

*Konstantinos Gogos*: Entwicklungen im griechischen Steuerprozessrecht unter dem Einfluss der Haushaltskrise: Eine Zwischenbilanz nach fünf Jahren Reform – *Eugenia Prevedourou*: Privatisierung der Betreiber öffentlicher Dienstleistungen: das Beispiel der Trinkwasserversorgung und des Rundfunks – *Iakovos Mathioudakis*: Das Solidaritätsprinzip in der Zeit der griechischen Wirtschaftskrise

### 3. Vertrags- und Verbraucherschutzrecht

*Jan Schümbrand* (†): Verbraucherkreditrecht in der Krise – *Rigas Giannopoulos*: Kreditnehmerschutz in der Krise im griechischen Recht – *Achilleas Bechlianis*: Pyramidensysteme als unlautere Geschäftspraktik im Lichte der »4finance«-Entscheidung des EuGH vom 3. April 2014 (Rechtssache C-515/12) – *Georgios Mentis*: Anpassung von Kreditverträgen in Krisenzeiten, insbesondere im Hinblick auf die Finanzkrise von 2008 – Zugleich ein Beitrag zur Definition und Unwirksamkeit des Überschuldungsvertrags – *Florian Möslin*: Vertragsbindung in der Krise? Rückzahlungsklauseln (»clawbacks«) im Schnittfeld von Gesellschafts- und Vertragsrecht – *Apostolos D. Tassikas*: Kreditnehmerschutz vor Forderungsabtretung: das neue Gesetz 4354/2015 in Griechenland

### 4. Insolvenz und Sanierung

*Stefan Thomas*: Erleichterungen bei der Fusionskontrolle in Sanierungsfällen – *Georgios Psaroudakis*: Aspekte des Sanierungsbeitrags von Anteilssinhavern – *Nikolaos Eleftheriadis*: Internationalprivatrechtliche Besonderheiten der Insolvenzverursachungshaftung und sonstiger insolvenzbezogener Haftungskonstruktionen

### 5. Gesellschafts- und Kapitalmarktrecht

*Klaus J. Hopt*: Corporate Governance und Krise: Verwaltungsrat und/oder Vorstand und Aufsichtsrat in Europa – *Nikolaos Tellis*: Neue gesetzgeberische Entwicklungen im griechischen Gesellschaftsrecht – *Christoph Kumpan*: Europäische Kapitalmarktunion – marktorientierte Regulierung zur Bewältigung von Krisenfolgen

#### 6. Arbeitsrecht

*Georg Caspers*: Das deutsche Insolvenzarbeitsrecht in der Krise – Der Beitrag des Arbeitsrechts zur Sanierung insolventer Unternehmen – *Dimitrios Zerdelis*: Das griechische Kündigungsschutzrecht

## Issues and Challenges in Corporate and Capital Market Law: Germany and East Asia

Ed. by Holger Fleischer, Hideki Kanda, Kon Sik Kim, and Peter Mülbert

Volume 121  
2018. X, 286 pages.

ISBN 9783161562099  
cloth 79,00 €

ISBN 9783161562105  
eBook PDF 79,00 €

This volume is based on presentations delivered at a symposium held in March 2016 at the University of Tokyo. It seeks to reinvigorate the scholarly exchange which can be traced back to the late 19th century between company law academics in Germany, China, Japan and South Korea. Contributions from all four jurisdictions include papers on corporate divisions and valuation of shares and its procedure as well as studies on the civil liability of the company and its directors for false financial statements and the corporate law rules on the squeeze-out of minority shareholders.

Survey of contents

#### I. Corporate Divisions (or more generally, Umwandlung)

*Rüdiger Veil*: The German Law on Transformation – *Ruoying Chen*: Corporate Division: Rules and Practice in China – *Hyeok-Joon Rho*: Statutory Corporate Divisions in Korea – *Koji Funatsu*: Creditor Protections in Company Splits in Japan

#### II. Valuation of Shares and Its Procedure

*Lars Klöhn*: Exit Rights, Shareholder Compensation and the Valuation of Shares in German Stock Corporation Law – *Ok-Rial Song*: Valuation of Shares in Korean Corporate Law

#### III. Civil Liability of the Company and Its Directors when Financial Statements are False

*Klaus Ulrich Schmolke*: Civil Liability of the Company and Its Directors for False Financial Statements under German Law – *Li Guo*: General Trends of Misrepresentation Litigation in China – *Sunseop Jung*: Civil Liability of the Company and Its Directors – *Takahito Kato*: A Recent Transformation of the Japanese Civil Liability System against Fraudulent Disclosure in Secondary Market

#### IV. Corporate Law Rules on Squeeze-out of Minority Shareholders

*Jens Koch*: Corporate Law Rules on Squeeze-out of Minority Shareholders – *Jiangyu Wang*: Squeeze-out (or the Lack Thereof) in the Regulation of Corporate Mergers in China – *Moon Hee Choi*: Corporate Law Rules on Squeeze-outs in Korea – *Eiji Takahashi*: Is the Regime of Japanese Squeeze-out of Minority Shareholders Constitutional?

Lüttringhaus, Jan D.

## Vertragsfreiheit und ihre Materialisierung im Europäischen Binnenmarkt

Die Verbürgung und Materialisierung unionaler Vertragsfreiheit im Zusammenspiel von EU-Privatrecht, BGB und ZPO

Volume 120  
2018. XXXIV, 684 pages.

ISBN 9783161557651  
cloth 109,00 €

ISBN 9783161557668  
eBook PDF 109,00 €

What role does freedom of contract play and what form does it take in European Union law? Jan D. Lüttringhaus studies the guarantees of and approach to substantive freedom of contract in the EU, focusing on the interaction between national and European private and business law.

Heinze, Christian

## Schadensersatz im Unionsprivatrecht

Eine Studie zu Effektivität und Durchsetzung des Europäischen Privatrechts am Beispiel des Haftungsrechts





Volume 119  
2017. XXV, 700 pages.

ISBN 9783161542015  
cloth 99,00 €

ISBN 9783161542022  
eBook PDF 99,00 €

What are the consequences for a damages claim if the right which has been violated is based on European and not national law? This question is addressed by Christian Heinze, taking the fields of competition law, consumer law, product liability law and travel and transport law as examples.

## German and Asian Perspectives on Company Law

### Law and Policy Perspectives

Ed. by Holger Fleischer, Hideki Kanda, Kon Sik Kim and Peter Mülbert

Volume 118  
2016. XI, 377 pages.

ISBN 9783161550263  
cloth 79,00 €

ISBN 9783161551383  
eBook PDF 79,00 €

This volume is based on presentations delivered at a symposium held in May 2015 at the Max Planck Institute for Comparative and International Private Law in Hamburg. It seeks to reinvigorate the scholarly exchange which can be traced back to the late 19th century between company law academics in Germany, China, Japan and South Korea. Contributions from all four jurisdictions include papers on directors' liability and capital maintenance as well as studies of the role of shareholders in public companies and the regulation of groups of companies.

Survey of contents

#### Introduction

*Hideki Kanda*: A Brief Guide to Japanese Company Law – *Holger Fleischer*: A Guide to German Company Law for International Lawyers. Distinctive Features, Particularities, Idiosyncrasies

#### I. Directors' Liability

*Kenichi Osugi*: Directors' Liability and Enforcement Mechanisms in Japan – *Kyung-Hoon Chun*: Corporate Opportunity Doctrine as a Basis for Directors' Liability. A New Statutory Experiment in Korea – *Jianbo Lou*: Ordinary Corporate Conduct Standard vs. Business Judgment Rule. A Review of Case Rulings by Beijing Courts between 2005 and 2014 – *Hans Christoph Grigoleit*: Directors' Liability and Enforcement Mechanisms from the German Perspective. General Structure and Key Issues

#### II. Capital Maintenance

*Gen Goto*: Legal Capital in Japan and the Influence of German Law – *Andreas Cahn*: Capital Maintenance – *Ruoying Chen*: From Legal Capital to Subscribed Capital. Capital Rule in China and its Economic Background

#### III. The Role of Shareholders

*Gerald Spindler*: The Role of Shareholders in Public Companies – *Kon-Sik Kim/Moon-Hee Choi*: Declining Relevance of Lawsuits on the Validity of Shareholder Resolution in Korea. A Comparative Essay – *Hiroyuki Kansaku*: The Role of Shareholders in Public Companies

#### IV. Groups of Companies

*Junhai Liu*: Regulation of Corporate Groups in China – *Hyeok-Joon Rho*: Corporate Groups in Korea. Reconciliation of Individualism with Collectivism – *Eiji Takahashi*: Recht und Wirklichkeit der verbundenen Unternehmen in Japan – *Katja Langenbacher*: Do We Need a Law of Corporate Groups?

## Special Economic Zones

### Law and Policy Perspectives

Ed. by Jürgen Basedow and Toshiyuki Kono

Volume 117  
2016. XI, 259 pages.

ISBN 9783161549830  
cloth 64,00 €

ISBN 9783161549847  
eBook PDF 64,00 €

By their very nature, *Special Economic Zones* encompass various elements studied in the academic disciplines of economics, political science and law. While their objectives are determined by economics, and their structures, implications and limits by law, their implementation requires a certain combination and cooperation of political forces, something which has been the subject of political science enquiries. A conference held at Kyushu University in Fukuoka convened scholars from all these disciplines to put *Special Economic Zones* into perspective. The papers presented highlighted functions and structures, historical aspects, the political dimension and foreign equivalents of deregulation, the interplay of such zones, and constitutional considerations. Freedom of contract and competition law, plus the effects that these economy-boosting tools may have on labour and innovation are also dealt with.

Survey of contents

#### Introduction

*Jürgen Basedow*: Boosting the Economy. Special Economic Zones or Nationwide Deregulation

#### I. Foundations

*Ren Yatsunami*: Historical Perspective on Special Economic Zones in Japan – *Toshiyuki Kono / Kazuaki Kagami*: Structure and Functions of Special Economic Zones – *Hideaki Shiroyama*: Political Dimensions of Science, Technology, and Innovation Policy and the Importance of Local Contexts

#### II. Special Economic Zones and the Legal Environment

*Tom Ginsburg*: Special Economic Zones: A Constitutional Political Economy Perspective – *Carsten Herresthal*: Protection of

Freedom of Contract by Private Law after (Local) Deregulation – *Wolfgang Wurmnest*: Special Economic Zones, Deregulation and Competition Law

### III. Areas of Law Affected

*Časlav Pejović*: Japanese Labor Law: Hurdles on the Road to Abenomics – *Shinto Teramoto*: How Industrial Policy Affects the Nurturing of Innovation. From the Perspective of Intellectual Property Rights

Christandl, Gregor

## Selbstbestimmtes Testieren in einer alternden Gesellschaft

### Eine Untersuchung zum Schutz des Erblassers vor Fremdbestimmung

Volume 116  
2016. XXVII, 451 pages.

ISBN 9783161546327  
cloth 84,00 €

ISBN 9783161546334  
eBook PDF 84,00 €

Against the backdrop of demographic change, Gregor Christandl asks how current inheritance law meets the needs of so-called »vulnerable testators« to exercise their freedom as self-determinedly as possible and which measures could be taken to better protect against undue influence.

Mankowski, Peter

## Rechtskultur

Volume 115  
2016. XLVIII, 547 pages.

ISBN 9783161547928  
cloth 99,00 €

ISBN 9783161548284  
eBook PDF 99,00 €

Legal culture has become a key notion in law and society. But how to describe it? How does it emerge? Where are its roots and foundations? Which elements constitute it? Peter Mankowski provides answers by highlighting its development and structures. Rather than establishing a grand theory, his work looks at different contexts and offers at its core a comparative-anecdotal approach to a complex, multifaceted notion. Aiming to provoke thought and encourage discussion, the author depicts the societal, religious and ideological traditions surrounding legal culture, which has to be dynamic to keep apace with progress in society, science and technology. An international phenomenon, legal culture looks at individuals and their relationships to society and community. Its often media influenced public perception and own image within the legal profession are further constituent parts. In short, legal culture is colourful and mirrors the vitality of law and life.

## Legislators, Judges, and Professors

Ed. by Jürgen Basedow, Holger Fleischer and Reinhard Zimmermann

Volume 114  
2016. XIII, 249 pages.

ISBN 9783161549854  
cloth 64,00 €

ISBN 9783161549861  
eBook PDF 64,00 €

As lawyers we are normally interested in various substantive areas of law; and as comparative lawyers we are interested in finding out about the differences and similarities between national legal systems. But from time to time we should also reflect on how we think and operate, and look at basic questions of legal methodology – both for the sake of understanding better what we do as lawyers immersed in our own legal systems and as lawyers attempting to assess and comprehend how foreign legal systems work. The nine essays in this volume are devoted to the topics of law-making today (with a focus on Japan, Turkey and Russia), judicial decision-making today (with a focus on England and Wales, Switzerland and Argentina), and legal scholarship today (with a focus on the United States, France and South Africa); and they thus revolve around the three protagonists of legal development: legislators, judges and professors.

Survey of contents

### Law-Making Today

*Yuko Nishitani*: Law-Making in Japan – *Başak Baysal*: Law-Making in Turkish Private Law – *Andrey M. Shirvindt*: Reforming the Russian Civil Code. A Search for Better Law-Making

### Judicial Decision-Making Today

*Thomas Coendet*: Judicial Decision-Making Today. The Swiss Perspective – *Matthew Dyson*: Judicial Decision-Making in England and Wales – *Agustín Parise*: Judicial Decision-Making in Latin America. Unveiling the Dynamic Role of the Argentine Supreme Court

### Legal Methodology Today

*Aditi Bagchi*: On the Very Idea of Legal Methodology – *Jean-Sébastien Borghetti*: Legal Methodology and the Role of Professors in France. Professorenrecht is not a French Word! – *Helen Scott*: The Death of Doctrine? Private-Law Scholarship in South Africa Today



## Zukunftsperspektiven der Rechtsvergleichung

Hrsg. v. Reinhard Zimmermann

Volume 113  
2016. XX, 267 pages.

ISBN 9783161549496  
cloth 69,00 €

ISBN 9783161549502  
eBook PDF 69,00 €

What does the future hold for comparative law and what challenges lie ahead? The contributions in this volume, delivered at a symposium marking Hein Kötz's 80th birthday cover a breadth of topics and methods befitting of a man who maintains that no one single point of view can hold all the answers in a complex world. The work poses the challenging question of just what can and should be meaningfully compared when drawing from the conflict of laws, property law, commercial law, tort law, comparative law in a post-secular society, the comparison of legal systems, competition between regulatory models and combining doctrinal and non-doctrinal approaches. Hein Kötz himself pleads for calm in the face of these myriad approaches and warns against succumbing to the allure of a single cure-all solution.

Survey of contents

*Reinhard Zimmermann:* Keine Festschrift – *Christiane Wendehorst:* Rechtssystemvergleichung – *Ralf Michaels:* Religiöse Rechte und postsäkulare Rechtsvergleichung – *Giesela Rühl:* Rechtsvergleichung und europäisches Kollisionsrecht. Die vergessene Dimension – *Eva-Maria Kieninger:* Sachenrechtliche Prinzipien und Grundbegriffe als Gegenstände der Rechtsvergleichung – *Gralf-Peter Calliess:* Die Rolle der Rechtsvergleichung im Kontext des Wettbewerbs der Rechtsordnungen – *Marc-Philippe Weller:* Zukunftsperspektiven der Rechtsvergleichung im IPR und Unternehmensrecht – *Jan von Hein:* Marktregulierung durch Deliktsrecht. Zukunftsperspektiven der Rechtsvergleichung – *Hein Kötz:* Schlusswort

Schwarz, Simon

## Globaler Effektenhandel

Eine rechtstatsächliche und rechtsvergleichende Studie zu Risiken, Dogmatik und Einzelfragen des Trading, Clearing und Settlement bei nationalen und internationalen Wertpapiertransaktionen

Volume 112  
2016. XLV, 1037 pages.

ISBN 9783161534249  
cloth 99,00 €

ISBN 9783161542480  
eBook PDF 99,00 €

The legal design of operational infrastructures for the efficient processing and settlement of securities transactions is a complex challenge that touches on diverse legal areas such as civil, commercial, corporate, banking, capital markets and private international law. Simon Schwarz analyses the current legal regime, develops a theoretic framework and offers solutions to long-standing problems.

Domej, Tanja

## Internationale Zwangsvollstreckung und Haftungsverwirklichung

am Beispiel der Forderungspfändung

Volume 111  
2016. XXVIII, 622 pages.

ISBN 9783161527333  
cloth 79,00 €

ISBN 9783161528248  
eBook PDF 79,00 €

It is often said that jurisdiction for execution measures is strictly territorial. Measures that can be carried out without physical compulsion, however, cannot be distinctly localised. Tanja Domej retraces the debates over the relevancy and meaning of the principle of territoriality for the cross-border attachment of debts from a comparative perspective. She shows that the pertinent issues of cross-border debt enforcement cannot be solved by reference to this principle but that, on the other hand, simply transferring concepts developed in the field of international litigation is also unsuitable. On the basis of an interest analysis, she presents perspectives for an appropriate approach to dealing with issues of cross-border attachment of incorporeal assets.

## Employee Participation and Collective Bargaining in Europe and China

Ed. by Jürgen Basedow, Chen Su, Matteo Fornasier and Ulla Liukkunen

Volume 110  
2016. XV, 257 pages.

ISBN 9783161544064  
cloth 64,00 €

ISBN 9783161544071  
eBook PDF 64,00 €

Collective labour law is, for the most part, national law. It is often the result of social struggle and political compromise occurring in the national context. Unlike other fields of private law, it has not been the object of legal harmonisation, at either international or European levels. However, as national frontiers progressively open up for goods and services, collective labour law has become increasingly exposed to international and supranational law.

This book contains the papers presented at an international conference held at the Max Planck Institute for Comparative and International Private Law in 2014. The authors look, from a comparative perspective, at current developments in the fields of collective bargaining and employee participation in several European countries and in China. They analyse the extent to which differences between the national legal systems still prevail and whether common features are about to emerge.



Survey of contents

**Part I : Setting the Stage**

**A. Collective Bargaining and its Interaction with State Legislation and Individual Employment Contracts**

*Örjan Edström*: Collective Labour Law in the Nordic Countries. The Relationship between Individual Employment Contracts and State Legislation - *Matteo Fornasier*: Collective Bargaining in Germany and its Interaction with State Legislation and Individual Employment Contracts - *Louise Merrett*: Collective Bargaining in the UK and its Interaction with State Legislation and Individual Employment Contracts - *CHEN Su*: The Collective Contract System in China

**Part II : Specific Issues of Collective Labour Law**

**B. Collective Organizations, Collective Bargaining and Collective Labour Conflicts**

*Etienne Pataut*: Collective Agreements in Europe. European Social Dialogue and Contractual Autonomy - *LI Jianfei*: Collective Contracts and Trade Unions in China - *Ulla Liukkunen*: The Right to Strike in the International and European Context. Viking, Laval and Beyond - *Bernd Waas*: Collective Labour Conflicts in Europe

**C. Employee Participation**

*Robbert H. van het Kaar*: Workplace Representation in the EU - *XIE Zengyi*: Employee Participation at Workplace Level in China - *Achim Seifert*: Employee Participation at Board Level in Europe - *ZHANG Hui*: Employee Involvement at Board Level in China. The Present, the Problem and the Development

## German and Nordic Perspectives on Company Law and Capital Markets Law

Ed. by Holger Fleischer, Jesper Lau Hansen and Wolf-Georg Ringe

Volume 109  
2015. XII, 275 pages.

ISBN 9783161539077  
cloth 69,00 €

ISBN 9783161539565  
eBook PDF 69,00 €

The volume traces back to a symposium held at the Max Planck Institute for Comparative and International Private Law in Hamburg and offers a broad comparative analysis of company and capital markets law in Germany and the Nordic states. It details the special elements of company law in Scandinavia that developed amid the twin forces of innovative experimentation and the drive for harmonization, contrasting them with the distinctive features of German company law. Further contributions deal with the newly created entrepreneur company in Germany and Denmark, as well as the role of shareholders and boards in public companies. It also contains detailed analyses of the law of company groups in Germany and the Nordic states. The volume is further rounded out with contributions on capital markets law and takeover law, including issues involving acting in concert, ownership disclosure and the interaction between the legislator and the takeover panel in Sweden.

Survey of contents

**Part I – Overview of Company Law and Types in Germany and the Nordic Countries**

*Holger Fleischer*: A Guide to German Company Law for International Lawyers – Distinctive Features, Particularities, Idiosyncrasies – *Jan Andersson*: Company Law as a Product in Scandinavia versus EU – Experimentation and Innovation versus Harmonization

**Part II – The Law of Private Limited Companies**

*Frauke Wedemann*: Reforming the Law of Limited Liability Companies in Germany – *Troels Michael Lilja*: Entrepreneur Companies in Denmark and Germany – On the Danish IVS and the German UG (haftungsbeschränkt)

**Part III – The Role of Shareholders and Boards in Public Companies**

*Jesper Lau Hansen*: The Role of Shareholders in Public Companies in the Nordic Countries – *Christian Kersting*: The Role of Shareholder in Public Companies in Germany – *Paul Krüger Andersen/Evelyne JB Sørensen*: The Danish Supervisory Board – a German Model?

**Part IV – Groups of Companies**

*Tobias Träger*: Corporate Groups – A German's European Perspective – *Søren Friis Hansen*: Introduction to Scandinavian Nordic Group Law

**Part V – Capital Markets in Perspective**

*Dirk Verse*: Acting in Concert in German Company and Takeover Law – *Mårten Knuts*: The Disclosure of Cash Settled Equity Derivatives – Will the Proposed Amendments Solve the Problems? – *Göran Nyström/Erik Sjöman*: The Regulation of Takeovers in Sweden – An Interplay Between the Rulemaker and the Takeover Panel

## Das Europäische Wirtschaftsrecht vor neuen Herausforderungen

Beiträge aus Deutschland und Griechenland

Hrsg. v. Klaus J. Hopt u. Dimitris Tzouganatos

Volume 108  
2014. XIX, 355 pages.

ISBN 9783161536359  
cloth 89,00 €

ISBN 9783161537653  
eBook PDF 89,00 €

This book deals with the »new« European economic and business law acts and proposals following the financial crisis, plus the problems of transformation and practical consequences for member states, taking as examples Germany and Greece. Particular attention is paid to banking, company and capital market law, as well as consumer law, procedural law and antitrust.

Survey of contents

**I. Europäisches Bank- und Finanzrecht**

*Jens-Hinrich Binder*: Auf dem Weg zu einer europäischen Bankenunion. Erreichtes, Unerreichtes, offene Fragen – *Georgios*



Mohr Siebeck

Beiträge zum ausländischen und internationalen Privatrecht  
Last updated: 22/10/2020

Page 12 of 25

*Psaroudakis*: Das Recht der Bankenrestrukturierung in Zeiten der Wirtschaftskrise

## II. Europäisches Gesellschafts- und Kapitalmarktrecht

*Rüdiger Veil*: Kapitalmarktgesetzgebung im Zeitalter der ESMA. Europa auf dem Weg in die Kapitalmarktunion – *Christoph Kumpan*: Interessenkonflikte von Organverwaltern. Zur Dogmatik der Fremdinteressenwahrung im Gesellschaftsrecht –

*Nikolaos A. Vervossos*: Das naming and shaming als Sanktion gegen kapitalmarktrechtliches Fehlverhalten

## III. Europäisches Privatrecht

*Karl Riesenhuber*: Auf dem Weg zu einem europäischen Privatrecht – *Antonios G. Karampatzos*: Rechtspaternalismus im Europäischen Verbraucherschutzrecht. Lehren aus »Behavioural Law and Economics« – eine Bestandsaufnahme

## IV. Europäisches und internationales Prozessrecht

*Jan von Hein*: Wirtschaftsrechtlich bedeutende Neuerungen in der Europäischen Gerichtsstands- und Vollstreckungsverordnung von 2012. Gerichtsstandsvereinbarungen und Abschaffung des Exequaturs – *Georgios Orfanidis*: Die Verordnung (EU) Nr. 655/2014 des Europäischen Parlaments und des Rates über ein europäisches Verfahren zur vorläufigen Kontenpfändung

## V. Regulierung durch Privatrecht

*Tobias Träger*: Regulierung durch Privatrecht. Folgenorientierung in der Privatrechtswissenschaft als Konsequenz latenter oder intendierter Verhaltenssteuerung durch privatrechtliche Normen

## VI. Wettbewerbs- und Kartellrecht

*Emmanuela Truli*: Wettbewerbsrechtliche Problemstellungen aus der Aktionärsrolle des Staates in mehreren Banken am Beispiel Griechenlands – *Friedemann Kainer*: Auf dem Weg zu einer einheitlichen europäischen Wettbewerbspolitik

Fehrenbach, Markus

## Haupt- und Sekundärinsolvenzverfahren

### Zur sachgerechten Verfahrenskoordination bei grenzüberschreitenden Unternehmensinsolvenzen

Volume 107  
2014. XXXV, 549 pages.

ISBN 9783161534768  
cloth 104,00 €

ISBN 9783161535048  
eBook PDF 104,00 €

The EU Insolvency Regulation deals with cross-border insolvency by a system of main and secondary insolvency proceedings. Markus Fehrenbach clarifies the legal structure of these proceedings as well as the relationship and cooperation between the proceedings for the purposes of liquidation and reorganisation.

Enchelmaier, Stefan

## Übertragung und Belastung unkörperlicher Gegenstände im deutschen und englischen Privatrecht

Volume 106  
2014. XXI, 709 pages.

ISBN 9783161527609  
cloth 119,00 €

ISBN 9783161527616  
eBook PDF 119,00 €

This comparative Anglo-German study considers proprietary transactions in intangibles, that is, debts, shares and intellectual property rights. These assets represent the lion's share of the value created and traded in modern economies. Nevertheless, English law has not always found it easy to accommodate intangibles within a conceptual framework of property law whose medieval roots are still omnipresent, particularly in the law of assignment. The German civil code of 1900, by contrast, introduced a thoroughly modern and comprehensive system of proprietary transactions in intangibles. All the same, a plethora of questions remain to be explored here too, including some of a fundamental nature. Not the overall layout of English law, but a number of its individual solutions can provide inspiration for parallel questions that arise in German law.

Hilbig-Lugani, Katharina

## Staat – Familie – Individuum

### Eine rechtsvergleichende Betrachtung zu Unterhaltsverhältnissen und ihrer privatautonomen Gestaltbarkeit in Deutschland, England und Wales, Frankreich und Schweden

Volume 105  
2014. XLVIII, 502 pages.

ISBN 9783161530531  
cloth 109,00 €

ISBN 9783161530616  
eBook PDF 109,00 €

Which family relationships are accompanied by maintenance duties and why? Can maintenance debtor and creditor agree on a modification of the legal maintenance duties? Why should they be allowed to do so and why not? How do legal orders react to maintenance agreements? Katharina Hilbig-Lugani investigates these questions and suggests a modern and more coherent model for maintenance duties and maintenance agreements.



Yassari, Nadjma

## Die Brautgabe im Familienvermögensrecht

### Innerislamischer Rechtsvergleich und Integration in das deutsche Recht

Volume 104  
2014. XXXIII, 580 pages.

ISBN 9783161534232  
cloth 94,00 €

ISBN 9783161534966  
eBook PDF 94,00 €

The work of Nadjma Yassari examines the Islamic dower (mahr) from a comparative perspective and considers it in the context of the family property law of Egypt, Iran, Pakistan and Tunisia. Emphasizing the function and purpose of the mahr, her work also addresses its incorporation into private international law and German family law.

Schacherreiter, Judith

## Das Landeigentum als Legal Transplant in Mexiko

### Rechtsvergleichende Analysen unter Einbezug postkolonialer Perspektiven

Volume 103  
2014. XVI, 497 pages.

ISBN 9783161530463  
cloth 104,00 €

ISBN 9783161530470  
eBook PDF 104,00 €

The land issue in Mexico is strongly influenced by the colonial land seizure and the law of private property which is based on European universalisms and which conflicts with local communal ownership. This affects not only the rural population's livelihood but also the way of dealing with colonial history.

## Transformation durch Rezeption?

### Möglichkeiten und Grenzen des Rechtstransfers am Beispiel der Zivilrechtsreformen im Kaukasus und in Zentralasien

Hrsg. v. Eugenia Kurzynsky-Singer

Volume 102  
2014. XIV, 512 pages.

ISBN 9783161533198  
cloth 84,00 €

ISBN 9783161533204  
eBook PDF 84,00 €

The present volume examines the phenomenon of legal transplants through a series of studies documenting the civil law reforms witnessed in countries of the Caucasus and Central Asia. Following this survey, Eugenia Kurzynsky-Singer proposes a theoretical model which may explain the effectiveness of legal transplants and which may assess their chances of success from an ex ante perspective.

Survey of contents

*Inhaltsübersicht:*

**Teil I : Das Phänomen der legal transplants**

*Eugenia Kurzynsky-Singer:* Wirkungsweise der legal transplants bei den Reformen des Zivilrechts – *Natalia Pankevich:*

Phenomena of Legal Transplants Related to the Social Model of the Post-Soviet Countries – *Walter Grenz:*

Zivilrechtsentwicklung im Kaukasus und in Zentralasien – *Eugenia Kurzynsky-Singer:* Das Verbot der Gesetzesumgehung im

deutschen Recht als ein potentiell legal transplant

**Teil II : Legal transplants als law in action. Untersuchungen zu einzelnen Fragen des Zivil- und Wirtschaftsrechts in den**

**Staaten des Kaukasus und Zentralasiens**

*Eugenia Kurzynsky-Singer/Tamar Zarandia:* Rezeption des deutschen Sachenrechts in Georgien – *Giorgi Tsertsvadze:* The

New Georgian Arbitration Law in Practice – *Ketevan Giorgishvili:* Das georgische Verbraucherrecht – *Giorgi Vashakidze:*

Kodifikation des Internationalen Privatrechts in Georgien – *Irina Pak:* The »Point of Confusion« in the Uzbek Trade Marks

Act 1994 – *Iroda Djuraeva:* Personal Non-property Rights of Minors in Uzbekistan – *Zhannat Dosmanova:* Kontrakt über die

Nutznießung von Bodenschätzen nach dem Recht der Republik Kasachstan

**Teil III : Materialien der Konferenz »Entwicklung des Privatrechts im Kaukasus und in Zentralasien. Transformation mittels**

**legal transplants?»**

*Jürgen Basedow:* Georgien und die Europäisierung des Privatrechts – *Lado Chanturia:* Die Entwicklungstendenzen im

Zivilrecht der Länder des Kaukasus und Zentralasiens – *Elchin Usub:* Entwicklung des Zivilrechts Aserbaidshans – *Walter*

*Grenz/Alexander Shmagin:* Konferenzbericht »Entwicklung des Privatrechts im Kaukasus und in Zentralasien.

Transformation mittels legal transplants?« am 18. und 19. Oktober 2012 in Tiflis



Dutta, Anatol

## Warum Erbrecht?

### Das Vermögensrecht des Generationenwechsels in funktionaler Betrachtung

Volume 101  
2014. XX, 682 pages.

ISBN 9783161527289  
cloth 99,00 €

ISBN 9783161527296  
eBook PDF 99,00 €

Mechanisms such as private foundations and dynastic trusts increasingly allow owners to remove the intergenerational transfer of their wealth from the scope of succession law. Anatol Dutta explores whether the law of succession (including inheritance tax law) can serve any meaningful purpose for society, the economy and families if the succession law model of the State is at disposal of the individual. Additionally, he considers how potential purposes of succession law can be protected by limiting the power of individuals to tie up their property.

Martens, Sebastian A.E.

## Methodenlehre des Unionsrechts

Volume 100  
2013. XXVII, 628 pages.

ISBN 9783161531071  
eBook PDF 99,00 €

Sebastian Martens develops a methodology of European Union law by combining the various national traditions, which had been separated up to now, and if necessary modifying them in order to make the best possible allowance for the specific requirements of the European legal order.

Wedemann, Frauke

## Gesellschafterkonflikte in geschlossenen Kapitalgesellschaften

Volume 99  
2013. XXXV, 654 pages.

ISBN 9783161525407  
cloth 99,00 €

ISBN 9783161525414  
eBook PDF 99,00 €

Conflicts among shareholders are the weak spot in closed corporations. Frauke Wedemann shows how it might be possible to make improvements in the prevention and solution of these conflicts. She bases her suggestions on a broad methodological foundation comprised of comparative law, socio-legal studies, economy and sociology. Her suggestions for improvement will be of interest to shareholders and their advisors, lawmakers and the courts as well.

Perner, Stefan

## Grundfreiheiten, Grundrechte-Charta und Privatrecht

Volume 98  
2013. XX, 225 pages.

ISBN 9783161526374  
cloth 79,00 €

ISBN 9783161526381  
eBook PDF 79,00 €

Since its creation, the European Union has grown from a purely economic community to a political union. This development hit a peak with the entry into force of the Charter of Fundamental Rights of the European Union in 2009. The author discusses the influence of the single market provisions and the fundamental rights of the Charter on national private laws. The first part of the book gives a thorough study of the structure of the four freedoms and their effect on national as well as international private law. In the second part, the author analyzes the horizontal effect of European constitutional values.

Kroll-Ludwigs, Kathrin

## Die Rolle der Parteiautonomie im europäischen Kollisionsrecht

Volume 97  
2013. XXXI, 668 pages.

ISBN 9783161519505  
cloth 119,00 €

ISBN 9783161521546  
eBook PDF 119,00 €

Why did the European legislator decide on a broad freedom of choice of law in the law of contractual and non-contractual obligations on the one hand and on a limited choice in family law and the law of succession on the other hand? Kathrin Kroll-Ludwigs' analysis of the reasons for this divergency leads to the very basis of party autonomy as a fundamental right of individual freedom. She suggests a change of paradigm.



Rösler, Hannes

## Europäische Gerichtsbarkeit auf dem Gebiet des Zivilrechts

Strukturen, Entwicklungen und Reformperspektiven des Justiz- und Verfahrensrechts der Europäischen Union

Volume 96  
2012. XXIX, 643 pages.

ISBN 9783161518706  
cloth 104,00 €

ISBN 9783161521553  
eBook PDF 104,00 €

How does the interaction between national and European courts function in private law? Is there sufficient compliance with the demands of a civil law increasingly influenced by European law? Is the judicial and procedural law effective enough in order to implement European Union law? Hannes Rösler analyses the present situation and the reform options of the judicial system of the European Union from the standpoint of private law and with the aid of interdisciplinary approaches.

Rühl, Giesela

## Statut und Effizienz

Ökonomische Grundlagen des Internationalen Privatrechts

Volume 95  
2011. XXXII, 811 pages.

ISBN 9783161506987  
cloth 109,00 €

ISBN 9783161517488  
eBook PDF 109,00 €

Is private international law an efficient answer to the problems of international transactions? Giesela Rühl explores this question by analyzing the relevant rules from an economic perspective.

Wurmnest, Wolfgang

## Marktmacht und Verdrängungsmissbrauch

Eine rechtsvergleichende Neubestimmung des Verhältnisses von Recht und Ökonomik in der Missbrauchsaufsicht über marktbeherrschende Unternehmen

Volume 94  
2nd, revised edition 2012.  
XXX, 694 pages.

ISBN 9783161519147  
cloth 104,00 €

ISBN 9783161522987  
eBook PDF 104,00 €

Against the background of the ongoing debate in Europe on the more economic approach to competition law, Wolfgang Wurmnest gives a critical account of the orthodox interpretation and application of German and European abuse control prohibitions. Based on an economic and comparative analysis which includes US law, he advocates a more sophisticated assessment when applying abuse control law to exclusionary conduct. His approach combines the needs of the law with modern economic insights.

Förster, Christian

## Die Fusion von Bürgschaft und Garantie

Eine Neusystematisierung aus rechtsvergleichender Perspektive

Volume 93  
2010. XXII, 548 pages.

ISBN 9783161502774  
cloth 99,00 €

ISBN 9783161510861  
eBook PDF 99,00 €

Unlike the accessory suretyship, the independent guarantee is still not governed by statutory rules and must be given a dogmatic structure. However, differentiating between the two remains difficult, especially since for some time the written law and the practice of personal security have been drifting apart. Christian Förster suggests a new approach: the fusion of suretyship and independent guarantee into a single instrument. Based on this approach, distinctions would only be necessary if they lead to a different legal outcome. Furthermore, in a detailed analysis using a broad comparative scope including several jurisdictions, the author shows that it is possible to find a common regulation which is not only more convincing from a systematic perspective but above all accommodates the needs of modern legal reality.





Thole, Christoph

## Gläubigerschutz durch Insolvenzrecht

### Anfechtung und verwandte Regelungsinstrumente in der Unternehmensinsolvenz

Volume 92  
2010. XXXV, 1018 pages.

ISBN 9783161510854  
eBook PDF 154,00 €

Since the European Court of Justice's ruling on freedom of establishment for companies, conventional corporate capital protection has been under scrutiny. The significance of insolvency law as a setting for creditor protection instruments has increased considerably. However, up to now there has been no seminal study of creditor protection in insolvency law. Christoph Thole examines the conditions for the use of German insolvency avoidance law (preference law and fraudulent transfer law) on the basis of a comparative analysis of American and British laws of avoidance. He also deals with related regulatory instruments such as the liability of managing directors and partners and their relationships to the law of transaction avoidance. In conclusion, the author studies the fundamentals of avoidance of transactions in insolvency from the perspective of conflict of laws, European law and the law of international jurisdiction within the context of European insolvency law.

## Kompatibilität des türkischen und europäischen Wirtschaftsrechts

### Der neue türkische HGB-Entwurf und benachbarte Rechtsgebiete

Hrsg. v. Yesim M. Atamer u. Klaus J. Hopt

Volume 91  
2009. XXVII, 335 pages.

ISBN 9783161500374  
cloth 79,00 €  
ISBN 9783161510847  
eBook PDF 79,00 €

This volume contains fifteen articles which originated at a German-Turkish conference held jointly by the Istanbul Bilgi University and the Max Planck Institute for Comparative and International Private Law in Istanbul. The contributions focus on the compatibility of Turkish and European business laws in the areas of company, capital market, transport, maritime, insurance, consumer, competition and copyright law. The book is designed to give the reader an overview of the relevant provisions by a Turkish expert first, followed by a comment of a German colleague from the perspective of European law. The significance of the articles is that they evaluate all the major Turkish business laws issued with a view to adapting the *acquis communautaire* and also the final draft of the Turkish Commercial Code.

Survey of contents

#### I. Handels- und Gesellschaftsrecht

*Ünal Tekinalp*: Leitlinien der türkischen Handelsrechtsreform – *Klaus J. Hopt*: Reformprobleme im Handels-, Gesellschafts- und Abschlussprüferrecht. Bemerkungen zur türkischen Handelsrechtsreform 2008

#### II. Kapitalmarktrecht

*Veliye Yanli*: Kapitalmarktrechtliche Publizitätspflichten von Aktiengesellschaften in der Türkei – *Holger Fleischer*: Kapitalmarktrechtliche Publizitätspflichten im Gemeinschaftsrecht

#### III. Transportrecht

*Arslan Kaya*: Analysis of the Provisions regarding Carriage of Goods by Road in the Turkish Commercial Code and the Draft Turkish Commercial Code – *Krijn F. Haak*: Das neue türkische Transportrecht im Lichte internationaler Entwicklungen

#### IV. Seehandelsrecht

*Kerim Atamer*: Reform des Seehandelsrechts im Entwurf des türkischen Handelsgesetzbuchs – *Beate Czerwenka*: Reform des Seehandelsrechts – ein deutsch-türkischer Vergleich

#### V. Versicherungsrecht

*Samim Ünan*: Some Aspects of the New Turkish Legislative Work Related to Private Insurance – *Christian Armbrüster*: Aktuelle Entwicklungen des türkischen Versicherungsaufsichts- und -vertragsrechts im Vergleich zum deutschen und europäischen Recht

#### VI. Verbraucherrecht

*Yesim M. Atamer, Hans W. Micklitz*: Türkisches Verbraucherrecht im Lichte des EG-Rechts

#### VII. Wettbewerbsrecht

*Osman B. Gürzumar*: Zehn Jahre türkisches Wettbewerbsrecht. Ein zusammenfassendes Bild im Lichte des europarechtlichen Harmonisierungsprozesses – *Jürgen Basedow*: Zehn Jahre türkisches Wettbewerbsrecht. Ein europäischer Kommentar

#### VIII. Urheberrecht

*Gül Okutan Nilsson*: Harmonisation of Turkish Copyright Law with EU Law – *Reto M. Hilty*: Türkisches Urheberrecht und Europäischer Acquis Communautaire

Baetge, Dietmar

## Globalisierung des Wettbewerbsrechts

### Eine internationale Wettbewerbsordnung zwischen Kartell- und Welthandelsrecht



Volume 90  
2009. XL, 594 pages.

ISBN 9783161495489  
cloth 109,00 €

ISBN 9783161510830  
eBook PDF 109,00 €

Dietmar Baetge deals with the internationalization of competition policy, its causes and consequences as well as its theoretical background. He describes the various attempts at a global regulation of competition that have been made up to now. Other solutions that might serve as alternatives to the globalization of competition law are dealt with in great detail, such as for example unilateral measures by national governments, crossborder cooperation between competition authorities and competition rules within regional trade agreements. The final chapter is dedicated to reform projects that seek to improve the status quo. In his own proposal, the author favors a global competition regime within the regulatory framework of the World Trade Organization based on a 'constitutional' model.

Metzger, Axel

## Extra legem, intra ius: Allgemeine Rechtsgrundsätze im Europäischen Privatrecht

Volume 89  
2009. XXVI, 622 pages.

ISBN 9783161497957  
cloth 104,00 €

ISBN 9783161510823  
eBook PDF 104,00 €

General principles of law are of particular importance for the European legal methodology. Since the 1950s, the European Court of Justice has been invoking general principles of law to interpret community law and to fill the numerous gaps in Community law. In the 1980s, a group of scholars started to develop the »Principles of European Contract Law« on the basis of comparative law. Other projects on tort and family law, on trusts and insurance law have followed in recent years. Nevertheless, up to now most of the theoretical issues have not been analyzed in detail. Axel Metzger provides answers to the main epistemological questions and to the critical issue of validity for all types of general principles to be found in the emerging European private law. He analyzes the recognition and the functions of the general principles of law for the national private law systems of the EC Member States as well as for European community law, uniform legal instruments such as the CISG and the new *lex mercatoria*.

Roth, Markus

## Private Altersvorsorge: Betriebsrentenrecht und individuelle Vorsorge

### Eine rechtsvergleichende Gesamtschau

Volume 88  
2009. LIV, 746 pages.

ISBN 9783161510816  
eBook PDF 109,00 €

Markus Roth presents a comprehensive study on private pensions, based on a comparative assessment of the legal situation in the US, the United Kingdom and Switzerland. His main achievement is the development of general principles for an operative and sustainable law on occupational and individual pensions. The study explores the application of these general principles to pension contracts from the stage of contract conclusion until the time of payout. The survey covers insurance law, investment law, company pension law as well as trust and Treuhand. The author's central objective is to provide the dogmatic foundations for asset funding and defined contribution schemes. Both are key elements of modern occupational pension law.

Hein, Jan von

## Die Rezeption US-amerikanischen Gesellschaftsrechts in Deutschland

Volume 87  
2008. XLVI, 1089 pages.

ISBN 9783161496677  
cloth 129,00 €

ISBN 9783161510809  
eBook PDF 129,00 €

This volume is the first comprehensive study of the Americanization of German corporate law from the 19th century to the present day. Drawing on interdisciplinary approaches, Jan von Hein analyzes the reasons for widespread legal transplants in corporate law as well as their economic, political and legal foundations. The common theme underlying the permanent state of corporate law reform in Germany is a re-focusing of national corporate law on the goal of informational efficiency in a globalized capital market. The work was awarded the Hochschulpreis des deutschen Aktieninstituts 2008.

Kocher, Eva

## Funktionen der Rechtsprechung

### Konfliktlösung im deutschen und englischen Verbraucherprozessrecht

Volume 86  
2007. XXII, 549 pages.

ISBN 9783161491016  
cloth 124,00 €

ISBN 9783161510793  
eBook PDF 124,00 €

Consumer protection challenges civil procedural law dogmatics to reconstruct basic social functions of legal proceedings. In comparing Germany and England, Eva Kocher studies the forms of representing interests in consumer procedural law, in particular »locus standi« and private legal actions taken by associations, as well as instruments for decreasing the formal requirements in individual proceedings, such as for example small claims proceedings or settlements before court. The result of this study is the author's appeal for a differentiation between judicial and non-judicial functions of legal proceedings.



Hippel, Thomas von

## Grundprobleme von Nonprofit-Organisationen

Eine zivilrechtsdogmatische, steuerrechtliche und rechtsvergleichende Untersuchung über Strukturen, Pflichten, Kontrollen und wirtschaftliche Tätigkeit von Vereinen und Stiftungen

Volume 85  
2007. XLVI, 689 pages.

ISBN 9783161510786  
eBook PDF 119,00 €

The significance of nonprofit organizations is increasing around the world in many areas. German jurisprudence approaches this phenomenon from the perspective of the law relating to associations, from the law relating to foundations and from fiscal law, without having been able to forge sufficient links between these branches of the law up to now. Thomas von Hippel studies selected basic problems of nonprofit organizations (subject of the examination, the duties of the managerial organs, the carrying out of these duties, the admissibility of mixed forms of associations and foundations and the admissibility of economic activities). In doing so, he deals with all three branches of the law on the basis of comparative law.

Rudolf, Claudia

## Einheitsrecht für internationale Forderungsabtretungen

UN-Abtretungsübereinkommen, UNIDROIT-Factoringübereinkommen, PECL, UNIDROIT-Principles

Volume 83  
2006. XXII, 681 pages.

ISBN 9783161489761  
cloth 119,00 €

The significance of the assignment of receivables in international trade is increasing constantly in regard to factoring, forfaiting, securitization or assignment for security purposes. The United Nations Convention on Assignment, as well as the UNIDROIT Convention on Factoring provide internationally uniform regulations for cross-border assignment of receivables whose purpose is to make international assignments easier and to support them. Claudia Rudolf analyzes both of these and examines them from the standpoint of comparative law.

Survey of contents

### 1. Teil: Auslegung und Lückenfüllung des ZessÜ und FactÜ

1. Kapitel: Einleitung
2. Kapitel: Auslegung des ZessÜ und FactÜ
3. Kapitel: Lückenfüllung im ZessÜ und FactÜ

### 2. Teil: Anwendungsbereich des ZessÜ und FactÜ

1. Kapitel: ZessÜ
2. Kapitel: FactÜ
3. Kapitel: Partei- und Privatautonomie im ZessÜ und FactÜ
4. Kapitel: Unterschiede im Anwendungsbereich des ZessÜ und FactÜ und deren Verhältnis zueinander
5. Kapitel: PECL und UNIDROIT-Principles über die Abtretung

### 3. Teil: Wirksamkeit und Wirkungen der Forderungsabtretung

1. Kapitel: Wirksamkeit der Forderungsabtretung
2. Kapitel: Vertragliche Abtretungsbeschränkungen
3. Kapitel: Übertragung von Sicherungsrechten

### 4. Teil: Rechtsverhältnis zwischen dem Zedenten und Zessionar

1. Kapitel: Rechte und Pflichten des Zedenten und Zessionars
2. Kapitel: Zusicherungen des Zedenten
3. Kapitel: Anzeige an den Schuldner
4. Kapitel: Zahlungsanspruch des Zessionars

### 5. Teil: Die rechtliche Stellung des Schuldners

1. Kapitel: Einleitung
2. Kapitel: Schuldnerschutz nach dem ZessÜ
3. Kapitel: Zahlung durch den Schuldner
4. Kapitel: Einreden und Aufrechnung
5. Kapitel: Vereinbarungen nach der Abtretung
6. Kapitel: Rückforderung von Zahlungen

### 6. Teil: Mit dem Zessionar konkurrierende Berechtigte

1. Kapitel: Einleitung
2. Kapitel: Regelung des Vorranges nach dem ZessÜ
3. Kapitel: Erlöse nach dem ZessÜ
4. Kapitel: Sachrechtliche Vorschriften über die Priorität nach dem ZessÜ
5. Kapitel: Sachrechtliche Vorschriften über die Priorität nach den PECL und UNIDROIT-Principles
6. Kapitel: Wertung

### 7. Teil: Die Abtretung im Internationalen Privatrecht

1. Kapitel: Einleitung
2. Kapitel: Die kollisionsrechtlichen Vorschriften des V. Kapitels des ZessÜ
3. Kapitel: Die Anknüpfungsregeln nach Art. 12 EVÜ
4. Kapitel: Verhältnis des ZessÜ zu Art. 12 EVÜ und »Rom I«

Schlussbetrachtung



## Europäisierung des Handels- und Wirtschaftsrechts

### Gemeinsame oder unterschiedliche Probleme für das deutsche und griechische Recht?

Hrsg. v. Klaus J. Hopt u. Dimitris Tzouganatos

Volume 82  
2006. XXIV, 329 pages.

ISBN 9783161488498  
cloth 89,00 €

This volume contains thirteen articles which originated at a German-Greek conference held by the Max Planck Institute for Foreign Private Law and Private International Law. These articles deal with current national and international developments in individual areas of corporate law, commercial agent law, cartel law, capital market law as well as in consumer protection law. In doing so, they go into aspects of substantive law and of procedural law as well.

Survey of contents

#### I. Europäisches Gesellschaftsrecht

*Heribert Hirte*: »Inspire Art« und die Folgen für das europäische und das nationale Recht

*Rigas G. Giannopoulos*: »Inspire Art« und die Folgen für das europäische und das nationale Recht aus griechischer Perspektive

#### II. Europäisches Aktien- und Kapitalmarktrecht

*Susanne Kalls*: Die 13. Richtlinie, die Rechtsprechung des EuGH zu den Goldenen Aktien und das nationale Recht

*Georgios D. Sotiropoulos*: Die 13. Richtlinie, die Rechtsprechung des EuGH zu den Goldenen Aktien und das nationale Recht

#### III. Europäisches Handelsvertreter- und Vertriebsrecht

*Peter Mankowski*: Handelsvertreterverträge im Internationalen Prozess- und Privatrecht

*Nikolaos Tellis*: Handelsvertreter- und Vertriebsrecht: Privatrechtliche Fragen der Handelsvertreterrichtlinie aus griechischer Sicht

#### IV. Europäisches Handels- und Vertriebsrecht

*Gerald Spindler*: Prohibitions of Competition -Economic Analysis, Commercial and Competition Law

*Heike Schweitzer*: Handelsvertreterverträge im europäischen Wettbewerbsrecht

#### V. Europäisches Kartellrecht

*Josef Drexl*: Europäisierung und Ökonomisierung des deutschen Kartellrechts

*Dimitris Tzouganatos*: Fragen zum neuen EG-Kartellverfahrensrecht – Verordnung (EG) 1/2003

#### VI. Europäisches Verbraucherschutzrecht

*Barbara Dauner-Lieb*: Europäisches Verbraucherschutzrecht als Motor der Veränderung des deutschen Privatrechts – Schuldrecht im Spannungsverhältnis zwischen Privatautonomie und Verbraucherschutz

*Athanasios K. Pouliadis*: Die Bedeutung des Verbraucherschutzrechts im Kontext der Entwicklung eines europäischen Vertragsrechts: Das Beispiel der Kaufrechtsrichtlinie

*Alexandra Mikroulea*: Verbandsklage auf Schadensersatz im griechischen Verbraucherschutzgesetz

## Die Rechtsstellung nichtehelicher Lebensgemeinschaften – The Legal Status of Cohabitants

Hrsg. v. Jens M. Scherpe u. Nadjma Yassari

Volume 81  
2005. XII, 605 pages.

ISBN 9783161487057  
cloth 104,00 €

The book contains an extensive analysis of the legal status of cohabitants in nine European countries, Canada, Australia and New Zealand, as well as articles on specific issues, an overview of the historic development and demographical data. The contents of the respective legislation and their practical experiences are analysed and guidance is given to legislators aiming to design an adequate legal framework for cohabitants. The need for such a coherent framework is apparent; as despite the growing number of cohabitants and the resulting legal problems, in many countries piecemeal regulations have emerged that do not adequately reflect social reality.

Siems, Mathias M.

## Die Konvergenz der Rechtssysteme im Recht der Aktionäre

Ein Beitrag zur vergleichenden Corporate Governance in Zeiten der Globalisierung

Volume 80  
2005. XXV, 572 pages.

ISBN 9783161486685  
cloth 114,00 €

The words globalization, internationalization and Europeanization are currently seen and heard everywhere. Thus, it is also often claimed that national legal systems come closer and closer together. Advocates of the counterhypothesis however maintain that convergence of legal systems is neither realistic nor necessary. Mathias M. Siems takes a look at how to approach this issue in shareholder law. First, he deals with the company law of Germany, France, the United Kingdom, the USA, Japan and China. Second, he analyzes economical and political factors, which might (or might not) lead to convergence. Finally, he assesses this development.

## Prospekt- und Kapitalmarktinformationshaftung

Recht und Reform in der Europäischen Union, der Schweiz und den USA

Hrsg. v. Klaus J. Hopt u. Hans-Christoph Voigt

Volume 79  
2005. L, 1209 pages.

ISBN 9783161485480  
cloth 164,00 €

International breakdowns of major listed companies have triggered the need for effective laws on the liability for capital market information in Germany and Europe. Under the direction of Klaus J. Hopt the Hamburg Max Planck Institute for Private Law has produced an expert opinion for the German Federal Ministry of Finance on prospectus liability in Europe, Switzerland and the United States. This publication also covers the law on the liability for continuing capital market information.

Dannemann, Gerhard

## Die ungewollte Diskriminierung in der internationalen Rechtsanwendung

Zur Anwendung, Berücksichtigung und Anpassung von Normen aus unterschiedlichen Rechtsordnungen

Volume 78  
2004. XXII, 528 pages.

ISBN 9783161483080  
cloth 114,00 €

Cases connected to different legal systems can get a rough ride, simply because applicable rules are not dovetailed to each other. This is frequently the case if one of the systems involved belongs to the common law and the other to the civil law world. In combination, they can produce results which are not intended by either system involved – insufficient maintenance or benefits, heirs receiving more or less than they should, criminals punished too harshly, marriages which cannot be divorced, cases which no court wants to hear.

It is argued that courts are empowered to modify or ignore applicable rules in order to avoid such accidental discrimination, to the degree that legislators would be prevented from deliberately discriminating international cases under higher ranking principles of equality of treatment. On the other hand, the author criticizes Continental doctrine and court practice which seeks to give the same far-reaching powers to courts in other complex international situations.

Remien, Oliver

## Zwingendes Vertragsrecht und Grundfreiheiten des EG-Vertrages

Volume 77  
2003. XXXIII, 678 pages.

ISBN 9783161474347  
cloth 139,00 €

Do legal provisions on contractual obligations, consumer and small business protection restrict the fundamental freedoms guaranteed in the EC Treaty? Are public policy rules on nullity of immoral contracts such as telephone sex, standards for determining usury, rights to call in a loan, compensation claims of French tenants of business premises or German contract dealers and German control of standard business conditions in accordance with European law? Oliver Remien does a careful analysis of the rulings of the European Court of Justice on fundamental freedoms and shows the particular relevance of international mandatory standards of contractual law for the Single European Market.

## Unternehmensgruppen in mittel- und osteuropäischen Ländern

Entstehung, Verhalten und Steuerung aus rechtlicher und ökonomischer Sicht

Hrsg. v. Klaus J. Hopt, Christa Jessel-Holst u. Katharina Pistor

Volume 76  
2003. XI, 315 pages.

ISBN 9783161480898  
cloth 104,00 €

In this volume, leading scholars from Central and Eastern European countries and from Western Europe as well work out suggestions for dealing with company groups in transforming countries' groups.

Survey of contents

*Klaus J. Hopt und Katharina Pistor: Company Groups in Transition Economies: A Case for Regulatory Intervention? – Christa Jessel-Holst: Regulatory Approaches to Groups of Companies in States in Transition in Central and Eastern Europe – Peter Hommelhoff: Protection of Minority Shareholders, Investors and Creditors in Corporate Groups: the Strengths and Weaknesses of German Corporate Group Law – Marcus Lutter: Minderheiten- und Gläubigerschutz im Konzern: Regelungsansätze in der Europäischen Union – Stanislaw Soltysinski und Andrzej Szumanski: Shareholder and Creditor Protection in Company Groups under Polish Law – Eddy Wymeersch: Financial Institutions as Members of Company Groups in the Law of the European Union – Michal Tomasek: Finanzsituationen als Teil von Finanzgruppen in Tschechien – Meinrad Dreher: Groups of Undertakings and Competition – Regulatory Approaches in Europe – Anna Fornalczyk: Company Groups and Development of Competition in Poland – Tomas Sandor und Tomas Sarközy: Regulatory Approaches*



to Groups of Companies in Hungary – *Sinisa Petrovic*: The Legal Regulation of Company Groups in Croatia – *Sorin David*: Company Groups in Romania: Current Status and Legal Implications – *Tania Buseva*: Unternehmensgruppen in Bulgarien – *Sime Ivanjko*: Verbundene Gesellschaften in Slowenien – *Lubos Tichy und Jaroslav Salac*: Das neue tschechische Konzernrecht im Vergleich

Kieninger, Eva-Maria

## Wettbewerb der Privatrechtsordnungen im Europäischen Binnenmarkt

Studien zur Privatrechtskoordinierung in der Europäischen Union auf den Gebieten des Gesellschafts- und Vertragsrechts

Volume 74  
2002. XVII, 442 pages.

ISBN 9783161477997  
cloth 119,00 €

The author discusses whether institutional competition among member states in the European Union would be preferable to harmonization with respect to the future development of European private law, especially in the fields of corporate and contract law. The work was conceived partly as a result of the Centros decision of the European Court of Justice in 1999, in which the Court used the topos of »competition among legal systems« for the first time and enlisted its support for an extensive interpretation of the freedom of establishment.

Nelle, Andreas

## Anspruch, Titel und Vollstreckung im internationalen Rechtsverkehr

Einwendungen gegen einen titulierten Anspruch im deutschen und europäischen Zivilprozeßrecht

Volume 71  
2000. XXXII, 625 pages.

ISBN 9783161575488  
eBook PDF 119,00 €

Procedures for the enforcement of foreign judgments have to strike a balance between the creditor's right to obtain satisfaction from a judgment or other enforceable instrument already created in another jurisdiction and the debtor's right to defend himself against the underlying claim or to plead a counterclaim against the creditor. This balance is struck by the complex interaction of rules of res judicata, issue preclusion, applicable law, jurisdiction and the scope of review in exequatur and enforcement proceedings. Comparing British, French, German, Swiss and U.S. (Federal, New York and California) law, Andreas Nelle develops six basic rules for resolving such conflicts between creditor and debtor in international enforcement proceedings. Applying these principles, he develops solutions for a large number of practical situations, showing how these rules facilitate the coordinated enforcement across national borders of countries which often have fundamentally different enforcement regimes.

## Die Rechtsstellung gleichgeschlechtlicher Lebensgemeinschaften

Hrsg. v. Jürgen Basedow, Peter Dopffel, Klaus J. Hopt u.a.

Volume 70  
2000. VI, 423 pages.

ISBN 9783161473180  
cloth 74,00 €

This work contains a comparative report on the law relating to same-sex couples drawn up by the Max Planck Institute for Foreign and International Private Law to advise the German Ministry of Justice on impending legislation. National reports deal with the legislation of the Scandinavian countries, the Netherlands, France, Spain and with the present situation in the United Kingdom and the United States of America. Further reports describe the position taken by the Catholic and Protestant churches and analyze the current state of relevant research on human sexuality and social psychology. The work concludes with a comparative evaluation and recommendations.

Survey of contents

### I. Länderberichte

*Peter Dopffel / Jens M. Scherpe*: Gleichgeschlechtliche Lebensgemeinschaften im Recht der nordischen Länder – *Katharina Boele-Woelki / Wendy Schrama*: Die Rechtsstellung von Menschen mit homosexueller Veranlagung im niederländischen Recht – *Frédérique Ferrand*: Die Rechtsstellung gleichgeschlechtlicher Partnerschaften in Frankreich – *Susanne Schlenker*: Die Stellung gleichgeschlechtlicher Lebensgemeinschaften in Spanien und in spanischen Teilrechtsordnungen – *Christa Jessel-Holst*: Ansätze für eine rechtliche Regelung der gleichgeschlechtlichen Lebensgemeinschaften in Ungarn – *Michael Freeman*: United Kingdom Law and the Gay with Special Reference to Gay Marriages – *Harry D. Krause*: U.S. American Law on Same-Sex Marriage, Formal and Informal Same-Sex and Heterosexual Cohabitation Arrangements, and Same-Sex Relationships

### II. Gutachten aus theologischer, sexualwissenschaftlicher und sozialwissenschaftlicher Sicht

*Hanspeter Heinz*: Zu gesetzlichen Regelungen gleichgeschlechtlicher Lebensgemeinschaften, Forschungsbericht über die Haltung der katholischen Kirche – *Siegfried Keil*: Zur rechtlichen Anerkennung gleichgeschlechtlicher Lebensgemeinschaften aus der Perspektive evangelischer Theologie und Kirche in Europa – *Martin Dannecker*: Sexualwissenschaftliches Gutachten zur Homosexualität – *Wassilios E. Fthenakis*: Gleichgeschlechtliche Lebensgemeinschaften und kindliche Entwicklung

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Martiny, Dieter

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