

# Jus Privatum. Beiträge zum Privatrecht

The *Jus Privatum. Beiträge zum Privatrecht* series was founded in 1991, primarily to provide a suitable platform for habilitations and monographs written by professors whose field is private law.

The series encompasses all branches of private law, civil law, commercial and corporate law, labor law and procedural law. It does not exclude interdisciplinary subjects as long as the work concerned focuses on private law.

Most of the titles in this series do not confine themselves to German law, since in accordance with the current laws the issues dealt with in the works have often been influenced by European law. In addition, it is becoming increasingly important to obtain insight into legal systems in other countries by means of comparative law.

This ambitious and appealing series is extremely successful. Since it was established, more than 170 volumes have been published, an indication that the series does provide more than just a random selection of current research in civil law. It also reflects the standard and the present significance of private law in Germany. Within a relatively short period of time, the *Jus Privatum* series has made a name for itself in Germany and in other countries as well.

#### Contact:

Dr. Julia Caroline Scherpe-Blessing, LL.M. (Cantab)

Program Director Private Law, Criminal Law, and Procedural Law

ISSN: 0940-9610 - Suggested citation: JusPriv

Last updated: 25/04/2024. Prices are subject to change.

---

#### Order now:

[https://www.mohrsiebeck.com/en/monograph-series/jus-privatum-juspriv?no\\_cache=1](https://www.mohrsiebeck.com/en/monograph-series/jus-privatum-juspriv?no_cache=1)

[order@mohrsiebeck.com](mailto:order@mohrsiebeck.com)

Phone: +49 (0)7071-923-0

Fax: +49 (0)7071-51104

Bien, Florian

## Haftungskoordination in der arbeitsteiligen Pflichtenkette

Zugleich ein Beitrag zum Dogma von der Relativität der Schuldverhältnisse

2024. Approx. 340 pages.  
forthcoming in December

ISBN 9783161518881  
cloth approx. 90,00 €

ISBN 9783161521638  
eBook PDF approx. 90,00 €

Violations of duties in chains of contracts due to the division of labour often cause damages to those chain links which are far away. Coping with this is a challenge for both jurisprudence and legal practice. Florian Bien provides a coherent summary of the problems which arise and gives them a new dogmatic basis.

Holle, Philipp Maximilian

## Der privatrechtliche Beschluss

Funktionsvoraussetzungen, Tatbestand, Fehlerfolgen

2024. Approx. 490 pages.  
forthcoming in July

ISBN 9783161623912  
cloth approx. 120,00 €

ISBN 9783161633355  
eBook PDF approx. 120,00 €

The author points out that the same functional requirements always apply to resolutions under private law and that these can therefore be traced back to uniform dogmatics. Based on this, he develops a system of coordinates which, as a general theory of resolutions, presents a way of navigating through decision-making in the collective.

Survey of contents

**1. Teil: Koordinaten der Willensbildung im Beschlusswege**

1. Kapitel: Funktion und Funktionsbedingungen der Willensbildung im Beschlusswege
2. Kapitel: Mechanik der Willensbildung im Beschlusswege

**2. Teil: Beschluss als Rechtsakt und seine tatbestandlichen Elemente**

3. Kapitel: Beschluss als sich tatbestandlich aus Antrag, Abstimmung und Feststellung zusammensetzender Rechtsakt
4. Kapitel: Beschlussantrag
5. Kapitel: Abstimmung
6. Kapitel: Beschlussfeststellung
7. Kapitel: Besondere Beschlussformen und Beschlussauslegung

**3. Teil: Grundzüge eines allgemeinen Beschlussmängelrechts**

8. Kapitel: Kategorisierung der Beschlussmängel und ihrer Rechtsfolgen
9. Kapitel: Geltendmachung von Beschlussfehlern
10. Kapitel: Weitergehende Spezifika eines Beschlussmängelrechts

**4. Teil: Untersuchungsergebnisse**

Korch, Stefan

## Unternehmenskaufverträge

2023. Approx. 720 pages.  
forthcoming in May

ISBN 9783161625848  
cloth approx. 140,00 €

ISBN 9783161625855  
eBook PDF

Despite their enormous economic importance, M&A contracts are largely neglected by legal academia. Stefan Korch analyses the law in action, laying the theoretical foundations for a better understanding of the M&A practice. He thereby also contributes to the evolving body of literature on the drafting and evolution of contracts and contract design in general.

Rapp, Julian Philipp

## Revision, Kassation, Final Appeal

Letztinstanzliche Zivilverfahren zwischen Individualrechtsschutz und Rechtsfortbildung

Volume 274  
2024. XXXVIII, 560 pages.  
forthcoming in June

ISBN 9783161627767  
cloth 129,00 €

ISBN 9783161627774  
eBook PDF

Courts of last resort decide individual disputes but are also engaged in developing the law by precedents. This twofold assignment shows a profound contradiction in any appellate proceeding: Civil justice primarily serves to achieve individual justice whereas the function of a supreme court is predominantly or almost exclusively oriented towards a »public« interest emancipated from individual legal disputes by clarifying legal questions, developing the law, and ensuring the uniform application of the law by lower courts.

Survey of contents

**Teil I: Vom Zweck des Revisionsverfahrens**

- § 1 – Prolegomena
- § 2 – Historische Entwicklungslinien
- § 3 – Die Revisionszwecke im geltenden Recht
- § 4 – Die Entfaltung der Revisionszwecke im Verfahren

**Teil II: Die Stellung und Arbeitsweise des Revisionsgerichts**

- § 5 – Die Stellung des Revisionsgerichts im Justizsystem
- § 6 – Richter- und Anwaltpersönlichkeit am BGH
- § 7 – Über den Stil und die Veröffentlichungspraxis höchstrichterlicher Entscheidungen

**Teil III: Die Revisionszwecke im Rechtsvergleich**

- § 8 – Revision, Kassation, final appeal, writ of certiorari
- § 9 – Das französische Kassationsmodell
- § 10 – Das appeal-Modell im englischen Recht
- § 11 – Das certiorari-Verfahren im US-amerikanischen Recht
- § 12 – Vergleichende Bewertung

**Teil IV: Die Effektivität des Revisionsverfahrens de lege lata et ferenda**

- § 13 – Die Stärkung der Rechtsfortbildungsfunktion des Revisionsgerichts
- § 14 – Der Schutz vor einer Überlastung des Revisionsgerichts

**Teil V: Bewertung**

- § 15 – Zusammenfassung

Wilhelm, Alexander

## Modulares Organisationsrecht

Ein Perspektivwechsel im organisationsprivatrechtlichen Denken unter besonderer Berücksichtigung der sogenannten DAOs

The German law of private organisations is in a permanent state of change. Based on an extensive analysis of the underlying currents, Alexander Wilhelm develops a comprehensive understanding of the existing legal structures, which leads to a new and mostly functional, essentially »modular« way of legal thinking.

Survey of contents

**Kapitel 1: Einführung**

- § 1 Problemaufriss
- § 2 Der Plan dieses Buchs

**Kapitel 2: Strukturelle Grundlagen des privaten Kooperationsrechts**

- § 3 Das gesetzliche Grundmodell
- § 4 Einflüsse des Unionsrechts

**Kapitel 3: Transformationsprozesse**

- § 5 Vermischungen und Verschiebungen
- § 6 Ein Seitenblick ins Ausland
- § 7 Zwischenbewertung und Folgefragen

**Kapitel 4: Organisation im Spiegel der Sozialwissenschaften**

- § 8 Organisation als Hierarchie
- § 9 Organisation und Effizienz
- § 10 Organisation und Innovation
- § 11 Organisation als System
- § 12 Zwischenbetrachtung

**Kapitel 5: Perspektivwechsel**

- § 13 Rechtsquellenkritik
- § 14 Modulares Organisationsrecht: Versuch einer Modellierung
- § 15 Materielle Pfeiler

**Kapitel 6: Modulares Organisationsrecht und die DAO**

- § 16 Grundlagen
- § 17 Probleme und Perspektiven

**Kapitel 7: Schluss**

Volume 273  
2023. XXX, 719 pages.

ISBN 9783161624094  
cloth 139,00 €

ISBN 9783161625060  
eBook PDF 139,00 €

§ 18 Abschließende Anmerkungen  
§ 19 Zusammenfassung in Kernthesen

König, Carsten

## Unternehmenshaftung

### Dogmatische Rekonstruktion der deliktischen Schadensersatzhaftung von Unternehmensträgern

Volume 272  
2023. XXII, 808 pages.

ISBN 9783161618628  
cloth 149,00 €

ISBN 9783161618635  
eBook PDF

Against the background of recent high-profile cases, such as the diesel emissions scandal, Carsten König examines the foundations of corporate liability in German tort law. Drawing on legal doctrine, economic analysis and comparative law, he argues for a more organisational approach to corporate liability.

Survey of contents

Einleitung

#### Teil 1 Bestandsaufnahme

§ 1 Stand der Diskussion

§ 2 Rechtsökonomik

#### Teil 2 Theorie der Unternehmenshaftung

§ 3 Dogmatische Rekonstruktion

#### Teil 3 Direkte Unternehmenshaftung – Grundlagen

§ 4 Pflichtenstellung

§ 5 Individualrisiken (Zurechnung)

§ 6 Organisationsrisiken

#### Teil 4 Direkte Unternehmenshaftung – Konkretisierung

§ 7 Unternehmens-Gefährdungshaftung

§ 8 Unternehmens-Fahrlässigkeitshaftung

§ 9 Unternehmens-Vorsatzhaftung

#### Teil 5 Indirekte Unternehmenshaftung

§ 10 Grundlagen und Konkretisierung

Zusammenfassung

Duden, Konrad

## Digitale Sachherrschaft

Volume 271  
2023. XXIX, 437 pages.

ISBN 9783161614347  
cloth 104,00 €

ISBN 9783161614354  
eBook PDF

Our everyday existence is increasingly permeated with connected devices and the Internet of Things. This connectedness not only enables new potential applications and business models, but also puts the user of the device at the mercy of the supplier, who may be able to lock a device by blocking access to the cloud-server or by disabling software embedded in the device. A supplier can thus turn a high-tech end-user device into electronic waste. The law of contracts will apply in many such cases; but what if there is no privity of contract between the user and the supplier of the device? Users have no recourse other than whatever protections possession or ownership may afford. Konrad Duden investigates whether the digital use of a device is covered by such protection at all.

Schirmer, Jan-Erik

## Nachhaltiges Privatrecht

Volume 270  
2023. XVII, 465 pages.

ISBN 9783161618642  
cloth 124,00 €

ISBN 9783161618659  
eBook PDF

Can private law become sustainable? In this contribution to private law theory, Jan-Erik Schirmer demonstrates a possible way. At the same time, with »responsive bipolarity“, he outlines a model of private law for today's pluralistic society.

Survey of contents

Einleitung

#### Teil 1: Nachhaltigkeit

§ 1 Der Brundtland-Bericht

§ 2 Inhalt und normativer Aussagegehalt

#### Teil 2: Nachhaltigkeit und Privatrecht

§ 3 Reelle Eigenlogik

§ 4 Ideelle Eigenlogik: Die klassische Antwort

§ 5 Ideelle Eigenlogik: Die richtige Antwort

#### Teil 3: Nachhaltigkeit im Privatrecht

§ 6 Klimahaftung  
§ 7 Lieferkettenverantwortlichkeit  
§ 8 Negativmerkmale

Schluss

Illmer, Martin

## Strukturen eines Dienstleistungsvertragsrechts

Volume 269  
2022. XXXIX, 943 pages.

ISBN 9783161613784  
cloth 179,00 €

ISBN 9783161613791  
eBook PDF 179,00 €

On the basis of a critical analysis of the existing German law of service contracts, the book aims at developing the structure and content of a new uniform German service contract law *de lege ferenda*. Such a uniform contract type for the provision of services would fit as a third column alongside the existing two columns of sale contracts and contracts for hire and lease.

Denga, Michael

## Zurechnung

### Vom Trennungsprinzip zum Mehrebenensystem

Volume 268  
2022. XXI, 442 pages.

ISBN 9783161616143  
cloth 119,00 €

ISBN 9783161616150  
eBook PDF

Attribution – Zurechnung – is a fundamental problem in German private and business law that remains unresolved. Michael Denga undertakes a comprehensive systematization of the essential elements of attribution and, in particular, shows the tension between the German idea of separation and the European view of unity.

Lübke, Julia

## Privatautonome Verhaltensvorgaben für Gesellschafter-Erben

Volume 267  
2022. XXVIII, 718 pages.

ISBN 9783161595134  
cloth 149,00 €

ISBN 9783161595141  
eBook PDF 149,00 €

Those who seek to influence how their heirs will continue to run a business can find themselves caught between succession and company law. By analysing the mechanisms and intentions of German law in this legal territory, Julia Lübke shows that not only can the conflict of laws be narrowed down, but that rules for consistently solving such cases do already exist.

Becker, Maximilian

## Absolute Herrschaftsrechte

Volume 266  
2022. XXIX, 732 pages.

ISBN 9783161597657  
cloth 139,00 €

ISBN 9783161608070  
eBook PDF 139,00 €

What is the underlying structure of intellectual property, property and personal rights? Maximilian Becker develops a model of absolute rights centred on control over information that also offers a basis for the assignment of new property.



Kraft, Julia

## Armut und Vertrag

### Über den liberalen Wert eines sozialen Vertragsrechts

Volume 265  
2022. XXIV, 455 pages.

ISBN 9783161617164  
cloth 119,00 €

ISBN 9783161617966  
eBook PDF 119,00 €

What contribution does contract law make to combating poverty? Julia Kraft confronts the redistribution debate conducted in legal economics with an economic approach based on freedom and shows that poverty reduction cannot succeed without the support of contract law.

Survey of contents

#### Einleitende Vorbemerkungen

- A. Armut und Rechtswissenschaft
- B. Methodischer Ansatz und Forschungsfragen
- C. Warum eine Befähigungsperspektive auf das Vertragsrecht?
- D. Untersuchungssubjekt und Untersuchungsgegenstand
- E. Gang der Untersuchung

#### Erstes Kapitel: Grundlegung

- § 1 Befähigungsansatz im Gefüge von Politik und Wissenschaft
- § 2 Ökonomischer Entstehungszusammenhang
- § 3 Grundgüter und Wohlergehen
- § 4 Befähigung und Wohlergehen
- § 5 Freiheitsorientiertes Armutsverständnis
- § 6 Zusammenfassung

#### Zweites Kapitel: Anwendung

- § 7 Vertragsfreiheit als Fähigkeit?
- § 8 Recht im Befähigungsansatz
- § 9 Befähigungsdenken in Rechtsetzung und Rechtsanwendung
- § 10 Vertragsrecht als Entwicklungsfaktor
- § 11 Zusammenfassung

#### Drittes Kapitel: Legitimation

- § 12 Legitimationsprogramm
- § 13 Freiheit als Mittel und Ziel
- § 14 Warum gleiche Grundfähigkeiten?
- § 15 Warum einer und nicht alle?
- § 16 Humanisierung des ökonomischen Vertragsdenkens
- § 17 Zusammenfassung

#### Schlussbetrachtung

- A. Freiheitsorientierte Rechtsbeschreibung
- B. Freiheitsorientierte Rechtsgestaltung
- C. Umverteilung von Freiheiten

Sattler, Andreas

## Informationelle Privatautonomie

### Synchronisierung von Datenschutz- und Vertragsrecht

Volume 264  
2022. XV, 463 pages.

ISBN 9783161619052  
cloth 94,00 €

ISBN 9783161619069  
eBook PDF

The EU digital agenda reveals an unsolved conflict between the protection of personal data/privacy and the guarantee of private autonomy (freedom of contract). Accepting the economic reality that personal data has become an economic commodity, Andreas Sattler proposes a model of empowered informational private autonomy, thus enabling a synchronization of data protection (privacy) and contract law.

Survey of contents

Einführung

#### 1. Kapitel Grundrechtliche Gewährleistung von informationeller Privatautonomie

- A. Dominanz der abwehrrechtlichen Dimension der Grundrechte
- B. Asymmetrische Grundrechtssensibilität der DS-GVO
- C. Gefährdung der informationellen Privatautonomie
- D. Fazit: Privatrechtssensible Auslegung der DS-GVO

#### 2. Kapitel Subsidiarität der Interessenabwägung

- A. Die Interessenabwägung als Generalklausel
- B. Erleichterung der Datenverarbeitung durch eine Interessenabwägung
- C. Herausforderungen einer Datenverarbeitung auf Grundlage der Interessenabwägung
- D. Fazit: Funktion als Schrittmacher

#### 3. Kapitel Entlastungsfunktion der vertragsakzessorischen Datenverarbeitung

- A. Komplexes Verhältnis zum nationalen Schuldrecht

- B. Erleichterungen durch eine vertragsakzessorische Datenverarbeitung
- C. Herausforderungen der vertragsakzessorischen Datenverarbeitung
- D. Fazit: Entlastungsfunktion von Art. 6 Abs. 1 lit. b DS-GVO

#### 4. Kapitel Die Einwilligung als Nukleus des europäischen Datenschuldrechts

- A. Vorrang der Einwilligung
- B. Die Einwilligung zwischen Unter- und Übermaßverbot
- C. Stufenleiter der Einwilligung
- D. Fazit

#### 5. Kapitel Stufenmodell der Erlaubnistatbestände

- A. Erste Stufe: Enge Auslegung der Interessenabwägung
- B. Zweite Stufe: Enge Auslegung der Vertragsakzessorietät
- C. Dritte Stufe: Flexibilisierung des Einwilligungstatbestands
- D. Übersicht zum Stufenmodell

#### 6. Kapitel Erforderliche Abstütungen der informationellen Privatautonomie

- A. Standardisierte Kennzeichnung und Privacy Score
  - B. Kontroll-Cockpit für datenschutzrechtliche Erklärungen
- Zusammenfassung

Morell, Alexander

## Der Beibringungsgrundsatz

Eine Rechtfertigung unter besonderer Berücksichtigung der Passivität der nicht beweisbelasteten Partei

Volume 263  
2022. XIX, 346 pages.

ISBN 9783161612466  
cloth 109,00 €

ISBN 9783161612473  
eBook PDF

The law can only protect citizens from the legal wrongdoings of others in so far as the facts of a case can be clarified. If the principle of disclosure is set out in such a way that it prevents clarification, citizens are effectively deprived of their rights vis-à-vis third parties. Alexander Morrell is therefore in favour of an interpretation of the principle that encourages clarification, protects secrets, fits well into the procedural system, and also eliminates old inconsistencies. If this were to be recognised, it would become less attractive to violate the rights of others in the future.

Gal, Jens

## Die Mitversicherung

Das konsortiale Geschäft in der Versicherungswirtschaft im Spannungsfeld von Privatautonomie, Regulierung und Wettbewerb

Volume 262  
2022. XLIV, 1023 pages.

ISBN 9783161614255  
cloth 184,00 €

ISBN 9783161614262  
eBook PDF 184,00 €

From Italy in the High Middle Ages to the industrialised countries of the present day, there have always been risks that no-one wished to bear and no-one wanted to assume alone. The co-insurance of a risk is thus the nucleus of insurance that is constantly topical.

Croon-Gestefeld, Johanna

## Gemeininteressen im Privatrecht

Eine Betrachtung der privatrechtlichen Leiterzählung

Volume 261  
2022. XIX, 326 pages.

ISBN 9783161615627  
cloth 104,00 €

ISBN 9783161615634  
eBook PDF 104,00 €

While common interests – that is, those that cannot be assigned to individuals – are taken into consideration in the ordering of legal relationships between private parties, they are nevertheless perceived as alien to private law. Johanna Croon-Gestefeld employs the methods and insights of discourse theory to explore why this opinion remains influential. Her analysis then shows how common interests in environmental protection, the advancement of infrastructure, and non-discrimination are processed in private law.

#### Survey of contents

##### Einleitung

- I. Gemeinwohl – Gemeininteressen – Individualinteressen
- II. Verhältnis zu verwandten Themen
- III. Historische Abgrenzung
- IV. Methode der Untersuchung
- V. Gang der Untersuchung

##### Kapitel 1

###### Die privatrechtliche Leiterzählung: Gemeininteressen als Fremdkörper im Privatrecht

- I. Gefahr und Mehrwert einer Selbstbeschreibung
- II. Rechtswissenschaft und Leiterzählung
- III. Die freiheitlich-individualistische Leiterzählung
- IV. Rechtshistorische Widerlegung der Leiterzählung
- V. Gesucht: Fürsprecher der Leiterzählung
- VI. Alternative Privatrechtsverständnisse
- VII. Zusammenfassung

##### Kapitel 2

###### Erklärungen für die Beharrungskraft der Leiterzählung

- I. Rechtliche Erklärungen
- II. Außerrechtliche Erklärungen
- III. Zusammenfassung

##### Kapitel 3

###### Umweltschutz

- I. Umweltschutz durch Privatrecht: Eine Verortung
- II. Typisierung
- III. Weitergehende Beobachtungen

##### Kapitel 4

###### Infrastruktur

- I. Infrastruktur und Privatrecht: Eine Verortung
- II. Typisierung
- III. Weitergehende Beobachtungen

##### Kapitel 5

###### Nichtdiskriminierung

- I. Nichtdiskriminierung im Privatrecht: Eine Verortung
- II. Typisierung
- III. Weitergehende Beobachtungen

##### Kapitel 6

###### Umweltschutz, Infrastruktur, Nichtdiskriminierung: Übergreifende Beobachtungen

- I. Individualinteresse und Gemeininteresse
- II. Legislative und judikative Verarbeitung
- III. Methode
- IV. Praktische Bedeutsamkeit
- V. Bezug zur Leiterzählung des Privatrechts

##### Kapitel 7

###### Folgerungen für die Leiterzählung des Privatrechts

- I. Realistische Beschreibung
  - II. Überzeichnungen überdenken
  - III. Keine Zeit für neue Leiterzählungen
- Zusammenfassung

Selzer, Dirk

## Pflichtverletzung im Leistungsstörungenrecht

Ever since the introduction of Germany's Civil Code, it has been unclear as to whether and to what extent unjustness exists in cases where the performance of an obligation has been irregular. Dirk Selzer's study covers the whole spectrum of disruptions and identifies conduct which could be taken as adequate points of reference for verifying blame. This reveals the exact relationship between the basis for and principle of liability.

Volume 260  
2022. XXVI, 644 pages.

ISBN 9783161570322  
cloth 129,00 €

ISBN 9783161570339  
eBook PDF 129,00 €

Hübner, Leonhard

## Unternehmenshaftung für Menschenrechtsverletzungen

Volume 259  
2022. XXXIII, 622 pages.

ISBN 9783161602719  
cloth 129,00 €

ISBN 9783161602726  
eBook PDF 129,00 €

As a result of recent developments, several Western legal systems are now ready to consider the accountability of parent companies from the global north for human rights violations committed by their subsidiaries or suppliers from the global south. Leonhard Hübner examines the implications of enforcing human rights against the parent company with regard to international jurisdiction, conflict of laws and substantive liability. By taking current developments in different jurisdictions into account, the author evaluates and proposes a reform of German law.

Schmidt, Jan Peter

## Itinera hereditatis

### Strukturen der Nachlassabwicklung in historisch-vergleichender Perspektive

Volume 258  
2022. XXVII, 740 pages.

ISBN 9783161609794  
cloth 139,00 €

ISBN 9783161609800  
eBook PDF 139,00 €

The law of succession is not only concerned with determining the recipients of a deceased's persons assets, but also with implementing the envisaged order of distribution. In his historical and comparative analysis of the »how« of succession law, Jan Peter Schmidt reveals the underlying structures and policy issues. Hereby, he enables new perspectives on the national regimes and shows possibilities for reform.

Fervers, Matthias

## Die Bindung Dritter an Prozessergebnisse

### Eine Neubestimmung der subjektiven Rechtskraftwirkungen und sonstiger Drittbindungen

Volume 257  
2022. XXX, 422 pages.

ISBN 9783161613425  
cloth 109,00 €

ISBN 9783161613432  
eBook PDF

All rules of procedure must stipulate whether and under what conditions a party who is not involved in the proceedings can be bound by the result of the lawsuit. Matthias Fervers shows the deficits of the current legal regulations and their interpretation and develops a basic concept of legal force in relation to a third party.

Herberger, Marie

## Menschenwürde in der Zwangsvollstreckung

### Zur Genese und teleologischen Strukturierung des Vollstreckungsschutzes

Volume 256  
2022. XXVI, 392 pages.

ISBN 9783161612077  
cloth 104,00 €

ISBN 9783161612084  
eBook PDF 104,00 €

The law sets limits to enforcement. Marie Herberger finds reason for this in the constitutionally required protection of the debtor's dignified existence, which she understands as life in relationship to other people and animals as well as to things.

Thönissen, Stefan Frederic

## Subjektive Privatrechte und Normvollzug



Volume 255  
2022. XXIV, 625 pages.

ISBN 9783161608858  
cloth 129,00 €

ISBN 9783161608865  
eBook PDF 129,00 €

The private and procedural legal order is currently undergoing fundamental changes. Stefan Thönissen discusses these from a legal philosophy and dogmatic perspective and asks whether there are normative guidelines that structure the current changes and what their prospects for development are.

Gössl, Susanne Lilian

## Parteidispositionen und EU-Verbrauchervertragsrecht

Volume 254  
2021. XXXII, 545 pages.

ISBN 9783161608667  
cloth 139,00 €

ISBN 9783161608674  
eBook PDF 139,00 €

Consumers can be deterred from exercising their rights by formidable and complex national rules for proceedings. In her study, Susanne Lilian Gössl shows how German procedural law needs to be adapted to meet EU consumer law requirements.

Behme, Caspar

## Die Gesellschaft mit persönlicher Gesellschafterhaftung als Rechtsformtyp

Volume 253  
2022. XIV, 260 pages.

ISBN 9783161611339  
cloth 89,00 €

ISBN 9783161611346  
eBook PDF 89,00 €

Companies in which at least one shareholder is personally liable for the company's liabilities («partnerships») have a number of special features compared to companies with limited liability. The thesis analyzes the function of partnerships and, drawing on findings from legal economics and comparative law, outlines a conceivable conception of partnership law while ignoring the dogmatic path dependencies of a certain legal system.

Linardatos, Dimitrios

## Autonome und vernetzte Aktanten im Zivilrecht

### Grundlinien zivilrechtlicher Zurechnung und Strukturmerkmale einer elektronischen Person

Volume 252  
2021. XXII, 652 pages.

ISBN 9783161607561  
cloth 149,00 €

ISBN 9783161607578  
eBook PDF 149,00 €

The actions of autonomous and interconnected systems cannot be unequivocally assigned to a distinct person. Is it time to grant legal capacity to electronic agents? Can we recognize an ePerson to channel liability and responsibility to non-human actors?

Scheuch, Alexander

## Rechtsirrtum und Rechtsungewissheit

### Eine Untersuchung zu Anspruchsverfolgung und Anspruchsverteidigung unter Berücksichtigung zivilprozessrechtlicher Wertungen



Volume 251  
2021. XXXV, 821 pages.

ISBN 9783161600456  
cloth 174,00 €

ISBN 9783161602375  
eBook PDF 174,00 €

Can pointing to an error of law (error iuris) or legal uncertainty protect against legal disadvantages? Alexander Scheuch traces the disparate ways German private law addresses this classic problem of pursuing and defending claims to a system built on aspects of civil procedure.

Könen, Daniel

## Gesellschafter-Exithaftung im Personenverband

### Einstandspflicht gemäß § 128 HGB als liquidationsbezogene Ausfallhaftung

Volume 250  
2021. XXIII, 529 pages.

ISBN 9783161606397  
cloth 139,00 €

ISBN 9783161606403  
eBook PDF 139,00 €

The unlimited personal legal liability of shareholders in partnership companies is today generally understood as the primary liability. With the further dogmatic development of the legal nature of associations of persons, this has led to civil-legal conflicts. Daniel Könen counteracts the situation by offering a new model for when things go wrong – shareholder exit liability.

Husemann, Tim

## Der moderierte Vertrag

A conflict can be resolved by judgment, by contract or by mediation. At the end of the mediation there is a mediated contract. In this work, the author describes how it comes about, establishes a definition and creates the mobile system of the mediated contract in order to develop an adequate legal response to the interests of the person acting as a mediator.

Volume 249  
2021. XXXIV, 651 pages.

ISBN 9783161599897  
cloth 149,00 €

ISBN 9783161600883  
eBook PDF 149,00 €

Röder, Erik

## Nutzungsausgleich im Bürgerlichen Recht

Erik Röder addresses the question of whether and to what extent the legitimate owner of an asset should be entitled to claim compensation for the asset's use by someone who, for whatever reason, used it illegitimately.

Volume 248  
2021. XXXIV, 691 pages.

ISBN 9783161576959  
cloth 159,00 €

ISBN 9783161576966  
eBook PDF

Wendelstein, Christoph

## Pflicht und Anspruch

### Zugleich ein Beitrag zur Bedeutung subjektiver Rechte im Privatrecht

Volume 247  
2021. XXIV, 286 pages.

ISBN 9783161594984  
cloth 109,00 €

ISBN 9783161594991  
eBook PDF 109,00 €

Under what conditions do private duties to protect correspond to a claim for specific performance? Christoph Wendelstein's study traces the history and systematic of subjective rights and duties to reveal a fresh and independent perspective of the private law system both inside and out. The work is rounded off by an analysis of the civil procedural aspects of substantive law claims for the fulfilment of duties of care and protection in German law.

Rieländer, Frederick

## Mehrstufige Belastungen

Die wechselseitige Belastbarkeit subjektiver Rechte im deutschen Recht unter selektiver Berücksichtigung europäischer Nachbarrechtsordnungen

Volume 246  
2021. XXXVI, 1496 pages (2 volumes).

ISBN 9783161595288  
cloth 289,00 €

ISBN 9783161595295  
eBook PDF 289,00 €

This comparative legal study analyses both transfers and encumbrances of limited rights in rem in tangible and intangible assets. It develops a new system of »rights to rights« which serves to solve numerous legal problems, in particular of credit security law, and at the same time discusses the need for reform of the German law of property.

Hennemann, Moritz

## Interaktion und Partizipation

Dimensionen systemischer Bindung im Vertragsrecht

Volume 245  
2020. XXIV, 430 pages.

ISBN 9783161595745  
cloth 119,00 €

ISBN 9783161595752  
eBook PDF 119,00 €

Diverse modern forms of interaction and participation pose specific challenges for contract law. In his study focusing on the theory of contracts, contract law and its policy, Moritz Hennemann presents the developments of the last decades, assesses instruments available to today's private law societies, and ventures to see what the twenty-first century holds for the future of contract law.

Hacker, Philipp

## Datenprivatrecht

Neue Technologien im Spannungsfeld von Datenschutzrecht und BGB

Volume 244  
2020. XXXI, 744 pages.

ISBN 9783161596179  
cloth 154,00 €

ISBN 9783161596186  
eBook PDF

New technologies are increasingly converging towards a comprehensive Internet of Everything in which market processes are integrated in novel ways. For this world of ubiquitous data collection and analysis, Philipp Hacker develops a legal framework that promotes individual autonomy while addressing key regulatory risks.

Dubovitskaya, Elena

## Offenlegungspflichten der Organmitglieder in Kapitalgesellschaften

Volume 243  
2020. XXIV, 582 pages.

ISBN 9783161593741  
cloth 139,00 €

ISBN 9783161593758  
eBook PDF 139,00 €

What information, especially of a personal nature, must board members disclose to corporations and their shareholders? What does the financial market need to know about those at the helm of companies listed on the stock exchange? Constitutional law is at loggerheads with data protection regulation on the matter. Elena Dubovitskaya investigates whether this conflict ought to be resolved in favour of the individual's privacy or the sake of transparency.



Wietfeld, Anne Christin

## Bereichsverweisungen auf Rückabwicklungssysteme im Bürgerlichen Gesetzbuch

### Eine systematische Analyse

Volume 242  
2020. XXVIII, 491 pages.

ISBN 9783161590788  
cloth 129,00 €

ISBN 9783161590795  
eBook PDF 129,00 €

What rules are to be applied when a regulation refers to another area of provisions? And how is their legal character defined in such a case? Anne Christin Wietfeld provides answers to these and other questions concerning references within the German Civil Code.

Durantaye, Katharina de la

## Erklärung und Wille

Volume 241  
2020. XVII, 389 pages.

ISBN 9783161581854  
cloth 114,00 €

ISBN 9783161581861  
eBook PDF 114,00 €

When closely studied, the German Civil Code's rules on contract formation offer an objective standard. In doing so, they promote standardization and encourage market participants to express themselves in a way that objectively reflects what they subjectively want. The legal ideal is a meeting of inner minds. Where the subjective preferences of one party diverge from what is objectively agreed upon, the code provides for corrective measures.

Prütting, Jens

## Rechtsgebietsübergreifende Normenkollisionen

### Ein Lösungsansatz am Beispiel der Schnittstelle von Zivil- und Sozialversicherungsrecht im Gesundheitswesen

Volume 240  
2020. XVIII, 333 pages.

ISBN 9783161591068  
cloth 109,00 €

ISBN 9783161591075  
eBook PDF 109,00 €

Jens Prütting offers a tried-and-tested procedure for dealing with contradictions in evaluations, mutual modifications and the concomitant co-existence of legal provisions in various sectors of the law.

Dieckmann, Andreas

## Gesamthand und juristische Person

Volume 239  
2019. XXV, 667 pages.

ISBN 9783161576522  
cloth 154,00 €

ISBN 9783161576539  
eBook PDF 154,00 €

Andreas Dieckmann analyses the legal nature of joint ownership and the legal person. He shows how these two legal figures unite the aspects of multiplicity and unity and thus enable people to act as entities in law.

Stöhr, Alexander

## Kleine Unternehmen

### Schutz und Interessenausgleich im Machtgefüge zwischen Arbeitnehmern, Verbrauchern und Großunternehmen

Volume 238  
2019. XXV, 576 pages.

ISBN 9783161567261  
cloth 149,00 €

ISBN 9783161567278  
eBook PDF 149,00 €

The law almost always treats small businesses as employer or merchant, even though they do not fall cleanly into the opposing legal categories of employer-employee or consumer-merchant, respectively. Alexander Stöhr uses this setting to fundamentally examine the legal protection of small firms and establish an appropriate balance of interests in the power structure between employees, consumers and large companies. On that basis, he is able to make legislative proposals as well as develop lines of reasoning and interpretations of relevant provisions for purposes of legal application.

Redenius-Hövermann, Julia

## Verhalten im Unternehmensrecht

### Über die realverhaltensorientierte Fortentwicklung des Unternehmensrechts anhand ausgewählter Anwendungsbeispiele

Volume 237  
2019. XXVII, 452 pages.

ISBN 9783161562969  
cloth 119,00 €

ISBN 9783161562976  
eBook PDF 119,00 €

What benefits can be derived from the findings of behavioral economics, psychology and neuroscience for standard-setting and application in corporate law so conclusions can be drawn about how it receives its neighboring disciplines? Julia Redenius-Hövermann's study seeks to contribute to the general debate on using such knowledge and make it more objective.

Jakl, Bernhard

## Handlungshoheit

### Die normative Struktur der bestehenden Dogmatik und ihrer Materialisierung im deutschen und europäischen Schuldvertragsrecht

Volume 236  
2019. XXI, 315 pages.

ISBN 9783161556807  
cloth 104,00 €

ISBN 9783161556814  
eBook PDF 104,00 €

Current developments in contract law are partly being described as a return to contractual justice. In contrast, Bernhard Jakl suggests an agency-based approach and shows that the individual's self-determination can be extended through contract law without relying on general values or absolute conceptions.

Flume, Johannes W.

## Marktaustausch

### Grundlegung einer juristisch-ökonomischen Theorie des Austauschverkehrs

Volume 235  
2019. XXI, 304 pages.

ISBN 9783161568985  
cloth 99,00 €

ISBN 9783161568992  
eBook PDF 99,00 €

Johannes W. Flume analyses the legal foundation of markets and contracts. He formulates a theory of market exchange, which shows that markets are legal products and that all exchange contracts in a market economy are derivatives because they derive their value from underlying market prices.

»For German private law scholars, judges and jurists 'Market exchange' simply seems an essential read. [...] Fortunately, despite the vast ground covered, the book is resolutely concise, consisting of only 263 pages. 'Market exchange' makes for a stimulating, but concentrated read.«

*Janwillem Oosterhuis* in Comparative Legal History, DOI: 10.1080/2049677X.2020.1757259

Renner, Moritz

## Bankkonzernrecht

Volume 234  
2019. XVI, 401 pages.

ISBN 9783161560330  
cloth 114,00 €

ISBN 9783161560347  
eBook PDF 114,00 €

Global banking groups considered »too big to fail, too complex to fail, too interconnected to fail« were the target of new regulation following the financial crisis. Moritz Renner analyzes the novel law of banking groups that came into being as a result of these efforts.

Makowsky, Mark

## Einwendungen aus fremdem Schuldverhältnis

Volume 233  
2019. XXIX, 440 pages.

ISBN 9783161565779  
cloth 129,00 €

ISBN 9783161565786  
eBook PDF 129,00 €

The admissibility of objections arising from a third-party obligation is primarily only being discussed for individual cases. Mark Makowsky examines the topic from a wider perspective and develops a new concept for the dogmatic understanding of the different legal provisions.

Wendland, Matthias

## Vertragsfreiheit und Vertragsgerechtigkeit

Subjektive und objektive Gestaltungskräfte im Privatrecht am Beispiel der Inhaltskontrolle

Allgemeiner Geschäftsbedingungen im unternehmerischen Geschäftsverkehr

Volume 232  
2019. XL, 1055 pages.

ISBN 9783161548178  
cloth 179,00 €

ISBN 9783161552489  
eBook PDF 179,00 €

*Volenti non fit iniuria* – the consenting party does not suffer injustice. The freedom of contract as the legitimizing basis of a legal relationship is a constitutive element of private law. But does the principle still apply under the conditions of »watered down freedom«? And what significance does contractual justice gain here? Matthias Wendland sheds light on these aspects of controlling terms and conditions in business-to-business transactions.

Tolani, Madeleine

## Parteiherrschaft und Richtermacht

Die Verhandlungs- und die Dispositionsmaxime im Lichte divergierender Prozessmodelle

Volume 231  
2019. XXVIII, 532 pages.

ISBN 9783161565335  
cloth 139,00 €

ISBN 9783161565342  
eBook PDF 139,00 €

Madeleine Tolani deals with the balance of power between parties and judges, focusing on the principle of party control over the scope and nature of proceedings and the proof of facts. The author frames a concept for an adversarial liberal civil proceeding which is fundamentally determined by the parties and their lawyers.

Picht, Peter Georg

## Vom materiellen Wert des Immateriellen

### Immaterialgüterrechte als Kreditsicherungsmittel im nationalen und internationalen Rechtsverkehr

Volume 230  
2018. XXII, 708 pages.

ISBN 9783161560101  
cloth 154,00 €

ISBN 9783161560118  
eBook PDF 154,00 €

Intellectual property rights play a key role in today's economy. By collateralizing these intangible assets, their value can serve to raise capital that finances, for instance, start-ups or large mergers and acquisitions. Many legal aspects of the collateralization of intellectual property are, however, unclear. Peter Georg Picht presents an in-depth analysis of the most important practical issues and develops a coherent legal framework for such transactions.

Foerster, Max

## Die Zuordnung der Mitgliedschaft

Volume 229  
2018. XXVI, 484 pages.

ISBN 9783161560811  
cloth 119,00 €

ISBN 9783161560828  
eBook PDF 119,00 €

The assignment of membership is the basis of the rights and legal consequences attached to a membership. Max Foerster shows that membership is composed of a formal and a material element, defines these elements, which can be (partially) split between legal entities, and explains the legal consequences.

Mörsdorf, Oliver

## Ungleichbehandlung als Norm

### Eine dogmatische Analyse des unional determinierten Antidiskriminierungsrechts in Deutschland

Volume 228  
2018. XXIV, 542 pages.

ISBN 9783161558269  
cloth 139,00 €

ISBN 9783161558276  
eBook PDF 139,00 €

There is hardly an area of German private law with stronger links to EU law than anti-discrimination law. Oliver Mörsdorf takes this fact into account by analyzing the concepts, rules and remedies of anti-discrimination law from a strictly European viewpoint based on the general principle of non-discrimination.

Sanders, Anne

## Mehrelternschaft

Volume 227  
2018. XXIV, 511 pages.

ISBN 9783161558078  
cloth 134,00 €

ISBN 9783161558085  
eBook PDF 134,00 €

It is increasingly common for more than two people to be involved in conceiving and bringing-up a child: sperm, egg and embryo donors, surrogate mothers, adoptive and step-parents – all can play a role. But who are actually the child's parents, what rights do they have and which duties? Anne Sanders analyses what binds parent and child together and how these bonds tie into constitutional and family law in her search for answers.

Benedict, Jörg

## Culpa in Contrahendo

Transformationen des Zivilrechts. Band I: Historisch-kritischer Teil: Entdeckungen – oder zur Geschichte der Vertrauenshaftung

Volume 226  
2018. XXI, 813 pages.

ISBN 9783161517440  
cloth 149,00 €

ISBN 9783161520952  
eBook PDF 149,00 €

In the Roman law tradition up to Savigny, *culpa* was not considered to be a *causa obligationis*. Rudolf v. Jhering rejected this dogma 150 years ago. His »discovery« of culpa in contrahendo finally introduced a general basis for liability in legal relations based on nothing but *bona fides* (good faith). However, the stage at which precontractual reliance becomes worthy of protection is not yet defined. In this study, the author explores why *culpa in contrahendo* is nevertheless still retained.

Segna, Ulrich

## Bucheffekten

Ein rechtsvergleichender Beitrag zur Reform des deutschen Depotrechts

Volume 225  
2018. XXXI, 698 pages.

ISBN 9783161530128  
cloth 149,00 €

ISBN 9783161532320  
eBook PDF 149,00 €

In Germany, the legal framework for intermediated securities is largely based on traditional civil law concepts. It is widely believed that these concepts have not kept pace with the development of modern financial markets and that they are not compatible with the various harmonization initiatives in the field of intermediated securities, such as the Hague Securities Convention, the Geneva Securities Convention and the EU Legal Certainty Project. Ulrich Segna examines whether it is necessary to change the German legal framework for intermediated securities fundamentally and, if so, which alternative approach should be taken instead.

Doralt, Walter

## Langzeitverträge

Volume 224  
2018. XXI, 554 pages.

ISBN 9783161556180  
cloth 114,00 €

ISBN 9783161556197  
eBook PDF 114,00 €

This book deals with problems of long-term contracts – a central field of research for economists but, surprisingly, less so for lawyers. Building on the insights developed by economists, it focuses on five problems of paramount importance for long-term contracts: good faith and fiduciary duties, change of circumstances and force majeure (including contract design, risk distribution and renegotiation), termination for cause and, finally, penalty clauses.

Magnus, Robert

## Der Rückholanspruch

Die rückwirkende Grenze der Eigentumsfreiheit

Volume 223  
2018. XXXIV, 510 pages.

ISBN 9783161556937  
cloth 134,00 €

ISBN 9783161556944  
eBook PDF 134,00 €

The term »Rückholanspruch« describes a right to subsequently render void a transaction that was valid when it was made and then reclaim assets that were dissipated through that transaction. Such reversal rights exist in insolvency, family and succession law, and although they are essentially identical, they are very differently regulated. Robert Magnus queries whether a uniformly designed claim exists here or should be considered.

Leyens, Patrick C.

## Informationsintermediäre des Kapitalmarkts

### Private Marktzugangskontrolle durch Abschlussprüfung, Bonitätsrating und Finanzanalyse

Volume 222  
2017. XLII, 841 pages.

ISBN 9783161540967  
cloth 149,00 €

ISBN 9783161540974  
eBook PDF 149,00 €

Standing guard as information intermediaries of capital markets, auditors, rating agencies and analysts mediate between firms, shareholders and investors. Patrick C. Leyens reveals their increasing significance, explains their historical, economic and theoretical foundations and develops an up-to-date framework of regulation.

Mayer, Claudia

## Haftung und Paarbeziehung

### Ein Beitrag zu den Rechtspflichten in familienrechtlichen Lebensgemeinschaften und den Haftungsfragen im Innen- und Außenverhältnis

Volume 221  
2017. XXVIII, 509 pages.

ISBN 9783161554896  
cloth 139,00 €

ISBN 9783161554902  
eBook PDF 139,00 €

There are numerous liability risks when it comes to family relationships. Claudia Mayer shows that such relationships constitute normal obligations. With recourse to the dogmatics of the law of obligations, she demonstrates that even controversial matrimonial and family law questions can be compellingly solved.

Beurskens, Michael

## Privatrechtliche Selbsthilfe

### Rechte, Pflichten und Verantwortlichkeit bei digitalen Zugangsbeschränkungs- und Selbstdurchsetzungsbefugnissen

Volume 220  
2017. XVI, 488 pages.

ISBN 9783161544255  
cloth 134,00 €

ISBN 9783161544262  
eBook PDF 134,00 €

»Self-help« is considered the opposite of legal enforcement under a rule of law. While fear of violence might justify a careful approach in face-to-face transactions, the internet allows invisible and retaliation-free enforcement without personal contact. The legal system is, however, ill-prepared for a world in which the touch of a button can restrict access and usability of products. Covering a broad field ranging from traditional self-enforcement prohibitions to trade secret rules and computer crime, Michael Beurskens establishes a workable uniform framework for future challenges.

Lorz, Sigrid

## Ausländische Staaten vor deutschen Zivilgerichten

### Zum Spannungsverhältnis von Staatenimmunität und Recht auf Zugang zu Gericht

Volume 219  
2017. XXIV, 499 pages.

ISBN 9783161555480  
cloth 129,00 €

ISBN 9783161555497  
eBook PDF 129,00 €

Private creditors increasingly request German courts for legal protection against foreign states to enforce their rights arising from government bonds or investment protection treaties. At the interface between civil procedure law and international law, various questions arise on the tension between state immunity and the right to access to court.



Hofmann, Franz

## Der Unterlassungsanspruch als Rechtsbehelf

Volume 218  
2017. XXIV, 540 pages.

ISBN 9783161548963  
cloth 129,00 €

ISBN 9783161552267  
eBook PDF 129,00 €

Can the enforcement of rights under private law be analyzed as an independent problem area? Franz Hofmann attempts not only to define the meaning of injunctions, but also to lay the foundations for a German »law of remedies« by making a categorical distinction between substantive rights and remedial rights.

Wiese, Volker

## Alternativität in Schuldverhältnissen

Volume 217  
2017. XXX, 635 pages.

ISBN 9783161553745  
cloth 149,00 €

ISBN 9783161553752  
eBook PDF 149,00 €

Alternative obligations are a somewhat peculiar legal institution. They give rise to particular questions. If you have the right to claim one thing or the other, which party, for instance, has the right to choose? Does one have to notify the choice? Is the choice binding or revocable? Is an alternative obligation the same as contract or business options? How does it relate to the »doctrine of election«? With focus on German Law all of these questions concerning alternative obligations are treated and elucidated in this volume »Alternativität in Schuldverhältnissen".

Schreiber, Christoph

## Konzernrechtsfreie Kontrolle

### Zivilrechtliche Möglichkeiten der Einflussnahme auf die Geschäftsführung der GmbH

Volume 216  
2017. XVIII, 300 pages.

ISBN 9783161554568  
cloth 109,00 €

ISBN 9783161554575  
eBook PDF 109,00 €

Christoph Schreiber sets the German corporate group law for limited liability companies (GmbH) free of analogies to stock corporation law. The domination agreement is depicted on the basis of general civil law. In addition, the law of membership, of statutes, and of general obligations is vetted to check its suitability as a means of control.

Bach, Ivo

## Leistungshindernisse

Volume 215  
2017. XLVII, 879 pages.

ISBN 9783161548734  
cloth 169,00 €

ISBN 9783161548741  
eBook PDF 169,00 €

When an impediment prevents a party from performing its contractual obligations, the law must answer two different questions, depending on whether the impediment can be overcome or not. When it cannot, the question is whether or not the debtor shall be liable in damages for non-performance. When the impediment can be overcome, the additional question arises of how much effort the debtor must expend in order to make performance possible. Ivo Bach investigates how German and European sales laws answer these questions.

Meyer, Olaf

## Korruption im Vertrag

Volume 214  
2017. XXVI, 495 pages.

ISBN 9783161547072  
cloth 129,00 €

ISBN 9783161547089  
eBook PDF 129,00 €

Against the background of the current debate on »private enforcement«, Olaf Meyer examines the effects of economic corruption on civil law. The author's two-fold aim is to reinforce the rights of corruption victims and at the same time increase liability risk for perpetrators.

Schrader, Paul Tobias

## Wissen im Recht

### Definition des Gegenstandes der Kenntnis und Bestimmung des Kenntnisstandes als rechtlich relevantes Wissen

Volume 213  
2017. XXV, 489 pages.

ISBN 9783161546419  
cloth 129,00 €

ISBN 9783161546426  
eBook PDF 129,00 €

In civil law, a person's knowledge is often relevant. When is this knowledge actually present? In order to determine the legally relevant level of knowledge, Paul Schrader proposes to separate the substantive definition of the subject matter of such knowledge from the subsequent examination concerning the actual existence of the legally relevant knowledge. In doing so, he adopts a method known from patent law.

Ebers, Martin

## Rechte, Rechtsbehelfe und Sanktionen im Unionsprivatrecht

Volume 212  
2016. LVI, 1116 pages.

ISBN 9783161548703  
cloth 194,00 €

ISBN 9783161548710  
eBook PDF 194,00 €

Above all, EU law suffers from a lack of legal remedies and sanctions. Although EU law has harmonised national legal orders to a great extent, most of its norms do not clearly indicate whether these norms confer corresponding rights and remedies, and how the law is to be enforced in member states. On the other hand, the European Court of Justice has gradually recognised (unwritten) union rights and shaped the consequences for breaches of its law. Against this background, Martin Ebers develops a general theory of union rights, remedies and sanctions, with special focus on fundamental freedoms, competition and state aid law, anti-discrimination and consumer law.

Janssen, André

## Präventive Gewinnabschöpfung

Volume 211  
2017. XXIX, 693 pages.

ISBN 9783161531422  
cloth 159,00 €

ISBN 9783161532337  
eBook PDF 159,00 €

By violating the legally protected interests of others and standard market behavior, companies chalk up large profits obtained from unlawful acts. It seems that the law has neither a legal framework nor efficient instruments for preventing this from happening. André Janssen addresses the issue of whether a skimming of excess profits which is based on liability law and designed to be preventive can rectify this.

Gomille, Christian

## Informationsproblem und Wahrheitspflicht

### Ein Aufklärungsmodell für den Zivilprozess



Volume 210  
2016. XXV, 506 pages.

ISBN 9783161546112  
cloth 129,00 €

ISBN 9783161546129  
eBook PDF 129,00 €

The risk-bearing party can only succeed in civil procedure if it has access to all decision-relevant information. At the same time, the opposing party can strongly influence which information this is by knowingly making untruthful submissions. A model orientated on the procedural obligation to tell the truth removes the option of artificially causing information difficulties.

Limbach, Francis

## Gesamthand und Gesellschaft

### Geschichte einer Begegnung

Volume 209  
2016. XXVIII, 484 pages.

ISBN 9783161541766  
cloth 129,00 €

ISBN 9783161541773  
eBook PDF 129,00 €

Who owns the assets that have been contributed to a partnership: the partners jointly or the partnership itself? This question has been answered in different ways by German established and Roman law. Francis Limbach challenges the commonly held notion identifying old Germanic legal concepts of the »collective hand« as the source of these divergences.

Sonnentag, Michael

## Das Rückgewährschuldverhältnis

Volume 208  
2016. LVIII, 769 pages.

ISBN 9783161519253  
cloth 149,00 €

ISBN 9783161538254  
eBook PDF 149,00 €

What are the effects of the avoidance of a contract and the loss or deterioration of the goods received by the other party? Michael Sonnentag focuses on these issues under the U.N. Sales Convention and develops a proposal for a future European contract law. Thereby the author takes into account the responsibility for the avoidance of the contract, the possession of the goods, the buyer's interest in using the goods and the seller's interest in the restitution of whatever the other party has received.

Hellgardt, Alexander

## Regulierung und Privatrecht

### Staatliche Verhaltenssteuerung mittels Privatrecht und ihre Bedeutung für Rechtswissenschaft, Gesetzgebung und Rechtsanwendung

Volume 207  
2016. XXXIV, 848 pages.

ISBN 9783161543395  
cloth 159,00 €

ISBN 9783161543685  
eBook PDF 159,00 €

Alexander Hellgardt shows that private law is not restricted to the balancing of private interests but is also a tool legislators and courts use in order to pursue public interest goals. The author examines in detail regulation through private law and presents conclusions for jurisprudence, legislation and legal practice.

Fries, Martin

## Verbraucherrechtsdurchsetzung



Volume 206  
2016. XV, 309 pages.

ISBN 9783161545870  
cloth 104,00 €

ISBN 9783161545887  
eBook PDF

The value of civil rights depends crucially on their enforceability. Especially when it comes to small claims like consumer claims, enforcement can however prove to be difficult. Martin Fries develops criteria for dispute systems aimed at effectively enforcing consumer rights. His analysis contributes to the recent debate on consumer access to justice.

Fest, Timo

## Anleihebedingungen

### Rechtssicherheit trotz Inhaltskontrolle

Volume 205  
2022. L, 578 pages.

ISBN 9783161545078  
cloth 149,00 €

ISBN 9783161545085  
eBook PDF 149,00 €

Corporate bonds are a major instrument in financing international corporations. Bond terms define the borrower's obligations as well as the bondholders rights. Although the issuer enjoys freedom of contract, there are many restrictions on bond terms. These are discussed by Timo Fest and a concrete reform proposal to strengthen Germany's capital market is also made.

Rudkowski, Lena

## Transparenzpflichten zur Kontrolle von Finanzdienstleistungsunternehmen

### Unter besonderer Berücksichtigung des Schutzes von Geschäftsgeheimnissen

Volume 204  
2016. XXIV, 365 pages.

ISBN 9783161542824  
cloth 104,00 €

ISBN 9783161543074  
eBook PDF 104,00 €

European and German law increasingly demands financial services companies to reveal relevant information for the sake of »transparency«. Lena Rudkowski examines the concepts of control that the various transparency obligations are subject to and suggests maxims for their further development.

Schneider, Angie

## Vertragsanpassung im bipolaren Dauerschuldverhältnis

Volume 203  
2016. XVIII, 479 pages.

ISBN 9783161540677  
cloth 134,00 €

ISBN 9783161541308  
eBook PDF 134,00 €

Adapting contracts serves to bring obligations into line with changed circumstances. This requires certain conditions to be met, yet there are no general standards that apply to all types of continuing obligations. Angie Schneider suggests remedies.

Klocke, Daniel Matthias

## Rechtsschutz in kollektiven Strukturen

### Die Verbandsklage im Verbraucher- und Arbeitsrecht



Volume 202  
2016. XXV, 332 pages.

ISBN 9783161542640  
cloth 94,00 €

ISBN 9783161543630  
eBook PDF 94,00 €

Daniel Klocke takes issue with inadmissible general business terms in labour law and describes collective redress in labour and consumer law. He also shows how unions could even today take action against unlawful pre-formulated employment contracts.

Franck, Jens-Uwe

## Marktordnung durch Haftung

Legitimation, Reichweite und Steuerung der Haftung auf Schadensersatz zur Durchsetzung marktordnenden Rechts

Volume 201  
2016. XXXVIII, 710 pages.

ISBN 9783161538025  
cloth 154,00 €

ISBN 9783161540936  
eBook PDF 154,00 €

Using damage liability to enforce market regulation has become increasingly commonplace in Germany and Europe, especially when it comes to securities regulation and competition law. Jens-Uwe Franck analyses the fundamental issues of this development and, using the standard model of optimal sanctions, identifies the systematic risks of over- and under-deterrence accompanying this method of private enforcement. These insights and a range of examples provide a basis for discussing the potential of damage liability to minimise risks of regulatory failure.

Kuntz, Thilo

## Gestaltung von Kapitalgesellschaften zwischen Freiheit und Zwang

Venture Capital in Deutschland und den USA

Volume 200  
2016. XLIV, 846 pages.

ISBN 9783161534652  
cloth 159,00 €

ISBN 9783161540097  
eBook PDF 159,00 €

Thilo Kuntz deals with the freedom of contract in corporate law. He puts the German law's comparatively rigid approach under scrutiny by using venture capital contracts as a test case. The author discusses the reasons to limit the parties' autonomy from a broad comparative and economic perspective.

Janal, Ruth M.

## Europäisches Zivilverfahrensrecht und Gewerblicher Rechtsschutz

Volume 199  
2015. XXXIX, 920 pages.

ISBN 9783161539336  
cloth 189,00 €

ISBN 9783161539343  
eBook PDF 189,00 €

In view of the increasing harmonization of private law within the European Union, one may ask whether the development of common enforcement mechanisms throughout the union is expedient. Existing legislation in the area of civil procedure maintains a particular focus on the enforcement of intellectual property rights. By using the example of industrial property, Ruth Janal demonstrates current obstacles to the harmonization of civil procedure and explains the potential effect of EU rules on transnational civil procedure. The author also offers an introduction to the Unified Patent Court's rules of procedure.

Florstedt, Tim

## Recht als Symmetrie

Ein Beitrag zur Theorie des subjektiven Privatrechts



Volume 198  
2015. XV, 356 pages.

ISBN 9783161532238  
cloth 114,00 €

ISBN 9783161541834  
eBook PDF 114,00 €

Numerous principles and norms of private law distribute benefits and harm symmetrically. Tim Florstedt presents the first fundamental examination of these patterns, describing the assignment of goods or acts through institutional forms (ownership, representation, institutional bodies) and respective exceptions. The book thus presents a coherent theory of symmetrical distribution in private law.

Gruber, Malte-Christian

## Bioinformatonsrecht

### Zur Persönlichkeitsentfaltung des Menschen in technisierter Verfassung

Volume 197  
2015. XI, 408 pages.

ISBN 9783161536724  
cloth 129,00 €

ISBN 9783161536922  
eBook PDF 129,00 €

As a functioning part of the human body and mind, our internal information technology systems belong to our physical makeup just as much as body parts and substances do to the realm of reproductive medicine, genetic information does to gene technology and brain scans do to neurological technology. Bio-information law concerns itself with the rights of these roving human components.

Mohr, Jochen

## Sicherung der Vertragsfreiheit durch Wettbewerbs- und Regulierungsrecht

### Domestizierung wirtschaftlicher Macht durch Inhaltskontrolle der Folgeverträge

Volume 196  
2015. XLIII, 963 pages.

ISBN 9783161535130  
cloth 184,00 €

ISBN 9783161537097  
eBook PDF 184,00 €

Jochen Mohr assesses and harmonizes the interpretation of contract law on the one hand and competition and regulatory law on the other, using the example of follow-up contracts being caught under the sanction of nullity for violations of competition or regulatory law. To this end, he also makes the current findings and theories in the fields of competition economics and regulatory theory bear fruit.

Fischinger, Philipp S.

## Haftungsbeschränkung im Bürgerlichen Recht

Volume 195  
2015. XXXII, 819 pages.

ISBN 9783161535390  
cloth 179,00 €

ISBN 9783161538667  
eBook PDF 179,00 €

A working liability law is essential not only for an »equitable« balance of the interests of obligee and debtor but also a prerequisite for modern economic orders. Philipp S. Fischinger ascertains different methods to limit civil liability, such as the discharge of residual debt and the limitation of an employee´s liability towards his employer in the case of workplace accidents.

Hauck, Ronny

## Nießbrauch an Rechten

Volume 194  
2015. XXVI, 432 pages.

ISBN 9783161538094  
cloth 129,00 €

ISBN 9783161540646  
eBook PDF 129,00 €

Today's legal system and economy attaches considerable importance to the distribution of intangible assets, particularly when it comes to the care of relatives. An alternative to the complete transfer of rights could however be found in usufruct.

Heese, Michael

## Beratungspflichten

Eine rechtswissenschaftliche Abhandlung zur Dogmatik der Beratungspflichten und zur Haftung des Ratgebers im Zivil- und Wirtschaftsrecht

Volume 193  
2015. XXXIV, 531 pages.

ISBN 9783161538445  
cloth 149,00 €

ISBN 9783161539121  
eBook PDF 149,00 €

Advisors' obligations and the particulars of advisors' liability have been crucial questions in civil and business law ever since. Beginning in the 1990's, advice as a legal concept became more and more important for legal policy, legislators, and courts. Michael Heese continues to develop a more general civil law approach to advisors' obligations and liability, taking into account both professional duties and regulatory law.

Zetsche, Dirk A.

## Prinzipien der kollektiven Vermögensanlage

Volume 192  
2015. XXXIV, 1004 pages.

ISBN 9783161522710  
cloth 204,00 €

ISBN 9783161527012  
eBook PDF 204,00 €

Dirk A. Zetsche analyzes the private ordering of investment funds in eight jurisdictions. Considering among other things the relevant provisions of both the AIFM Directive and the UCITS Directive on the constitution of investment funds, he shows that none of the legal forms in which investment funds are constituted – trust, contract, partnership and corporation – reflect the true nature of investment funds. The author reveals that the unfitting legal forms lead to a deviation from the formal pressure to which a broad interpretation of contractual freedom as well as the judicature contributed. He demonstrates the consequences of this deviation from »form« to »substance« in the life cycle of investment funds.

Riehm, Thomas

## Der Grundsatz der Naturalerfüllung

Volume 191  
2015. XXX, 608 pages.

ISBN 9783161524547  
cloth 144,00 €

ISBN 9783161524554  
eBook PDF 144,00 €

The principle that contractual as well as legal claims are to be implemented as stipulated in the contract ( *in specie* ) is seen as a feature of German and continental European law. Thomas Riehm studies this principle and its limitations, i.e. the transitional prerequisites of monetary compensation in place of specific performance, from the perspective of history and comparative law, economics and legal dogmatics and develops a comprehensive model for contractual and legal claims.

Uffmann, Katharina

## Interim Management

Volume 190  
2015. XXIII, 513 pages.

ISBN 9783161533648  
cloth 149,00 €

ISBN 9783161533822  
eBook PDF 149,00 €

Interim Management describes a new phenomenon of increasing economic importance. It involves the transfer of management tasks for a limited period of time to experienced, external managers who are self-employed. This new kind of management service reflects the on-going professionalization of management functions and responds to the need for flexibility. Katharina Uffmann provides a deep insight into the structures of interim management and examines legal matters arising from it.

Schweizer, Mark

## Beweiswürdigung und Beweismaß

Rationalität und Intuition

Volume 189  
2015. XIX, 678 pages.

ISBN 9783161536427  
cloth 159,00 €

ISBN 9783161537592  
eBook PDF 159,00 €

Mark Schweizer examines the evaluation of evidence and the standard of proof in civil proceedings within a probabilistic and decision theoretic framework. The rational Bayesian approach to evidence evaluation is contrasted with insights from models of coherence-based reasoning, in the hope of improving the process of evidence evaluation. The author argues for the adoption of a lower standard of proof in civil proceedings.

Lieder, Jan

## Die rechtsgeschäftliche Sukzession

Eine methodenpluralistische Grundlagenuntersuchung zum deutschen Zivilrecht und Zivilprozessrecht sowie zum Internationalen und Europäischen Privatrecht

Volume 188  
2015. XXXIV, 1296 pages.

ISBN 9783161529115  
cloth 194,00 €

ISBN 9783161530340  
eBook PDF 194,00 €

Jan Lieder develops and reviews the principles of contractual succession (outside inheritance law) under German civil law and civil procedure law as well as private international law and European private law using the examples of assignment of rights, substitution of debtors and transfer of contractual positions, movable and immovable property.

Zimmermann, Martin

## Das Aktiendarlehen

Die Zuordnung von Aktionärsrechten im Spannungsfeld von Zivil-, Gesellschafts- und Kapitalmarktrecht

Volume 187  
2014. XX, 362 pages.

ISBN 9783161531002  
cloth 119,00 €

ISBN 9783161531521  
eBook PDF 119,00 €

Securities lending can be used for a variety of strategies, including the decoupling of voting rights and economic ownership. Rather than discussing these strategies only from the standpoint of corporate or securities law, the author also focuses on the contractual relationship between lender and borrower.

Kleinschmidt, Jens

## Delegation von Privatautonomie auf Dritte

Zulässigkeit, Verfahren und Kontrolle von Inhaltsbestimmungen und Feststellungen Dritter im Schuld- und Erbrecht

Volume 186  
2014. XL, 907 pages.

ISBN 9783161525278  
cloth 204,00 €

ISBN 9783161526077  
eBook PDF 204,00 €

Private autonomy is one of the foundations of all European systems of private law. It gives each individual the power to determine his legal relationships, both during his lifetime and post mortem. From a comparative perspective, Jens Kleinschmidt explores whether this power can be delegated to a third person, which procedural rules apply to that person's decision and how the decision can be reviewed.

Eichel, Florian

## Künftige Forderungen

Volume 185  
2014. XXIX, 573 pages.

ISBN 9783161533853  
cloth 139,00 €

ISBN 9783161533860  
eBook PDF 139,00 €

A »future receivable« signifies a person's expectation of becoming entitled to claim something from someone else in the future. As such it may be secured by mortgages or serve as security itself and therefore already has legal force in the present. This existence between the present and the future, between the law of obligations and property law as well as between substantive and procedural law is a good reason to study it from various perspectives of private law.

Omlor, Sebastian

## Geldprivatrecht

### Entmaterialisierung, Europäisierung, Entwertung

Volume 184  
2014. XXXI, 569 pages.

ISBN 9783161529818  
cloth 144,00 €

ISBN 9783161531057  
eBook PDF 144,00 €

There is hardly another term which has attained a comparably far-reaching significance for our social, economic and legal order as the concept of money. Thus private law of money deals in particular with the nature and the functions of money, the way it is dealt with in currency law, the law of cash and debts as well as the relationship between monetary value and debt. These are examined in light of the leitmotifs of dematerialization, Europeanization and depreciation.

Kumpan, Christoph

## Der Interessenkonflikt im Deutschen Privatrecht

### Eine Untersuchung zur Fremdinteressenwahrung und Unabhängigkeit

Volume 183  
2014. XLV, 700 pages.

ISBN 9783161530524  
cloth 184,00 €

ISBN 9783161530555  
eBook PDF 184,00 €

Christoph Kumpan analyses legal strategies to address conflicts of interest which are a fundamental and pervasive issue of the modern service-oriented society. He carves out core rules which settle around the fiduciary duty of loyalty and the concept of independence and develops a systematic regulatory approach to conflicts of interest.

Arnold, Stefan

## Vertrag und Verteilung

### Die Bedeutung der *iustitia distributiva* im Vertragsrecht

Volume 182  
2014. XX, 489 pages.

ISBN 9783161529863  
cloth 139,00 €

ISBN 9783161530364  
eBook PDF 139,00 €

According to a paradigm of contract theory, *iustitia distributiva* (distributive justice) has almost no significance in contract law. Stefan Arnold challenges this paradigm and shows that *iustitia distributiva* pervades and influences contract law just as deeply as *iustitia commutativa*. He develops a theory of *iustitia distributiva* as a perspective of justice which goes beyond the exchange relationship of the parties to the contract and incorporates the regulatory capacity of contract law. In this way, contract law can contribute to behavior control, protection of the weak, or to the implementation of matters of public interest. Distributive Justice is flanked by the postulate of freedom of contract, which calls for autonomy and self-responsibility. The author illustrates the significance of *iustitia distributiva*, focusing, inter alia, on landlord and tenant, consumer protection, and non-discrimination.

Podszun, Rupprecht

## Wirtschaftsordnung durch Zivilgerichte

### Evolution und Legitimation der Rechtsprechung in deregulierten Branchen



Volume 181  
2014. XXI, 602 pages.

ISBN 9783161524325  
cloth 139,00 €

ISBN 9783161524783  
eBook PDF 139,00 €

How do civil law courts solve new economic conflicts? What characterizes a good court decision? And how should civil procedures be organized so that companies and consumers can enforce their claims? Rupprecht Podszun analyzes the new role of the civil courts in times in which private enforcement is strengthened.

Schroeter, Ulrich G.

## Ratings – Bonitätsbeurteilungen durch Dritte im System des Finanzmarkt-, Gesellschafts- und Vertragsrechts

Eine rechtsvergleichende Untersuchung

Volume 180  
2014. LVII, 1095 pages.

ISBN 9783161520433  
cloth 189,00 €

ISBN 9783161532832  
eBook PDF 189,00 €

The influence of rating agencies and their ratings of international financial markets is based on legal rules, but is also controlled by legal rules. Ulrich Schroeter deals with the regulation by ratings as well as the regulation of the ratings and develops innovative approaches to these in his study of comparative law.

Schmolke, Klaus Ulrich

## Grenzen der Selbstbindung im Privatrecht

Rechtspaternalismus und Verhaltensökonomik im Familien-, Gesellschafts- und Verbraucherrecht

Volume 179  
2014. LIV, 1030 pages.

ISBN 9783161519710  
cloth 184,00 €

ISBN 9783161523045  
eBook PDF 184,00 €

In spite of its liberal stance, German private law has numerous regulations aimed at protecting the contracting party from the disadvantages of his/her own decision. Based on this fact, Klaus Ulrich Schmolke traces the requirements and limits of legal paternalistic intervention in the freedom of contract and, using the insight gained from this, he develops a concept of the conditions for the justification of legal paternalism in private contractual relationships.

Rehberg, Markus

## Das Rechtfertigungsprinzip

Eine Vertragstheorie

Volume 178  
2014. XLII, 1242 pages.

ISBN 9783161519819  
cloth 244,00 €

ISBN 9783161523052  
eBook PDF 244,00 €

Classical contract theory focuses solely on the contracting parties at the tiny moment of conclusion. In reality, however, contract law organizes a highly sophisticated decision-making process, involving many participants at various times, pursuing a single aim: Each contracting party shall be legally bound only as far as is necessary to serve his or her own goals (principle of justification).

Mock, Sebastian

## Die Heilung fehlerhafter Rechtsgeschäfte



Volume 177  
2014. XLIII, 760 pages.

ISBN 9783161528460  
cloth 149,00 €

ISBN 9783161528477  
eBook PDF 149,00 €

German Civil Law provides under certain conditions the possibility to cure void legal transactions. However, there is not a single general but only a number of specific provisions in this regard. Sebastian Mock analyses these specific provisions and develops a general structure for the curing of void legal transactions.

Kreße, Bernhard

## Die Auktion als Wettbewerbsverfahren

Volume 176  
2014. XXXIII, 447 pages.

ISBN 9783161528323  
cloth 119,00 €

ISBN 9783161528453  
eBook PDF 119,00 €

The subject of this study is the character of an auction as a competitive procedure. The author deals with the legal relationships between the auctioneer of the auction house and the consignor and the bidders. Since the auctioneer plays a central role in the auction procedure, another key aspect of the study is the auctioneer's obligation of neutrality and impartiality.

Schmidt, Jessica

## Der Vertragsschluss

Ein Vergleich zwischen dem deutschen, französischen, englischen Recht und dem CESL

Volume 175  
2013. XLII, 869 pages.

ISBN 9783161528484  
cloth 159,00 €

ISBN 9783161528569  
eBook PDF 159,00 €

Jessica Schmidt analyses and compares the general rules regarding the conclusion of a contract in German, English and French law and in the draft of a Common European Sales Law (CESL). After depicting the historical developments, she analyses the most important questions and problems concerning offer and acceptance.

Koch, Raphael

## Mitwirkungsverantwortung im Zivilprozess

Ein Beitrag zum Verhältnis von Parteiherrschaft und Richtermacht, zur Wechselwirkung von materiellem Recht und Prozessrecht sowie zur Risikoverteilung und Effizienz im Zivilprozess

Volume 174  
2013. XXIII, 404 pages.

ISBN 9783161526565  
cloth 119,00 €

ISBN 9783161526572  
eBook PDF 119,00 €

In the case of an incomplete clarification of the circumstances, the court's conclusions lead to the official truth only. Referring to the findings of comparative law, Raphael Koch analyzes instruments in substantive and procedural law which can be used to eliminate information deficiencies in order to show the appropriate ways of fact-finding in civil proceedings.

Nietsch, Michael

## Freigabeverfahren

Beschlusskontrolle bei Strukturveränderungen



Volume 173  
2013. XLIV, 583 pages.

ISBN 9783161522031  
cloth 159,00 €

ISBN 9783161523038  
eBook PDF 159,00 €

Michael Nietsch examines the prerequisites and the effects of the release procedure and considers its impact on the system of the control of resolutions.

**Kolbe, Sebastian**

## Mitbestimmung und Demokratieprinzip

Volume 172  
2013. XXVII, 434 pages.

ISBN 9783161523205  
cloth 129,00 €

ISBN 9783161523700  
eBook PDF 129,00 €

Employee participation in the works council and the supervisory board is often understood as an element of democracy in the business world. Sebastian Kolbe questions this approach and does a normative comparison of codetermination with the constitutional principle of democracy.

**Schubert, Claudia**

## Die Wiedergutmachung immaterieller Schäden im Privatrecht

Volume 171  
2013. XLII, 968 pages.

ISBN 9783161507670  
cloth 184,00 €

ISBN 9783161526732  
eBook PDF 184,00 €

Claudia Schubert provides a comprehensive analysis of the compensation for non-economic damages in private law. She redefines the concept of non-economic damages, combines the individual sections in this concept, makes a proposal for a selective increase in the compensation for non-pecuniary damages and advocates an independent regulation of civil sanctions for the extension of the law of damages.

**Kern, Christoph A.**

## Typizität als Strukturprinzip des Privatrechts

### Ein Beitrag zur Standardisierung übertragbarer Güter

Volume 170  
2013. XLI, 614 pages.

ISBN 9783161517242  
cloth 139,00 €

ISBN 9783161520976  
eBook PDF 139,00 €

Legally standardized institutions dominate today's property law as well as the law of negotiable instruments (in particular bills of exchange and cheques) and the law of documents of title (e.g., bills of lading and warehouse receipts). Strict and reliable standardization is, on the other hand, almost absent in the law of securities. Insights from legal history and comparative law suggest, however, that a higher degree of standardization might be desirable regarding securities as well.

**Würdinger, Markus**

## Insolvenzanfechtung im bargeldlosen Zahlungsverkehr

### Eine insolvenzrechtsdogmatische Abhandlung zum Insolvenzanfechtungsrisiko bei Überweisungen und Lastschriften in der Insolvenz des Girokontoinhabers



Volume 169  
2012. XXIX, 468 pages.

ISBN 9783161520723  
cloth 119,00 €

ISBN 9783161521287  
eBook PDF 119,00 €

The purpose of avoidance is to bolster the insolvency mass. Markus Würdinger systematizes the categories of cases arising from transfer and direct debit transactions in case of insolvency of the current account holder, develops his own solutions and suggests some general theories of insolvency avoidance law.

Althammer, Christoph

## Streitgegenstand und Interesse

### Eine zivilprozessuale Studie zum deutschen und europäischen Streitgegenstandsbegriff

Volume 168  
2012. XXV, 813 pages.

ISBN 9783161509261  
cloth 174,00 €

ISBN 9783161522512  
eBook PDF 174,00 €

In German law, the matter in dispute is the key term for coping with problems in civil procedure. Its correct definition is difficult in practice and in theory as well. Using the concept of interests as a basis, Christoph Althammer develops an exportable model based on the German legal tradition.

Janda, Constanze

## Migranten im Sozialstaat

Volume 167  
2012. XXVII, 428 pages.

ISBN 9783161519338  
cloth 129,00 €

ISBN 9783161521614  
eBook PDF 129,00 €

The willingness of nation states to give migrants social security benefits is an important indicator of the openness of a supportive community. Constanze Janda studies the relevant factors in German social law and advocates granting social security as a human right.

Zech, Herbert

## Information als Schutzgegenstand

Volume 166  
2012. XXV, 488 pages.

ISBN 9783161521621  
eBook PDF

How is information protected by property rights? Information goods such as news, images, gene sequences or stored data can be classified as *semantic*, *syntactic* or *structural* information. Herbert Zech shows that information is allocated exclusively not only by intellectual property rights but also in other fields of law.

Kähler, Lorenz

## Begriff und Rechtfertigung abdingbaren Rechts

Volume 165  
2012. XIV, 480 pages.

ISBN 9783161507182  
cloth 119,00 €

ISBN 9783161520969  
eBook PDF 119,00 €

What are default rules? What consequences do they have and how can one distinguish them from mandatory rules? These questions are at the core of Lorenz Kähler's book that casts into doubt the previous models which tried to explain these rules by the hypothetical will of the parties, by the order of the legal system or by the efficiency of the contract.



Hölzle, Gerrit

## Verstrickung durch Desinformation

Eine rechtsdogmatische Auseinandersetzung auf Grundlage einer ökonomischen Analyse im Recht

Volume 164  
2012. XXIV, 641 pages.

ISBN 9783161509377  
cloth 159,00 €

ISBN 9783161520167  
eBook PDF 159,00 €

Gerrit Hölzle provides the first integrated economic-legal analysis of the new institutions of the modernized law of obligation. In doing so, he develops a system for the application of economic topics in the law, a system which is integrated into the interpretive canon of legal dogmatics. The basis for demonstrating the application of the system developed by the author is the law of sale and purchase agreements with a particular focus on information asymmetry.

Tröger, Tobias

## Arbeitsteilung und Vertrag

Verantwortlichkeit für das Fehlverhalten Dritter in Vertragsbeziehungen

Volume 163  
2012. XXXI, 636 pages.

ISBN 9783161509247  
cloth 159,00 €

ISBN 9783161520860  
eBook PDF 159,00 €

The sophisticated division of labor typical for highly developed economies represents a challenge for private law systems that evolved over centuries. The historical, comparative and economic deliberations of Tröger's analysis supply a normative foundation that can guide both, the adjudication under current German law and the development of an emerging European private law.

Binder, Jens-Hinrich

## Regulierungsinstrumente und Regulierungsstrategien im Kapitalgesellschaftsrecht

Volume 162  
2012. XXXI, 623 pages.

ISBN 9783161508486  
cloth 159,00 €

ISBN 9783161520853  
eBook PDF 159,00 €

Jens-Hinrich Binder presents studies in the theory of regulation of corporations. He examines the various instruments and methods with which lawmakers can and actually do regulate problems with financial relations between corporations and their equity and debt suppliers. Integrating the perspectives of law and economics, legal theory and comparative law, the author discusses the functional characteristics inherent in different regulatory instruments.

McGuire, Mary-Rose

## Die Lizenz

Eine Einordnung in die Systemzusammenhänge des BGB und des Zivilprozessrechts

Volume 161  
2012. XIX, 802 pages.

ISBN 9783161504259  
cloth 174,00 €

ISBN 9783161518782  
eBook PDF 174,00 €

The goal pursued by Mary-Rose McGuire is to reintegrate the license as the most important form of exploitation of intellectual property rights into the system of private law. The license is seen as a reified contractual right, the licensing agreement is a unitary concept modelled after the specific contracts of the German Civil Code.

Leuschner, Lars

## Das Konzernrecht des Vereins

Volume 160  
2011. XXVII, 441 pages.

ISBN 9783161508271  
cloth 129,00 €

ISBN 9783161517600  
eBook PDF 129,00 €

Much like corporations, associations (Vereine) are often integrated into groups of enterprises. The study deals with the issues raised by such integration, examining associations in their role as a controlling entity as well as in their role as a controlled entity.

Möslein, Florian

## Dispositives Recht

### Zwecke, Strukturen und Methoden

Volume 159  
2011. XX, 640 pages.

ISBN 9783161508912  
cloth 144,00 €

ISBN 9783161517594  
eBook PDF 144,00 €

Default rules supplement incomplete contracts, and they serve as a model concept (»Leitbild«). While these two functions are well-known, Florian Möslein offers a much more multifaceted picture of this regulatory instrument. Inspired by governance research, he presents new insights into the peculiarities of codified default rules, describes the way they function and shows that their significance as an innovative regulatory instrument in private law has been underestimated so far.

Tamm, Marina

## Verbraucherschutzrecht

### Europäisierung und Materialisierung des deutschen Zivilrechts und die Herausbildung eines Verbraucherschutzprinzips

Volume 158  
2011. XXIV, 1078 pages.

ISBN 9783161508806  
cloth 209,00 €

ISBN 9783161517587  
eBook PDF 209,00 €

At times we are faced with the question of »the law behind the law,« that is to say the question of legalities connected by a multitude of associated norms. It is precisely those very diverse regulations in consumer protection law which raise this question. Marina Tamm deals with this issue and presents German consumer protection law in a form which is comprehensible and interesting to the layperson and the expert.

Madaus, Stephan

## Der Insolvenzplan

### Von seiner dogmatischen Deutung als Vertrag und seiner Fortentwicklung in eine Bestätigungsinsolvenz

Volume 157  
2011. XXIX, 675 pages.

ISBN 9783161507281  
cloth 149,00 €

ISBN 9783161512346  
eBook PDF 149,00 €

It is in times of crisis that many people avail themselves of insolvency law; nevertheless these people eschew a company's reorganization based on an insolvency plan. Stephan Madaus develops a new type of planning procedure which as a pre-voted insolvency would make it possible to reorganize a company in a short and predictable insolvency procedure.

Brinkmann, Moritz

## Kreditsicherheiten an beweglichen Sachen und Forderungen

Eine materiell-, insolvenz- und kollisionsrechtliche Studie des Rechts der Mobiliarsicherheiten vor dem Hintergrund internationaler und europäischer Entwicklungen

Volume 156  
2011. XXV, 555 pages.

ISBN 9783161503795  
cloth 149,00 €

ISBN 9783161512339  
eBook PDF 149,00 €

The law of secured transactions is particularly significant in times when it is becoming more difficult for companies to obtain credit. Moritz Brinkmann studies the extent to which German law is able to meet the challenges it is facing and describes alternative models which exist on a national and a European level.

Maultzsch, Felix

## Streitentscheidung und Normbildung durch den Zivilprozess

Eine rechtsvergleichende Untersuchung zum deutschen, englischen und US-amerikanischen Recht

Volume 155  
2010. XXV, 492 pages.

ISBN 9783161505386  
cloth 119,00 €

ISBN 9783161512322  
eBook PDF 119,00 €

What is the relationship between the dispute settlement referring to one specific case and the law-making function in the decision-making process of the appellate courts? Felix Maultzsch looks into this question in a comparative study of German, English and US law.

Thomas, Stefan

## Die Haftungsfreistellung von Organmitgliedern

Bürgerlichrechtliche, gesellschaftsrechtliche und versicherungsrechtliche Grundlagen der Freistellung und der Versicherung von organschaftlichen Haftungsrisiken im Kapitalgesellschaftsrecht

Volume 154  
2010. XXXIV, 581 pages.

ISBN 9783161512315  
eBook PDF 139,00 €

Stefan Thomas develops general principles for the assessment of insurance for executives and related non-insurance measures, also taking into account new legislative acts such as the amended insurance contract law and the new Act on the Appropriateness of Management Board Compensation.

Stürner, Michael

## Der Grundsatz der Verhältnismäßigkeit im Schuldvertragsrecht

Zur Dogmatik einer privatrechtsimmanenten Begrenzung von vertraglichen Rechten und Pflichten

Volume 153  
2010. XXV, 507 pages.

ISBN 9783161502736  
cloth 139,00 €

ISBN 9783161512308  
eBook PDF 139,00 €

The principle of proportionality is a general legal principle which also applies to private law. On a comparative basis Michael Stürner analyses the structure of the proportionality principle and shows its significance for the law of contract.

Bergmann, Andreas

## Die Geschäftsführung ohne Auftrag als Subordinationsverhältnis

### Die Rechtsinstitute der *negotiorum gestio* in subordinationsrechtlicher Betrachtungsweise

Volume 152  
2010. XXII, 505 pages.

ISBN 9783161503290  
cloth 119,00 €

ISBN 9783161512292  
eBook PDF 119,00 €

Three legal institutions are concealed behind the standard heading *negotiorum gestio* (benevolent intervention in another's affairs), all of which could scarcely differ more in the nature of their interests. In spite of tentative approaches of the glossators this structural trichotomy of the law of *negotiorum gestio* has not been seen up to now. Instead of this, there was an obsession with the standard concept of the objective affairs of another which evens out the existing inconsistencies and enforces inappropriate values of the law of unjustified enrichment in the law of *negotiorum gestio*. This has resulted in the current crisis in *negotiorum gestio*, in which the Anglo-American model is increasingly being used to demand the abolition of the *negotiorum gestio* as an independent institution. Andreas Bergmann counters with a new concept for the benevolent intervention in another's affairs as an independent legal institution.

Meier, Sonja

## Gesamtschulden

### Entstehung und Regress in historischer und vergleichender Perspektive

Volume 151  
2010. XX, 1311 pages.

ISBN 9783161504433  
cloth 219,00 €

ISBN 9783161512285  
eBook PDF 219,00 €

The author presents a critical examination of the modern German law of joint and several liability against the background of Roman law, the *ius commune*, other continental European laws and the European unification projects.

Klimke, Dominik

## Die Vertragsübernahme

Volume 150  
2010. XXVI, 433 pages.

ISBN 9783161501548  
cloth 119,00 €

ISBN 9783161512278  
eBook PDF 119,00 €

Contract assumptions, i.e. the substitution of one contracting party in a legal transaction, are often practiced for example in landlord and tenant law and loan contracts. Dominik Klimke analyzes and systematizes the complex legal relationship among those concerned. Which method of concluding the contract is available to the contracting parties – a trilateral contract or a bilateral assumption agreement with the consent of the third party concerned? Which claims and rights or obligations are included in the contract? Is there an underlying transaction, and if so how can this be characterized? Do consumer protection standards which apply directly to the new contract also have to be applied to the assumption of the contract? What consequences do problems in the relationship between two contracting parties have for the third party? What is the procedural impact of the assumption? In answering these questions, the author provides contrasting and partially new solutions.

Bechtold, Stefan

## Die Grenzen zwingenden Vertragsrechts

### Ein rechtsökonomischer Beitrag zu einer Rechtsetzungslehre des Privatrechts

Volume 149  
2010. XV, 425 pages.

ISBN 9783161501555  
cloth 129,00 €

ISBN 9783161512261  
eBook PDF

Legislators are increasingly restricting the contractual freedom of the contracting parties. Stefan Bechtold analyzes examples from contract law, consumer protection law as well as corporate and securities law in which mandatory contract law has failed as a regulatory instrument. He relies extensively on insights from standard and behavioral law and economics, and develops a functional theory of lawmaking which assesses the advantages and disadvantages of different regulatory instruments in civil law. In addition, the author analyzes the extent to which economic and behavioral insights can be integrated into legal research. Thus the book not only deals with the limits of mandatory contract law, but also with the limits of social science research methods.

Hellwege, Phillip

## Allgemeine Geschäftsbedingungen, einseitig gestellte Vertragsbedingungen und die allgemeine Rechtsgeschäftslehre

Volume 148  
2010. XXVIII, 677 pages.

ISBN 9783161512254  
eBook PDF 134,00 €

According to orthodox German writing, standard contract terms came into use in the 19th century. The legal profession, however, only reacted in the 20th century by developing special rules addressing the problems following the use of standard contract terms, especially rules on their incorporation into the contract, their interpretation and their fairness control. These rules are looked upon as products of 20th century legal development. Phillip Hellwege traces these rules back into the 19th century. His historical analysis raises a number of questions: Is there a need for special rules on the incorporation of standard contract terms? And should the fairness control be restricted to standard contract terms? After a comparative overview, Hellwege tries to answer these and other questions. He thereby gives a critical account of the modern German law regarding standard contract terms.

Alexander, Christian

## Schadensersatz und Abschöpfung im Lauterkeits- und Kartellrecht

### Privatrechtliche Sanktionsinstrumente zum Schutz individueller und überindividueller Interessen im Wettbewerb

Volume 147  
2010. XXXVIII, 769 pages.

ISBN 9783161501302  
cloth 144,00 €

ISBN 9783161512247  
eBook PDF 144,00 €

Claims for damages and skimming off are some of the sanctions in the law against unfair competition and in the law against restraint of competition. Christian Alexander studies the changes which both branches of the law are undergoing, changes which are based mainly on the influences of Community law. The fundamental changes apply mainly to sanctions in private law. The intention is to strengthen and expand private law enforcement by market players, and in doing so to allocate a key role to claims for damages and skimming off. The author shows that the definition and application of these claims is influenced by a multidimensional synergy of individual and supra-individual interests and integrates these into the structures of private law. In doing so, he also deals with the basic principles of Community law and constitutional law.

Hähnchen, Susanne

## Obliegenheiten und Nebenpflichten

### Eine Untersuchung dieser besonderen Verhaltensanforderungen im Privatversicherungsrecht und im allgemeinen Zivilrecht unter besonderer Berücksichtigung der Dogmengeschichte

Volume 146  
2010. XXI, 351 pages.

ISBN 9783161496400  
cloth 114,00 €

ISBN 9783161512230  
eBook PDF 114,00 €

Diverse standards of conduct are imposed by the German term *Obliegenheiten*. According to the current prevailing opinion, these are not »real« legal duties, but rather those which have less legal compulsion, which are prerequisites for maintaining the law in one's own interest or liability for fault against one's own interests. As a result, the provisions of the general law of obligations do not apply. The dogmatic classification of *Obliegenheiten* in the private law system of duties is however unclear. They developed into a special feature in German law at a time when the difference in the relationship between primary duties and collateral duties had not yet been established conclusively. Susanne Hähnchen studies the functions of the individual elements of the legal norm and of the various interests concerned and in doing so reaches a differentiating conclusion.

Lehmann, Matthias

## Finanzinstrumente

### Vom Wertpapier- und Sachenrecht zum Recht der unkörperlichen Vermögensgegenstände

Volume 145  
2009. XXXII, 558 pages.

ISBN 9783161512223  
eBook PDF 149,00 €

The dematerialization of securities has been gaining ground all over the world. One of the most notable exceptions is Germany, where securities are still required to be evidenced by documents. Matthias Lehmann compares the situation under German law with that of other jurisdictions, in particular the U.S., the U.K., France, Italy, Spain and Switzerland. He includes a taxonomy of financial innovations such as asset-backed securities, swaps or credit derivatives. The author claims that the legal categories used so far for these and other financial products do not square with economic reality. Against this backdrop, he develops a new concept of registered, incorporeal property rights, the so-called financial instruments. He outlines rules for their transfer and use as a security, and deals with conflict-of-laws and insolvency issues. For non-German readers, the book is of special interest because it contains a complete theory of financial instruments, a notion used in various international and European texts.

Stieper, Malte

## Rechtfertigung, Rechtsnatur und Disponibilität der Schranken des Urheberrechts

Volume 144  
2009. XIX, 584 pages.

ISBN 9783161501777  
cloth 149,00 €

ISBN 9783161512216  
eBook PDF 149,00 €

Copyright strikes a delicate balance between the interests of rightholders in the exploitation of their works, and society's competing interest in the free flow of information. This balance maintained by the limitations on copyright is at stake. The use of digital technology allows rightholders to enforce contractual terms restricting even legal uses of copyrighted works. After exploring the ethical and economic justification of copyright, Malte Stieper analyzes the extent to which copyright limitations can be overridden by contract and technological protection measures. Limits set by competition law and general contract law are taken into account, as is the overreaching legal protection against the circumvention of technological measures by the EU Information Society Directive.

Klöhn, Lars

## Das System der aktien- und umwandlungsrechtlichen Abfindungsansprüche

Volume 143  
2009. XXV, 478 pages.

ISBN 9783161500336  
cloth 134,00 €

ISBN 9783161512209  
eBook PDF 134,00 €

In a stock corporation, majority shareholders are allowed to make decisions against the will of the other shareholders. In most cases, minority shareholders have to accept these decisions, in some cases they can exit the corporation against reasonable compensation (§§ 305, 320b, 327a Stock Corporation Act, 29, 122i, 207 Company Transformation Act, §§ 7, 9, 12 Societas Europaea Act, § 39a Takeover Act). Lars Klöhn attempts to analyze the »inner system« of these norms, thus showing and attaining its consistency and its unity. His study is not confined to German stock corporation law but encompasses European law as well as German constitutional law. Its main focus is the dogmatic analysis of the written law, supplemented by a variety of law-and-economics-considerations.

Weller, Marc-Philippe

## Die Vertragstreue

### Vertragsbindung – Naturalerfüllungsgrundsatz – Leistungstreue

Volume 142  
2009. XXXI, 633 pages.

ISBN 9783161512193  
eBook PDF 159,00 €

Under German law, the sanctity of contracts (*pacta sunt servanda*) consists of three elements: the binding force of contract, the principle of specific performance and the principle of good faith. Marc-Philippe Weller analyzes these elements and compares them to the sanctity of contracts in common law. The sanctity of contracts does not benefit the creditor alone; it can also benefit the debtor. One of the theories advocated by the author is that according to German law the debtor has an (unenforceable) right to perform the contract specifically. The actionability of the creditor's primary right to specific performance in the German Civil Code can be traced back to Savigny and Windscheid. Thus the structure of claims under the German Civil Code differs from the structure of claims in common law, where a difference is made between the (non-actionable) primary right to performance and the (actionable) remedy of specific performance. This difference in the structure of claims explains some important differences in the design of the contractual legal framework in common law systems and in civil law systems as well.

Wilhelmi, Rüdiger

## Risikoschutz durch Privatrecht

### Eine Untersuchung zur negatorischen und deliktischen Haftung unter besonderer Berücksichtigung von Umweltschäden

Volume 141  
2009. XVII, 430 pages.

ISBN 9783161497469  
cloth 114,00 €

ISBN 9783161512186  
eBook PDF 114,00 €

Human conduct normally entails risks for others. The law provides several remedies to balance freedom of action and protection against risks. Rüdiger Wilhelmi studies the *actio negatoria*, which allows the restoration of infringements so as to prevent further damage and can also serve as a basis for prohibitory injunctions. He also looks at tort law, which awards damages for pain and loss already suffered. He shows how they are able to protect individual freedom by granting rights, while at the same time taking the public interest, for example regarding protection of the environment, into account. The author also explains the criteria for finding a duty of care. This duty is a prerequisite not only for a claim to damages under tort law but also for mandatory or prohibitory injunctions under the *actio negatoria*. The notion of risk is thus a core element of both tort law and the *actio negatoria*.

Kling, Michael

## Sprachrisiken im Privatrechtsverkehr

### Die wertende Verteilung sprachenbedingter Verständnisrisiken im Vertragsrecht

Volume 140  
2008. XXXI, 694 pages.

ISBN 9783161497773  
cloth 149,00 €

ISBN 9783161512179  
eBook PDF 149,00 €

The question of what is valid when private persons conclude a contract and misunderstandings arise due to a language problem has not been answered satisfactorily up to now. In the past, there have been many attempts to find simple, overall solutions to the problem of the so-called »language risk.« However, none of these solutions have been satisfactory. The question of how the problems related to the lack of understanding a language can be assigned requires solutions which make the necessary distinctions within the scope of the applicable dogmatics of German civil law. Michael Kling deals with this problem and provides a complete description of the most important language issues in German contract law, including the preliminary questions in Community law and international private law and the basis in the legal system.

Reymann, Christoph

## Das Sonderprivatrecht der Handels- und Verbraucherverträge

### Einheit, Freiheit und Gleichheit im Privatrecht

Volume 139  
2009. XXXVIII, 570 pages.

ISBN 9783161498657  
cloth 134,00 €

ISBN 9783161512162  
eBook PDF 134,00 €

Special private laws are characteristic of the German legal system. They conflict with the uniformity of the private legal order and the idea of equal individual freedom. Christoph Reymann analyzes the legitimacy of special private laws, using consumer and commercial law as examples. He illustrates the historical, terminological, systematic and methodological fundamentals of commercial and consumer law and examines the influence of the basic rights of the constitution and the market freedoms of the EU on their legitimacy. Based on the fundamental principles of equality and freedom, he concludes that certain guiding principles of the legal order which reflect either the attributes of the average consumer or the capabilities of the average businessman can serve as a rule to legitimate and control the separation of consumer law and commercial law from classic civil law.

Peukert, Alexander

## Güterzuordnung als Rechtsprinzip

Social, economic and technological developments have resulted in the creation of new goods such as electricity, merchandising of celebrities, or Internet domains. As long as the legislator has not made a specific decision about whom to grant exclusive rights for such new goods, some people will claim to be entitled to use and market them exclusively, whereas others will invoke their freedom of action to lawfully benefit from the goods. Alexander Peukert discusses which approach is valid under German law. Are the courts entitled to recognize new exclusive rights? Relying on a thorough analysis of private, procedural and constitutional law, the author develops a general theory of German property law. He concludes his study with a critique of Locke's assumption that property is liberty.

Volume 138  
2008. XXI, 984 pages.

ISBN 9783161497247  
cloth 204,00 €

ISBN 9783161512155  
eBook PDF 204,00 €

Servatius, Wolfgang

## Gläubigereinfluss durch Covenants

### Hybride Finanzierungsinstrumente im Spannungsfeld von Fremd- und Eigenfinanzierung

Wolfgang Servatius examines the legal impact of a company's creditors who are increasingly becoming part of good corporate governance in Germany. Their decisions on how management should behave and the contractual protection in covenants of loan agreements may be seen as a market-oriented chance to avoid a company's insolvency. In respect to this outside influence of creditors on companies, the author favors a liberal approach as long as a corresponding responsibility can be developed. The basis for such lender control liability can be seen in an extensive application of the German legal rules on the recharacterization of loans as equity.

Volume 137  
2008. XXVIII, 657 pages.

ISBN 9783161497391  
cloth 159,00 €

ISBN 9783161512148  
eBook PDF 159,00 €

Schaub, Renate

## Sponsoring und andere Verträge zur Förderung überindividueller Zwecke

Sponsorship as an essential element of funding cultural or social activities or sports does not fit in very well with the system of German contract law. Renate Schaub analyzes sponsorship contracts and other contracts which serve a purpose beyond the contract itself, develops rules to deal with such contracts and also considers the wider legal context of these transactions, for example in competition and intellectual property law. The sponsorship agreement is characterized as a legal transaction in which the person or association sponsored performs a service of communication and in return for this receives financing or other support.

Volume 136  
2008. XXVIII, 820 pages.

ISBN 9783161496394  
cloth 149,00 €

ISBN 9783161512131  
eBook PDF 149,00 €

Gödicke, Patrick

## Formularerklärungen in der Medizin

### Rechtliche Kontrollmaßstäbe für Einwilligungen in der medizinischen Heilbehandlung und Forschung

Volume 135  
2008. XXIII, 545 pages.

ISBN 9783161496165  
cloth 149,00 €

ISBN 9783161512124  
eBook PDF 149,00 €

Signed informed consent forms have no material significance, do however enable the first decisive evidence of an effective consent. In order to make up for this incongruity, Patrick Gödicke analyzes the specific potential dangers of medical consent forms and looks into appropriate standards for control. In doing so, he uses the model of informed consent in tort law, on which he elaborates for the reformed law pertaining to interference with the performance of an obligation. In connection with the German civil code, he establishes a rule for medical transparency, which includes guidelines from pharmaceutical law and which applies equally to standard clinical treatment and medical research. According to this rule, the transparency of a form is crucial for its value as evidence, and it is this transparency only which makes it possible to lower the oral standards for the process of providing information.

Schulze, Götz

## Die Naturalobligation

### Rechtsfigur und Instrument des Rechtsverkehrs einst und heute – zugleich Grundlegung einer zivilrechtlichen Forderungslehre

Volume 134  
2008. XXIX, 754 pages.

ISBN 9783161494079  
cloth 174,00 €

ISBN 9783161512117  
eBook PDF 174,00 €

Based on *obligatio naturalis*, which originated in classic Roman law, Götz Schulze describes the historical development of the imperfect obligation in theory and in practice and describes how it was included in European codifications. Thus the natural obligation can be seen as an obligatory claim for benefits, which cannot however be enforced by legal means. It has been given recognition in continental law, in particular in cases of a statute of limitations, games of chance and betting as well as moral duties. Further applications of unenforceable duties can be covered by the natural obligation. The natural obligation is suitable as a legal basis for gentlemen's agreements, since this makes it possible to place restrictions on the envisaged obligations which have no binding force.

Wielsch, Dan

## Zugangsregeln

### Die Rechtsverfassung der Wissensteilung

Volume 133  
2008. X, 303 pages.

ISBN 9783161495809  
cloth 119,00 €

ISBN 9783161512100  
eBook PDF 119,00 €

In order to preserve the conditions for decentralized innovation IP rights have to be complemented by rules of access. Such rules have to be stated with reference to social communication systems in the context of which the protected works are created. Dan Wielsch links insights of economic analysis of IP with general systems theory and thereby provides with a concept of IP law that takes seriously the collective character of meaning and knowledge intellectual works build on. With the help of Hayeks theory of knowledge markets, firms, and networks are viewed as knowledge generating institutions in each of which epistemic capacity and selection authority are related in a specific way. Examples taken from EC competition law, open source licenses, and the Internet demonstrate how IP rights are reconfigured by competition-/network-/media-specific rules of access.

Geibel, Stefan J.

## Treuhandrecht als Gesellschaftsrecht

Volume 132  
2008. XXXI, 522 pages.

ISBN 9783161495748  
cloth 159,00 €

ISBN 9783161512094  
eBook PDF 159,00 €

Trust shareholdings, real property trusts, accounts held on trust, property management, collection, security pools and double trusts, syndicate, bond and refinancing trusts, non-incorporated foundations: the problems of finding a legal classification and substantiation for any of these administrative trust applications under German law have still not been solved by the results obtained in legal practice. Stefan J. Geibel describes the administrative trust as an atypical private company, thus making it possible to assume that a separate trust fund is created in accordance with the principles of the German *Gesamthand*. The author also answers questions in procedural and insolvency law, commercial law, corporate law and the law concerning groups of companies and enables the distinction under German law between administrative trusts and security trusts as well as the transposition of English or American trusts into German law.



Haertlein, Lutz

## Exekutionsintervention und Haftung

### Haftung wegen unbegründeter Geltendmachung von Drittrechten in der Zwangsvollstreckung

Volume 131  
2008. XXXIX, 612 pages.

ISBN 9783161494048  
cloth 149,00 €

ISBN 9783161512087  
eBook PDF 149,00 €

In the individual compulsory execution, third party rights are often affected, since the law of execution contains scarcely any provisions which could prevent access to objects which do not belong to the debtor. This means that the third party concerned has to take action against the compulsory execution. Intervention in the execution makes it possible to stop or to cancel the execution as soon as third party rights are claimed. Lutz Haertlein deals with the liability of the intervening party in relation to the judgment creditor if the intervention is unfounded. He examines the liability of the intervening party's provision of collateral, the risk liability due to procedural causes and the liability privileges if government legal procedures are used as well as the compensation for unjustified enrichment in a legal relationship in which the judgment creditor, the judgment debtor and the intervening party are involved.

Kroppenberg, Inge

## Privatautonomie von Todes wegen

### Verfassungs- und zivilrechtliche Grundlagen der Testierfreiheit im Vergleich zur Vertragsfreiheit unter Lebenden

Volume 130  
2008. XVI, 410 pages.

ISBN 9783161491900  
cloth 119,00 €

ISBN 9783161512070  
eBook PDF 119,00 €

Inge Kroppenberg shows that freedom of testation has been both historically and dogmatically influenced by elements of freedom of contract *inter vivos*. Although freedom of testation has never been denied as an independent principle of the German civil code, it has often been interpreted as a mere variation of freedom of contract and therefore has been influenced decisively by the notions of the law of the living. This applies to general concepts, such as for example that of the »control by the testator from the grave«, but also to individual dogmatic issues. The author reconstructs freedom of testation as a truly hereditary principle, thus showing that it is the second cornerstone of German civil law apart from freedom of contract.

Helms, Tobias

## Gewinnherausgabe als haftungsrechtliches Problem

Volume 129  
2007. XIII, 526 pages.

ISBN 9783161490767  
cloth 129,00 €

ISBN 9783161579578  
eBook PDF 129,00 €

Present German liability law is not based on a coherent system of disgorgement of profits. If disgorgement of profits is allowed, there will be a danger that the injured party receives more than he would have if the matter had been allowed to take its course without disruption. If however disgorgement of profits is rejected, the lawbreaker will keep the profits which he would not have made without the breach of the law. Tobias Helms examines all the countervailing measures in German liability law and shows that the disgorgement of profits does not really aim at preventing violations of the law in general; it actually constitutes a sanction for a specific injustice. The author describes the criteria on which the granting of disgorgement awards under current German law should really depend.

Lakkis, Panajotta

## Gestaltungsakte im internationalen Rechtsverkehr

### Zur prozessualen Bindung an in- und ausländische privatrechtsgestaltende Urteile und andere privatrechtsgestaltende Hoheitsakte

Volume 128  
2007. XIV, 505 pages.

ISBN 9783161490774  
cloth 149,00 €

ISBN 9783161512056  
eBook PDF 149,00 €

Panajotta Lakkis refutes the assumption that there is a procedural effect resulting from modification of a legal right or status which applies *inter omnes*. She shows that there is no independent procedural effect of this modification; the only significant procedural obligatory effect, of judgments modifying a legal right or status as well, is substantial *res judicata*. This also means that the subjective limits to a commitment to a judgment which modifies a legal right or status are only determined by substantial *res judicata*. In the second part of the book, the author describes the problems in international legal relations, and concludes her work with a detailed summary which enables the reader to familiarize herself or himself with the author's theory in a condensed form before being given the detailed description.



Mohr Siebeck

Jus Privatum.  
Beiträge zum Privatrecht  
Last updated: 25/04/2024

Page 40 of 65

Gebauer, Martin

## Hypothetische Kausalität und Haftungsgrund

Volume 127  
2007. XXII, 432 pages.

ISBN 9783161512049  
eBook PDF 149,00 €

Should the defendant be relieved of liability for damages if some other hypothetical act or event would have led to the same result which occurred as a consequence of his actual conduct? 19th century German scholars established that damages should be assessed on the basis of the difference principle, which is in favor of relieving the defendant of liability in such a case. Since that time, the unsolved problem of hypothetical causation has been treated as a general damage issue rather than as a question of the reason for liability. In this work, Martin Gebauer develops a new approach. After outlining the various facets of this issue, which can be traced back to antiquity and were ignored for 150 years, he develops a solution which differentiates according to the specific reasons for liability. Some of these demand that the original right or obligation resulting from the action for damages be maintained, regardless of the hypothetical causes, and others allow hypothetical events to be taken into consideration.

Stamm, Jürgen

## Die Prinzipien und Grundstrukturen des Zwangsvollstreckungsrechts

### Ein Beitrag zur Rechtsvereinheitlichung auf europäischer Ebene

Volume 126  
2007. XXXVIII, 703 pages.

ISBN 9783161492464  
cloth 174,00 €

ISBN 9783161512032  
eBook PDF 174,00 €

Jürgen Stamm traces enforcement law with its supposed peculiarities back to the familiar structures of civil and public law. The impetus for a modernization of German enforcement law along the lines of unification of the law in Europe is provided by an examination of the enforcement systems in neighboring European countries. The author's objective is the dogmatic assessment of the principles and basic structures of German enforcement law as well as the creation of a unified model for a future European enforcement law.

Schürnbrand, Jan

## Organschaft im Recht der privaten Verbände

Volume 125  
2007. XXI, 476 pages.

ISBN 9783161494673  
cloth 139,00 €

ISBN 9783161512025  
eBook PDF 139,00 €

It is only with the help of their organs that artificial persons are able to take part in legal relations in the same way that natural persons can. Thus the organ is one of the main concepts of company law. In this work, Jan Schürnbrand deals with this subject in detail and develops general theories about the organ. To begin with, he focuses on the question of who the organ of the artificial person actually is. He then discusses the practical problems, such as for example which rules apply when somebody is working for several artificial persons at the same time. Can organs sue each other in a court of law? What happens with the organs in the case of a change of corporate form?

Schinkels, Boris

## Normsatzstruktur des IPR

### Zur rechtstheoretischen Einordnung des Befehls der »Anwendung« ausländischem Recht entnommener Normsätze im autonomen deutschen IPR

Volume 124  
2007. XX, 268 pages.

ISBN 9783161492990  
cloth 99,00 €

ISBN 9783161512018  
eBook PDF 99,00 €

According to the traditional view, a German choice of law rule that orders the judge to apply foreign law does not result in the making of German law. Instead, foreign law is believed to be merely »applicable« and not to be valid German law. In this work, Boris Schinkels shows that, contrary to the traditional view, it is impossible to distinguish between »binding applicability« and »validity.« In accordance with legal theory and Kelsenian thinking, he concludes that by ordering the application of foreign law the German choice of law rules do in fact produce domestic German law. Based on this, Schinkels develops a new theoretical classification which distinguishes between choice of law rules that refer directly to foreign private law and those choice of law rules that take into account foreign choice of law rules as well (renvoi). He comes to the conclusion that due to the lack of a statutory basis for law-making the latter is incompatible with the German constitution.

Fischer, Christian

## Topoi verdeckter Rechtsfortbildungen im Zivilrecht

Volume 123  
2007. XXVI, 611 pages.

ISBN 9783161492723  
cloth 159,00 €

ISBN 9783161512001  
eBook PDF 159,00 €

Nowadays it is generally agreed that the development of the law is one of the legitimate functions of court rulings in civil law. The change of paradigms in the theory of determining the law does not however have an equivalent in the reasons given for court rulings. Although the civil courts do develop the law, in doing so they regularly use traditional reasons for their rulings which give the impression that they are merely interpreting and applying the laws. Christian Fischer studies these topics of hidden legal developments in an overview from the perspective of the law of civil procedure and legal methodology. After analyzing the concept of legal development, the author uses the history of court rulings and the judicial decisions of the highest civil courts to show the continuing practical significance of hidden development of the law.

Ackermann, Thomas

## Der Schutz des negativen Interesses

### Zur Verknüpfung von Selbstbindung und Sanktion im Privatrecht

Volume 122  
2007. XXII, 581 pages.

ISBN 9783161511998  
eBook PDF 134,00 €

In German civil law, the protection of the reliance interest has traditionally been regarded as a matter of non-contractual liability. Since *Fuller's* and *Perdue's* seminal article on the reliance interest in contract damages, the common law view has been different. Thomas Ackermann argues that a shift of perspective is required in Germany as well, in order to understand the system of obligations in a way that corresponds to the philosophical and economic foundations of contract law in a modern society.

Tillmanns, Kerstin

## Strukturfragen des Dienstvertrages

### Leistungsstörungen im freien Dienstvertrag und im Arbeitsvertrag

Volume 121  
2007. XVIII, 493 pages.

ISBN 9783161487392  
cloth 144,00 €

ISBN 9783161511981  
eBook PDF 144,00 €

Although contracts for freelance services and contracts of employment are two of the most important types of contract in legal practice, the abstract substance of the duty of the party obliged to perform the services is seldom questioned. Kerstin Tillmanns characterizes both types of contracts for services as contracts of controlled performance. In doing so, she differentiates between these contracts and contracts for work and services, in which the party undertakes to bring about a particular result, and shows the boundary of the admissibility of success-related remuneration components in the contract for services. She rejects attempts to adapt the substance of the duty to the criterion of average kind and quality (Section 243 Paragraph 1 of the German Civil Code), and maintains that the substance of the duty is to be determined according to the objective, individual performance of the party obliged to perform the services. If these services are not suited to the functions to be performed, this has to have an effect on the obligation of the other party.

Unberath, Hannes

## Die Vertragsverletzung

Volume 120  
2007. XVIII, 413 pages.

ISBN 9783161511974  
eBook PDF 134,00 €

Contract law is a cornerstone of a liberal legal system. In every market economy it is essential that persons are able to trade on a reliable basis for mutual benefit. This basis for cooperation is created by the principle of *pacta sunt servanda*. Whereas everyone agrees on this principle, the individual legal systems differ in regard to the consequences of a breach of contract. Hannes Unberath explores the philosophical foundations of remedies for breach of contract. In evaluating the approach of the Civil Law, especially of the reformed German law of obligations, and comparing it with that of the Common Law, the author studies how these can converge in view of projects to harmonize contract law on a European level.

Leistner, Matthias

## Richtiger Vertrag und lauterer Wettbewerb

### Eine grundlagenorientierte Studie unter besonderer Berücksichtigung der europäischen Perspektive

Volume 119  
2007. XXXIII, 1145 pages.

ISBN 9783161492280  
cloth 214,00 €

ISBN 9783161511967  
eBook PDF 214,00 €

Matthias Leistner examines the complex relationship between German and European contract law and unfair competition law. Based on the principle of equality, he develops a model which makes it possible to align legal standards in both fields of law. This reflects the process of the increasing de-individualization and institutionalization of contract law as well as the increasing significance of the protection of the contracting party as an objective of the reformed and liberalized Unfair Competition Act. The principle of equality makes it possible to make a large number of practical deductions, and thus it could set the pace for a further liberalization of unfair competition law, for the development of the doctrine of culpa in contrahendo and for a just interpretation of the new liability for information given in advertisements in the law relating to the sale of goods.

Hassemer, Michael

## Heteronomie und Relativität in Schuldverhältnissen

### Zur Haftung des Herstellers im europäischen Verbrauchsgüterkaufrecht

Volume 118  
2007. XVII, 305 pages.

ISBN 9783161491436  
cloth 119,00 €

ISBN 9783161511950  
eBook PDF 119,00 €

In numerous European countries, producers are directly liable to the consumers for material defects. The Michael Hassemer develops a model for a standard model for the European law on the sale of consumer goods. Due to the doctrine of privity, contracts basically only have an effect on the contracting parties. Michael Hassemer shows that privity is based on the self-determination of the individual: contracting parties cannot produce legal effects autonomously vis-à-vis a third party who is also self-determined. Thus the privity of obligations prohibits »heteronomous determination among equals.« The inversion of this argument is that the heteronomous law of obligations is not subject to the principle of privity. The European Consumer Sales Directive is a »positive mandatory law« and thus to a large extent of a heteronomous nature. Using this insight, the author develops a model for producers' liability in Europe.

Jacoby, Florian

## Das private Amt

Volume 117  
2007. XXXI, 635 pages.

ISBN 9783161490750  
cloth 159,00 €

ISBN 9783161511943  
eBook PDF 159,00 €

Florian Jacoby deals with the private office, such as for example guardians, custodians, administrators of an estate, boards of directors, supervisory boards, property managers or insolvency administrators. These offices have the function of institutionalizing third persons in organizations. By virtue of their offices, they have been made into representatives, institutions or parties. The author takes a look at the uniform structures of offices, which can be described using the keywords external relationship, organizational relationship and basic relationship. He shows that the institution 'office' itself can be given the position of an apersonal subject, and thus consolidates the separation of office and officeholder. It is the office only which is a permanent part of the organization concerned. The officeholder is needed only to exercise the concrete functions.

Sack, Rolf

## Das Recht am Gewerbebetrieb

### Geschichte und Dogmatik

Volume 116  
2007. XXVI, 358 pages.

ISBN 9783161492396  
cloth 129,00 €

ISBN 9783161511936  
eBook PDF 129,00 €

For more than 100 years, legal decisions in accordance with section 823 I of the German Civil Code have protected the so-called right to an established and operating business enterprise. However, for more than 40 years legal decisions have also continuously been confirming that this right is a legal element which only intervenes to fill a gap or fulfil a subsidiary function. In a detailed section dealing with legal history, Rolf Sack begins by showing that the history of the right to a business enterprise is by no means as straight and logical as it is usually deemed to be. In the section of the book which deals with dogmatics, he proves that the blanket clauses in unfair competition law and tort law provide basically the same protection of business enterprises as section 823 I of the German Civil Code if they are interpreted in accordance with their purpose of filling a gap.

Verse, Dirk A.

## Der Gleichbehandlungsgrundsatz im Recht der Kapitalgesellschaften

Volume 115  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XXIII, 622 pages.

ISBN 9783161579639  
eBook PDF 139,00 €

According to the principle of equal treatment of shareholders, each shareholder is to be treated the same as the other shareholders, e.g. in the distribution of profits, in the subscription of new shares or in the right to obtain information. For a long time now, this has been one of the basic principles of German corporate law and, since its codification in Article 42 of the EC Company Law Directive, also of European corporate law. Nevertheless, it has seldom been subjected to closer scrutiny in German legal writing in the past decades. In this work, Dirk A. Verse has succeeded in concretizing the content and the legal consequences of the equal treatment requirement. In order to do so, he makes use of the experiences of other European legal systems.

Buchner, Benedikt

## Informationelle Selbstbestimmung im Privatrecht

Volume 114  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XVIII, 343 pages.

ISBN 9783161580314  
eBook PDF 109,00 €

The significance of data protection as a central factor for trust and policy-shaping in the development of a modern information society has been generally recognized. The much lamented lack of enforcement of data protection regulations often leaves the individual unprotected against the desire for information shown by data processing institutions. Benedikt Buchner develops an independent data protection model for private law which puts an end to the unrelated juxtaposition of civil law and data protection law. He shows why it is sensible to choose an independent approach to regulating this in private law. He explains why it is preferable to have a private autonomous reconciliation of interests and how it can be ensured that the private autonomous exercise of the protection of privacy does not remain merely legal fiction.

Haar, Brigitte

## Die Personengesellschaft im Konzern

### Privatautonomie zwischen Vertrag und Organisation

Volume 113  
2006. XXIX, 616 pages.

ISBN 9783161490996  
cloth 159,00 €

ISBN 9783161579561  
eBook PDF 159,00 €

Is there anything that the organization of a corporate group can do better than a market exchange? In a subsidiary partnership a corporate partner gains a dominant influence on the business management of the partnership. Such an integration requires a universal subordination of the subsidiary in the group interest, leaving aside the individual partners' interests. However, minority and creditor protection may present an obstacle to such an alignment of interests. Brigitte Haar studies the structures which provide incentives for this protection and shows how they relate to the legal foundations of partnership law. She demonstrates that a partnership in a group is a test case for the more general question of the strained relationship between the boundaries of the legal independence and personality of an organization and its reification on the one hand and the freedom of contract of its partners on the other hand.

Bachmann, Gregor

## Private Ordnung

### Grundlagen ziviler Regelsetzung

Volume 112  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XIX, 483 pages.

ISBN 9783161580307  
eBook PDF 129,00 €

Gregor Bachmann deals with the phenomenon of private rulemaking. He explores the background of self-regulation in the constitution as well as the social sciences and presents some theories of German jurisprudence which have been developed in order to understand this phenomenon. The author identifies legitimation as the core concept on which any theory of rulemaking must be based. He describes the legal institutions of private law as instruments for the construction of a legitimate private order. He also makes suggestions for advanced legislation and drawing up contracts.

Jakob, Dominique

## Schutz der Stiftung

### Die Stiftung und ihre Rechtsverhältnisse im Widerstreit der Interessen

Volume 111  
2006. XXIX, 572 pages.

ISBN 9783161491009  
cloth 149,00 €

ISBN 9783161579516  
eBook PDF 149,00 €

The German law of foundations is undergoing a change. The traditional notion of the foundation as a legal entity is currently being modified in order to adapt this institution to modern political, social and economic needs. In this work, Dominique Jakob outlines the dogmatic structures of the foundation and the limitations of possible statutes. In doing so, he looks at the legal relationships between the various members of the foundation's structure and attempts to establish the main areas in which conflicts of interest among these members arise. He then searches for arrangements and strategies which can solve or prevent these conflicts. In addition to German law, the author also deals with the laws of Switzerland, Austria and Liechtenstein.

Survey of contents

#### 1. TEIL: SCHUTZZWECK UND SCHUTZGEGENSTAND STIFTUNG

##### 1. Kapitel: Die Stiftung als Phänomen in Gesellschaft, Wirtschaft und Recht

- A. Der traditionelle Stiftungsgedanke und seine Emanzipation – neue Anforderungen an eine alte Rechtsfigur
- B. Gedanken zum Stiftungsbegriff
- C. Zwischenresümee: Das zu schützende Stiftungskonzept

##### 2. Kapitel: Notwendigkeit des Schutzes einer Stiftung

- A. Problemstellung – Die Stiftung als Interessenkonflikt
- B. Lösungsansatz – Die Stiftung als Interessenkonkordanz

#### 2. TEIL: RECHTSVERHÄLTNISSE IM STIFTUNGSRECHT

##### 1. Kapitel: Die Stiftungsbeteiligten und ihr Verhältnis zur Stiftung

- A. Der Stifter
- B. Die Destinatäre
- C. Der Vorstand
- D. Das Zweitorgan – Der Beirat
- E. Die staatliche Aufsichtsbehörde
- F. Der übrige Rechtsverkehr
- G. Die Anfallberechtigten
- H. Die Steuerbehörde

**2. Kapitel: Die Stiftungsbeteiligten und ihr Verhältnis untereinander**

- A. Das Verhältnis des Stifters zu den übrigen Stiftungsbeteiligten
- B. Das Verhältnis der Destinatäre zu den übrigen Stiftungsbeteiligten
- C. Das Verhältnis der Stiftungsorgane zu den übrigen Stiftungsbeteiligten
- D. Das Verhältnis der Aufsichtsbehörde zu den übrigen Stiftungsbeteiligten

**3. Kapitel: Resümee und Zwischenergebnis**

**3. TEIL: INTERESSENKONFLIKTE IM STIFTUNGSRECHT UND IHRE LÖSUNGSMÖGLICHKEITEN**

**1. Kapitel: Strukturierung der Stiftungsinteressen und typische Gefährdungslagen**

- A. Interessengruppen
- B. Interessengegensätze
- C. Stiftungstypische Gefährdungslagen

**2. Kapitel: Strukturierung der Schutzmöglichkeiten und typische Stiftungsklagen**

- A. Außergerichtliche Schutzmöglichkeiten
- B. Gerichtliche Rechtsbehelfe

**3. Kapitel: Gefährdungslagen und Schutzmöglichkeiten – Zuordnung und Auswertung**

- A. Zuordnung der Schutzmöglichkeiten – Kongruenzen und Lücken
- B. Unechte Schutzlücken – Satzungsgestaltung des Stifters
- C. Echte Schutzlücken – Einschreiten des Gesetzgebers?
- D. Zwischenergebnis

**4. Kapitel: Corporate Governance im Stiftungsrecht – Foundation Governance**

- A. Materielle Regeln stiftungsrechtlicher Governance
- B. Institutioneller Ordnungsrahmen

**5. Kapitel: Der Weg zu einem geschlossenen Schutzsystem**

- A. Balance of powers und praktische Konkordanz
- B. Geschlossenes Schutzsystem durch Kohärenz der Schutzmechanismen

Sutschet, Holger

## Garantiehftung und Verschuldenshaftung im gegenseitigen Vertrag

In the literature concerning German contract law, the general opinion is that the debtor has to pay the creditor's interest only if the debtor is at fault, whereas in common law systems the debtor has to pay the interest even if there has been no negligence (strict liability). In this book, Holger Sutschet shows that these commonly-held beliefs have been oversimplified: in German law and in common law systems there is always not only a fault liability but a strict liability as well. In general, the debtor is strictly liable for the performance of the contract. Where damages however are concerned, the debtor may be strictly liable or fault liable only, depending on whether the parties have agreed upon the debtor's duty to achieve the absence of damages as a result.

Löhnig, Martin

## Treuhand

### Interessenwahrnehmung und Interessenkonflikte

When the interests of another are protected in a trust, the divergence between the ownership of the interests by the trustor and the protection of the interests by the trustee causes specific conflicts of interests which do not occur in this way in interchangeable obligations or in partnership agreements. Up to now, no one has drawn up general principles for the legal handling of conflicts of interests which go beyond the coincidences of case law in the various fields of law. In his fundamental work on German trust law, Martin Löhnig deals with this complex problem and in addition makes a contribution to the development of a 'general trust law' by presenting rules for solving conflicts which apply to all trusts or which can at least be applied randomly to certain groups of trusts.

Volume 110  
2006. XIX, 342 pages.

ISBN 9783161488443  
cloth 104,00 €

ISBN 9783161579554  
eBook PDF 104,00 €

Volume 109  
2006. XXXIX, 904 pages.

ISBN 9783161490781  
cloth 179,00 €

ISBN 9783161579547  
eBook PDF 179,00 €

Seiler, Wolfgang

## Verbraucherschutz auf elektronischen Märkten

Untersuchung zu Möglichkeiten und Grenzen eines regulativen Paradigmenwechsels im internetbezogenen Verbraucherprivatrecht

Volume 108  
2006. XXXIII, 473 pages.

ISBN 9783161488733  
cloth 139,00 €

ISBN 9783161579530  
eBook PDF 139,00 €

Today, the internet is an important marketplace for transactions of goods and services. However, e-commerce involves specific legal risks for the purchaser. The European legislator, and therefore the European member states as well, try to protect the consumers by numerous new statutes, which indeed were constructed without considering the specific economic mechanisms of the internet, the so-called network economy. Wolfgang Seiler compiles and discusses the European and German consumer protection law for the internet in the context of network economy and examines the need for amendments.

Bitter, Georg

## Rechtsträgerschaft für fremde Rechnung

Außenrecht der Verwaltungstreuhand

Volume 107  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XXIV, 550 pages.

ISBN 9783161580291  
eBook PDF 139,00 €

The limitation of the effects of trusteeships by the principle of immediacy, which has been advocated in Germany in insolvency law and enforcement law for the past 100 years, is unknown in Anglo-American law. Georg Bitter goes beyond the 100-year-old doctrine of immediacy. He develops a consistent model of trusteeship which enables a clear positioning of the trusteeship between the law of obligations and property law on the one hand and which on the other hand puts the external effects of trusteeship, which up to now had also been assessed very disparately in the various fields of law, into one system. His criterion for the delimitation of the external effects of a trusteeship can be useful to Anglo-American legal experts as well, and can contribute to a restriction of the external effects of the trust, which are still very widespread and vague, in Anglo-American law.

von Koppenfels-Spies, Katharina

## Die cessio legis

Volume 106  
2006. XXIII, 506 pages.

ISBN 9783161489891  
cloth 149,00 €

ISBN 9783161579523  
eBook PDF 149,00 €

Katharina von Koppenfels-Spies studies the assignment by operation of law in sections 774 and 1607 subsection 2 of the German Civil Code, the cessio legis in section 67 of the Insurance Contract Law as well as section 116 of the Code of Social Law, Book 10, and section 6 of the German law concerning continued payment of wages during the illness of an employee. Using an analysis of these regulations, the author deals with the impression that the recourse in cessio legis does not have a definite structure or system and that there is legislative arbitrariness and randomness in regard to the order of cessiones legis, due perhaps to the varying contexts or diverse legal regulations. She thus provides a contribution to the establishment of a structure and a system for the cessio legis and a system of recourse at the same time as well.

Survey of contents

### Erstes Kapitel: Einleitung

- A. Gegenstand und Ziel der Untersuchung
- B. Eingrenzung des Untersuchungsgegenstandes: Die behandelten cessiones legis
- C. Gang der Darstellung

### Zweites Kapitel: Dogmatische Grundlagen der Legalzession und des Legalzessionsregresses

- A. Ursprünge der cessio legis und des Legalzessionsregresses
- B. Struktur der Dreiecksbeziehung in den Fällen der Legalzession
- C. Art und Wirkung der Drittleistung in den Legalzessionskonstellationen
- D. Art des Ausgleichs in den Legalzessionskonstellationen und Abgrenzung gegenüber anderen Ausgleichswegen
- E. Funktionsweise des gesetzlichen Forderungsübergangs und Vereinbarkeit mit Grundprinzipien des Bürgerlichen Rechts
- F. Ergebnis der systematisch-dogmatischen Analyse: cessio legis als Instrument zur Behebung dreiseitiger Verteilungsstörungen

### Drittes Kapitel: Das System der cessio legis

- A. Bedeutung der »allgemeinen« Zessionsregelungen der §§ 399 ff. BGB für die cessio legis
- B. Bedeutung und Bewertung der konkreten gesetzlichen Ausgestaltung der cessio legis
- C. Reichweite und Bedeutung der cessio legis und ihrer Funktion
- D. Ergebnisse zum System der cessio legis

### Viertes Kapitel: Folgerungen aus Struktur und Funktion der cessio legis für ausgewählte Problembereiche

- A. Folgerungen für den Rückgriff in Schuldnermehrheiten ohne Ausgleichsregelung
- B. Legalzessionsregress trotz Fehlens seiner Strukturmerkmale?
- C. Systemwidrige Legalzessionen
- D. Ergebnis: Der restriktive Modellcharakter der cessio legis

#### Fünftes Kapitel: Schlussbetrachtung

- A. Voraussetzungen für die Anordnung einer cessio legis
- B. Idealtypische gesetzliche Ausgestaltung der Legalzessionsanordnungen
- C. Bewertung des Systems »cessio legis« und Bedeutung für die Rückgriffsordnung

Halfmeier, Axel

## Popularklagen im Privatrecht

### Zugleich ein Beitrag zur Theorie der Verbandsklage

Volume 105  
2006. XVI, 422 pages.

ISBN 9783161490484  
cloth 139,00 €

ISBN 9783161579509  
eBook PDF 139,00 €

Axel Halfmeier studies how the phenomena of popular action and legal action taken by an association, both of which exist in German private law, can be classified dogmatically and how they must be dealt with in procedural law. The issue here is the right of action with which an objective legal control is carried out in forms of private law. For this reason, the author gives a clear definition of the difference between popular action and legal action taken by an association and the enforcement of individual claims. He begins by dealing with the objective legal control in the form of the *actio popularis*. He then examines the current popular action in patent law and trademark law as well as legal action taken by associations, in particular in relation to consumer protection law and competition law. The author describes the common structural problems of these forms of action and provides them with a new solution on the basis of the law in force.

Füller, Jens T.

## Eigenständiges Sachenrecht?

Volume 104  
2006. XVI, 604 pages.

ISBN 9783161489938  
cloth 159,00 €

ISBN 9783161579493  
eBook PDF 159,00 €

The 3rd book of the German Civil Code, the so-called 'Sachenrecht' (property law), is unique compared to other laws. It is founded on the historical assumption that a civil right pertaining to things differs substantially from other rights. This assumption is also the root of certain principles which characterize the 3rd book. In this study, the author analyzes both the historical assumption and the development of the principles in practice in Germany. His suggestion is to simplify the law and to abandon the theory of a genuine 'Sachenrecht'.

Calliess, Graf-Peter

## Grenzüberschreitende Verbraucherverträge

### Rechtssicherheit und Gerechtigkeit auf dem elektronischen Weltmarktplatz

Volume 103  
2006. XIII, 528 pages.

ISBN 9783161488481  
cloth 149,00 €

ISBN 9783161579318  
eBook PDF 149,00 €

E-commerce integrates the consumer into global markets. But who provides the necessary institutional framework for international contractual exchange? Graf-Peter Calliess analyzes in detail the current German legal regime for cross-border consumer contracts as well as recent reform projects in Europe and the United States. The results are devastating: the nation states are both unable and unwilling to guarantee legal certainty and fairness on the global market place. Within the broader context of the global governance debate, transnational legal regimes based on co-regulation of states, industry, and civil society are proposed as an alternative. The New Law Merchant as well as the Uniform Dispute Resolution Policy of ICANN are taken as blueprints for a global consumer protection regime, the establishment of which can be observed on the basis of codes of conduct, trustmark schemes, and online dispute resolution systems.

Piekenbrock, Andreas

## Befristung, Verjährung, Verschweigung und Verwirkung

### Eine rechtsvergleichende Grundlagenstudie zu Rechtsänderungen durch Zeitablauf

Volume 102  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XLVI, 567 pages.

ISBN 9783161580284  
eBook PDF 144,00 €

One of the basic principles of civil law is that the rights of the individual can change due to the passage of time. In Germany, these changes are basically due to the limitation of the right of action in respect to a claim, the time limitation for rights, a period of prescription and the judicial institution of forfeiture. In British law, in particular procedural law, the term »limitation« is also of some significance. Since British law follows the substantive qualification of limitation and thus the connection to *lex causae* in its conflict of laws provisions, continental law is of considerable importance in Great Britain as well. Andreas Piekenbrock shows how the current limitation laws in Germany and in other countries are rooted in diverse schools of thought. In doing so, he provides the reader with an important insight into the concept of *prescriptio* in Roman law.

Meller-Hannich, Caroline

## Verbraucherschutz im Schuldvertragsrecht

### Private Freiheit und staatliche Ordnung

Volume 101  
2005. XVII, 354 pages.

ISBN 9783161487262  
cloth 129,00 €

ISBN 9783161579462  
eBook PDF 129,00 €

Whereas the contract law according to the German Civil Code was originally based on freedom and equality of the legal citizens, European consumer law is often regarded as overly regulated and legally incapacitating. In this work, Caroline Meller-Hannich reveals a new perspective which prevents the juxtaposition of the approaches and instruments of the regulations in consumer law with those of general contract law and whose intention is to bring about the necessary convergence within the law of obligations. According to the author, this would enable consumer law, based mainly on European law, to be integrated completely into the theoretical concept determined by civil contract law, which would result in a consistent system of contract law. In analyzing this, the author examines the dogmatic and the theoretical contractual foundations of consumer law and enquires into the relationship between the governmental system and the freedom of contract.

Lohse, Andrea

## Unternehmerisches Ermessen

### Zu den Aufgaben und Pflichten von Vorstand und Aufsichtsrat

Volume 100  
2005. XIX, 542 pages.

ISBN 9783161487804  
cloth 149,00 €

ISBN 9783161579448  
eBook PDF 149,00 €

The German discussion on the appropriate standard of review to be applied to business judgments made by the management board and the supervisory board has led to an adoption of the American business judgment rule, although it has not had the effect of increasing the quality of the decision-making process or the substance of the decision. In her work, Andrea Lohse develops a more demanding standard of review. She outlines criteria that place greater demands on the decision-making process and the substance of the decision and are enhanced by more drastic consequences in liability law. The criteria take into account business administration, the capital market orientation of corporate law as well as the legal developments in Europe and in the USA.

Koch, Jens

## Die Patronatserklärung

Volume 99  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XXXVII, 653 pages.

ISBN 9783161579608  
eBook PDF 149,00 €

Jens Koch examines the many forms the letter of comfort can take and puts them in a systematic order. During the past decades, the letter of comfort has established itself as a widespread alternative for the formulation of agreements to the traditional forms of credit collateral. Since however this has not been regulated by law and the terminological boundaries of the letter of comfort are not clearly outlined, its dogmatic acceptance has not been able to keep up with the extent to which it is practised. The classification of the letter of comfort under the law still creates a large number of doubts. As a result of the reform of the law of obligations and the reorganization of insolvency law, the need to clarify this has increased additionally.

Casper, Matthias

## Der Optionsvertrag

Volume 98  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XXIV, 515 pages.

ISBN 9783161579271  
eBook PDF 134,00 €

Option agreements enable the taker of an option to bring about an agreement through a declaration made by one party and without any further participation by the other partner. Although this type of agreement, which is not regulated by law, is widespread, there is uncertainty regarding its legal classification. Matthias Casper begins by explaining the dogmatic foundations of option agreements. He focuses on the question of whether or not there is unity between the option agreement and the main agreement. He also studies the legal nature of the option agreement and the right to exercise an option and analyzes general legal issues in civil law, such as requirements for validity, content, interference with performance of an obligation and transferability of the right to exercise an option. The author's main objective is to forge links between the understanding of options in civil law and those option agreements which are entered on capital and forward markets.

Jacobs, Matthias

## Der Gegenstand des Feststellungsverfahrens

### Rechtsverhältnis und rechtliches Interesse bei Feststellungsstreitigkeiten vor Zivil- und Arbeitsgerichten

Volume 97  
2005. XXXVIII, 554 pages.

ISBN 9783161484971  
cloth 149,00 €

ISBN 9783161579301  
eBook PDF 149,00 €

Matthias Jacobs examines the admissibility requirements of an action for a declaratory judgment in civil proceedings and their historical and teleological basis. He reveals the weaknesses in the traditional dogmatics, reappraises the action for a declaratory judgment's loss of substance in substantive law and attempts to outline and delimit the legal protection area in Section 256 Paragraph 1 of the Code of Civil Procedures more precisely than before by connecting it to substantive law. The break with the procedural interpretation of the action for a declaratory judgment opens the way for a recollection of the definitional element of the legal relationship and a discharge of the interest in an action for a declaratory judgment.

Preuß, Nicola

## Zivilrechtspflege durch externe Funktionsträger

### Das Justizverfassungsrecht der Notare und Verwalter

Volume 96  
2005. XVIII, 526 pages.

ISBN 9783161485800  
cloth 149,00 €

ISBN 9783161579325  
eBook PDF 149,00 €

Non-civil servants are private persons who assume responsibility for duties in civil proceedings which the state would otherwise have to have carried out by its own employees. The private persons concerned are notaries, who are given sole responsibility for the authentication of a contract, and insolvency administrators, sequestrators and administrators of a deceased's estate. Nicola Preuß examines the special official functions of these people, their basic duties, the access to their office and their supervision by the state. The selection of insolvency administrators is an issue which is of particular current interest, since in August 2004 the Federal Constitutional Court of Germany decided that applicants can demand to have a straightforward and verifiable selection procedure, which is what the author of this study is asking for as well.

Schwab, Martin

## Das Prozeßrecht gesellschaftsinterner Streitigkeiten

Volume 95  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XXXV, 786 pages.

ISBN 9783161579592  
eBook PDF 159,00 €

In civil associations there are complex legal relations between the association and its members as well as between the individual members. If there is a dispute involving these legal relations, such as for example about the payment of membership fees or expulsion from the association, the dispute will have to be settled in court in a two-party lawsuit. In addition to the association members involved, there is often a third group of members who do not wish to be a part of the legal dispute or are opposed to any legal proceedings concerning the issue under dispute. Against this backdrop and using trading companies as an example, Martin Schwab has developed models for allocating the roles to the various parties in internal disputes within the association, models which do justice to the existing requirements.

Benecke, Martina

## Gesetzesumgehung im Zivilrecht

### Lehre und praktischer Fall im allgemeinen und internationalen Privatrecht

Volume 94  
2004. XXIII, 393 pages.

ISBN 9783161484131  
cloth 129,00 €

ISBN 9783161579264  
eBook PDF 129,00 €

Martina Benecke deals with the problem of evasion of the law, which is as old as the law itself. Is a certain kind of behavior an inadmissible evasion or merely an act of legal creativity? Although the term evasion of the law is often applied, there is actually no real corresponding theory. The author of this treatise begins by examining the principles of evasion: history of the law, comparative law, delimitation from other institutions, statutory prohibition of evasion and the relationship between evasion of the law and interpretation. She then addresses the basic problem of evaluation by developing criteria which are comprehensible from a practical point of view and by examining the approach from the standpoint of legal method.

Körber, Torsten

## Grundfreiheiten und Privatrecht

Volume 93  
2004. XLVIII, 878 pages.

ISBN 9783161483578  
cloth 179,00 €

ISBN 9783161579400  
eBook PDF 179,00 €

Torsten Körber examines the principles governing the interaction between the EC Treaty's basic freedoms (free movement of goods, persons, services and capital) and the member states' rules of private law and jurisdiction. The findings are tested and clarified using examples taken from several fields of German law: in particular competition law, company law and conflict of laws. The final chapter of the study analyzes the direct effect of the basic freedoms on legal relationships between private parties.

Mäsch, Gerald

## Chance und Schaden

### Zur Dienstleisterhaftung bei unaufklärbaren Kausalverläufen

Volume 92  
2004. XXVII, 468 pages.

ISBN 9783161483646  
cloth 144,00 €

ISBN 9783161579486  
eBook PDF 144,00 €

The victim of professional malpractice may recover damages only if the link of causation between the breach of duty and the damages suffered is established to the actual certainty of the court. Yet, in many cases, this is not easy – Would the attorney's client have won the law suit »but for« the attorney's omission to file an appeal in time? Would the patient have survived »but for« the physician's failure to diagnose cancer at an earlier stage? In cases where the answer is not a clear »yes« or »no«, German courts follow the traditional »all-or-nothing-approach«: The client's claim for damages will succeed in full or be dismissed entirely, depending on the Court's decision to leave the burden of proof with the client or to shift it to the service provider. Against the background of a detailed evaluation of the experiences in foreign legal systems Gerald Mäsch examines the conditions for integrating a »loss of a chance approach« in German law and its scope of application.

Röthel, Anne

## Normkonkretisierung im Privatrecht

Volume 91  
2004. XIX, 491 pages.

ISBN 9783161483783  
cloth 144,00 €

ISBN 9783161579295  
eBook PDF 144,00 €

Anne Röthel examines the judicial interpretation of those legal concepts in national and European law which need to be put into concrete terms. Based on detailed constitutional clarification of the obligations and terms of the concrete interpretation of norms in accordance with the constitution, she describes the means and methods used for judicial interpretation. She uses this theoretical foundation as well as selected interpretational functions to develop a typology for interpreting norms and for developing criteria for this.

Wimmer-Leonhardt, Susanne

## Konzernhaftungsrecht

### Die Haftung der Konzernmuttergesellschaft für ihre Tochtergesellschaften im deutschen und englischen Recht

Volume 90  
2004. XXIX, 861 pages.

ISBN 9783161482380  
cloth 189,00 €

ISBN 9783161579479  
eBook PDF 189,00 €

The most common or typical business enterprise in contemporary society is not the single-company organization but the complex corporate group. One of the fundamental problems caused by corporate group activities is the question of inter-corporate liability towards the external creditors of companies within the group, since the potential for abusive or unfair practices that could have a negative effect on the interests of the external creditors of the group is inherent in the holding-subsidiary relationship.

Hanau, Hans

## Der Grundsatz der Verhältnismäßigkeit als Schranke privater Gestaltungsmacht

### Zu Herleitung und Struktur einer Angemessenheitskontrolle von Verfassungen wegen



Volume 89  
2004. XIV, 163 pages.

ISBN 9783161482571  
cloth 89,00 €

ISBN 9783161579288  
eBook PDF 89,00 €

Hans Hanau deals with the essential aspect of control for adequacy in the law of contracts: the principle of proportionality. Basing his work on the discussion surrounding the surety decision by the Federal Constitutional Court and using a constitutional approach, the author begins with demonstrating that the dispute about the effect of the basic rights between private parties is not the problem it would seem to be. The protective function in the constitution, created initially for public law and having the principle of proportionality as its central element, can basically be applied equally to the state sanctioning of privately heteronomous rights to influence legal relationships.

Schnorr, Randolph

## Die Gemeinschaft nach Bruchteilen (§§ 741–758 BGB)

Volume 88  
unrevised e-book edition 2019;  
Original edition 2004 2004.  
XXIV, 430 pages.

ISBN 9783161580277  
eBook PDF 129,00 €

Randolf Schnorr deals with the correct recognition of ownership in common as a joint legal jurisdiction, as a result of claims and competences and also with the restrictions pertaining to these among the partners. In doing so, he has worked out a model for common ownership which he illustrates by calling it the »relativization of real competences«. This is based on a new assessment of the historical principles of the institution and on the strict implementation of the private autonomy of the partners in the ownership in common. The results attained in this assessment concern the scope of the partners' obligation to take care of the common object and the admissibility of waiving a share.

Gruber, Urs Peter

## Methoden des internationalen Einheitsrechts

Volume 87  
2004. XXI, 422 pages.

ISBN 9783161482984  
cloth 134,00 €

ISBN 9783161579257  
eBook PDF 134,00 €

National law has already been replaced by uniform law conventions and the European Community law in many cases. In the near future, national law will be thrust even more into the background if a European civil code comes into force. It is however not yet clear how this new law should be applied. Urs Peter Gruber attempts to develop a coherent and independent method of statutory interpretation of uniform law conventions and the European Community law. He also deals with many other methodical questions such as the doctrine of stare decisis in international disputes and the problem of judge-made law in general. In addition, he focuses on the methods of legislation. The basis of his work is a broad comparative analysis that includes civil law systems as well as the laws of England and the United States. With his work, the author hopes to stimulate an international debate and support the development of a truly international jurisprudence.

Ebert, Ina

## Pönale Elemente im deutschen Privatrecht

### Von der Renaissance der Privatstrafe im deutschen Recht

Volume 86  
2004. XX, 664 pages.

ISBN 9783161481741  
cloth 149,00 €

ISBN 9783161579431  
eBook PDF 149,00 €

Ina Ebert demonstrates that private penalties are certainly not unheard of in German private law. She shows that the necessity of implementing the standards of the Basic Law and German private law will increase the significance of private penalties in the future and makes a plea for viewing the Renaissance of the private penalty in German law not as a step backwards but rather as a conscious decision for a well-tried method for improving legal protection. In addition she calls for an open admission of the existence of penal legal institutions in German private law. In her opinion, this is necessary in the interest of a renewed convergence of legal dogmatics and legal practice and in order to find solutions for concrete legal problems which up to now had been thwarted by disguising private penalties as compensation payments.

Sosnitza, Olaf

## Besitz und Besitzschutz

### Sachherrschaft zwischen faktischem Verhältnis, schuldrechtlicher Befugnis und dinglichem Recht

Volume 85  
2003. XXVII, 417 pages.

ISBN 9783161478703  
cloth 134,00 €

ISBN 9783161579424  
eBook PDF 134,00 €

In this work, the author examines the fundamental principles of possession and its protection on the basis of present positive law. In the first part of the study, he delimits the concept of possession and describes the regulatory structure of the codified right to possession. This is followed by an analysis of the legal nature of possession and of the right to possession. In the second section of the book the author questions the extent to which the protection of possession as it is laid down in various degrees in the German Civil Code is actually sufficient. In the last section, the author goes beyond the German Civil Code and takes a look at execution and insolvency law. In this work, the author examines the fundamental principles of possession and its protection on the basis of present positive law. In the first part of the study, he delimits the concept of possession and describes the regulatory structure of the codified right to possession. This is followed by an analysis of the legal nature of possession and of the right to possession. In the second section of the book the author questions the extent to which the

protection of possession as it is laid down in various degrees in the German Civil Code is actually sufficient. In the last section, the author goes beyond the German Civil Code and takes a look at execution and insolvency law.

Schubel, Christian

## Verbandssouveränität und Binnenorganisation der Handelsgesellschaften

Volume 84  
2003. XXIV, 653 pages.

ISBN 9783161481321  
cloth 174,00 €

ISBN 9783161579417  
eBook PDF 174,00 €

Christian Schubel shows how the sovereignty of associations can be consolidated as a structural principle in corporate law, a principle which limits the influence of a third party and also must be complied with when an internal constitution of an association is being drawn up.

Hau, Wolfgang Jakob

## Vertragsanpassung und Anpassungsvertrag

Volume 83  
2003. XXII, 465 pages.

ISBN 9783161480911  
cloth 139,00 €

ISBN 9783161579370  
eBook PDF 139,00 €

While in principle parties should be free to agree on a modification of their existing contract, there is a need to restrain unfair renegotiation practices such as an opportunistic demand for new terms on the one hand and a refusal to modify despite a justifiable reason for modifying on the other. Wolfgang Hau analyzes legal techniques that Anglo-American and continental legal systems apply in order to reconcile these differing interests.

Barnert, Thomas

## Die Gesellschafterklage im dualistischen System des Gesellschaftsrechts

Volume 82  
2003. XIII, 268 pages.

ISBN 9783161481499  
cloth 109,00 €

ISBN 9783161579394  
eBook PDF 109,00 €

In partnership or corporate law, the right of the individual partner to take legal action is regulated by the dualism of the basic corporation type. This is reflected in the varying allocation and division of assets in partnership and corporate law, and as a consequence the differences in responsibility for the rights and duties of the corporation and its partners. The authority of the partner as an individual legal entity to exercise a right either changes when he joins one of these dualistically structured associations or it is restricted. Thomas Barnert shows that literature as well as legal decisions dilute legal regulations by applying those rules which are valid for one to the other and vice versa. In partnership or corporate law, the right of the individual partner to take legal action is regulated by the dualism of the basic corporation type. This is reflected in the varying allocation and division of assets in partnership and corporate law, and as a consequence there are differences in responsibility for the rights and duties of the corporation and its partners. The authority of the partner as an individual legal entity to exercise a right either changes when he joins one of these dualistically structured associations or it is restricted. Thomas Barnert shows that literature as well as legal decisions dilute legal regulations by applying those rules which are valid for one to the other and vice versa.

Mankowski, Peter

## Beseitigungsrechte

### Anfechtung, Widerruf und verwandte Institute

Volume 81  
2003. LXVI, 1338 pages.

ISBN 9783161477942  
cloth 189,00 €

ISBN 9783161579349  
eBook PDF 189,00 €

How strong is a verbal commitment? In order to answer this question, the value of the given word has to be measured against the different modes of revocation. In modern times particularly, consumer law has created various rights enabling one of the parties concerned to withdraw from a contract. Thus the time has come to change the law pertaining to promises as well. Peter Mankowski deals with this subject, focusing on German law in particular, but also taking the CISG, the Lando principles and the UNIDROIT principles into consideration. The author concludes with a proposal for the amendment of the present law.

Gsell, Beate

## Substanzverletzung und Herstellung

### Deliktsrechtlicher Eigentumsschutz für Material und Produkt

Volume 80  
2003. XXIII, 393 pages.

ISBN 9783161478611  
cloth 129,00 €

ISBN 9783161579363  
eBook PDF 129,00 €

Beate Gsell examines the protection given under tort law from damage to objects during the manufacturing process. She examines the basis for and the scope of the manufacturer's liability which are defined in section 823, sub-section 1 of the German Civil Code. These apply not only to the damage which has spread to the defect-free portion of purchased property from a defective part but also to cases of the wasting of materials when manufacturing defective products.

Veil, Rüdiger

## Unternehmensverträge

### Organisationsautonomie und Vermögensschutz im Recht der Aktiengesellschaft

Volume 79  
2003. XVII, 333 pages.

ISBN 9783161481079  
cloth 119,00 €

ISBN 9783161579332  
eBook PDF 119,00 €

Contracts between business enterprises are an integral part of German stock corporation law. In this work, Rüdiger Veil analyzes the various types of contract and, based on an interpretation of the elements of the contract which apply to management and finance structures as seen from the perspective of company law, he develops a system for the law of contracts between business enterprises which shows the multi-faceted organizational and protective aspects of the contracts.

Adolphsen, Jens

## Internationale Dopingstrafen

Volume 78  
2003. XXXIX, 759 pages.

ISBN 9783161481185  
cloth 174,00 €

ISBN 9783161579455  
eBook PDF 174,00 €

Jens Adolphsen examines the possibility that athletes making use of their right to seek legal protection from state courts could prevent international athletic associations from enforcing uniform doping penalties. Based on a comparison of the laws in Switzerland (where most of the international associations have their headquarters), Germany, the U.S.A. and Europe (among others), the author asks if state law in general is responsible for the failure to enforce penalties, since it may not be able to cope with the phenomenon of global sport, if the athletic associations do not make sufficient use of the existing legal possibilities or if the state courts do not pay sufficient attention to the special qualities of international sport when applying the law.

Haedicke, Maximilian

## Rechtskauf und Rechtsmängelhaftung

### Forderungen, Immaterialgüterrechte und sonstige Gegenstände als Kaufobjekte und das reformierte Schuldrecht

Volume 77  
2003. XXVII, 364 pages.

ISBN 9783161479755  
cloth 104,00 €

ISBN 9783161579356  
eBook PDF 104,00 €

The reform of the German law of obligations has integrated the sale of intangible goods, in particular obligations, intellectual property rights and technical know-how, into the law on the sale of goods to a larger extent. However it is not yet known how this is to be applied in individual cases. Maximilian Haedicke examines this problem and develops approaches for a solution to the problem of the inclusion of intangible goods in property law in general and in the law on the sale of goods in particular.

Jansen, Nils

## Die Struktur des Haftungsrechts

### Geschichte, Theorie und Dogmatik außervertraglicher Ansprüche auf Schadensersatz

Volume 76  
unrevised e-book edition 2019;  
Original edition 2003 2003.  
XXI, 703 pages.

ISBN 9783161579141  
eBook PDF 149,00 €

Nils Jansen offers a theoretical and historical foundation aiming at a better understanding of the present tort law. He analyzes the normative structure of tort liability in terms of distributive or corrective justice and individual responsibility, asking whether the basic concepts really suit their function in actual decisions. He then reconstructs the history of the civil law of torts, showing that it evolved from the ancient Roman law of delict which originally was not related to the reparation of damage. On the basis of his historical and theoretical analysis, he concludes this work by giving a doctrinal reconstruction of tort law leading up to a restatement of the present law.

Jung, Peter

## Der Unternehmensgesellschafter als personaler Kern der rechtsfähigen Gesellschaft

Volume 75  
2002. XXXIII, 748 pages.

ISBN 9783161478628  
cloth 159,00 €

ISBN 9783161579387  
eBook PDF 159,00 €

In legal relations, incorporated companies as a separate legal form are independent of their members and are treated as the equivalent of natural persons. On the other hand they are legal forms which are either completely or partially dependent on the individuals behind them as far as development of their opinions, their behavior and their assets is concerned. To deal with these problems which arise in legal application, Peter Jung develops a model solution which encompasses all legal forms of a company and which differentiates between the purpose and the context of the legal rule being applied.

Bruns, Alexander

## Haftungsbeschränkung und Mindesthaftung

Volume 74  
2003. XLIV, 476 pages.

ISBN 9783161479083  
cloth 149,00 €

ISBN 9783161578885  
eBook PDF 149,00 €

Alexander Bruns presents a new concept for the admissibility of limitations of liability, a concept which is valid both in the E.C. and in the U.S.A. His basic theory, which he explains and summarizes by using significant legal areas as examples, is that liability limitations in contract law or corporate law are enforceable if the requisite minimum liability is maintained. He deals not only with the law in Germany, but also takes a look at the law in the U.S.A. and in the main European states as well as European Community law.

Ohly, Ansgar

## »Volenti non fit iniuria« – Die Einwilligung im Privatrecht

Volume 73  
2002. XXI, 503 pages.

ISBN 9783161477935  
cloth 139,00 €

ISBN 9783161578977  
eBook PDF 139,00 €

The maxim »volenti non fit iniuria« expresses a fundamental principle of justice. Its equivalent in tort law, the defense of consent, however, is surrounded by a penumbra of uncertainty. Starting from a historical and jurisprudential analysis, this study develops a theory of consent in private law based on the concepts of autonomy and responsibility. While the doctrinal part focuses on the nature of consent in German law, in particular its relation to contract law, the subsequent examination of the elements of consent draws on a comparison between German, English and US law. On this basis new legal solutions are offered for problems such as the validity of consent given by minors, the validity of consent to criminal behavior or irreversible injuries, the theory of 'informed consent' in medical law or the function of consent in personality merchandising.

Wiebe, Andreas

## Die elektronische Willenserklärung

### Kommunikationstheoretische und rechtsdogmatische Grundlagen des elektronischen Geschäftsverkehrs

Volume 72  
2002. XXIV, 590 pages.

ISBN 9783161478734  
cloth 159,00 €

ISBN 9783161578625  
eBook PDF 159,00 €

The development and increasing spread of information and communication technologies has led to more and more »automated« forms of communication which can also be used for the formation of contracts. Andreas Wiebe examines the extent to which electronic business transactions can be adequately integrated into the present contract theory. In order to transcend the present state of technology and to make this study relevant for the future development of contract law, the author has included concepts from the theory of communication and has established a connection to the legal doctrine of the declaration of intent .

Dreier, Thomas

## Kompensation und Prävention

### Rechtsfolgen der unerlaubten Handlung im Bürgerlichen, Immaterial-, Güter- und Wettbewerbsrecht

Volume 71  
2002. XXIV, 662 pages.

ISBN 9783161479076  
cloth 174,00 €

ISBN 9783161578632  
eBook PDF 174,00 €

In its section on enforcement, the TRIPS Agreement demands effective remedies. In German law, however, the main focus is still on compensating the damaged party rather than on preventing the infringement from occurring. In this work, Thomas Dreier demonstrates that intangible goods (creations, inventions, signs used as trademarks in commerce) require legal remedies different from those applied to the violation of exclusive rights to tangible goods. However he also shows that the existing legal framework can be used in order to satisfy the special protection needs of intellectual property rights.

Krause, Rüdiger

## Mitarbeit in Unternehmen

### Tätigkeitsverhältnisse im Spannungsfeld von Gesellschafts-, Dienstvertrags- und Arbeitsrecht

Volume 70  
2002. XXII, 752 pages.

ISBN 9783161477973  
cloth 179,00 €

ISBN 9783161578878  
eBook PDF 179,00 €

On the common ground to be found between partnership, corporate and employment law, Rüdiger Krause develops solutions which meet the requirements of both these fields. He begins by dealing with those forms of a contract which can connect the corporate and exchange relationships, such as for example the service and employment contract. He then focuses on the criteria to be used for a concrete delimitation of the legal forms and examines individual problem areas which can overlap and influence each other. In this context he provides a detailed analysis of areas such as job, salary, liability, prohibition of competition and termination of the employment.

Schäfer, Carsten

## Die Lehre vom fehlerhaften Verband

### Grundlagen, Verhältnis zum allgemeinen Vertragsrecht und Anwendung auf Strukturveränderungen

Volume 69  
2002. XXV, 537 pages.

ISBN 9783161477140  
cloth 139,00 €

ISBN 9783161579240  
eBook PDF 139,00 €

In this work, the author deals mainly with the so-called theory of the faulty association. Its objective is to insure that the legal consequences of defective incorporation are limited to an ex nunc invalidity. It is not only a question of creating standard elements for all associations and defining these separately from other recurring obligations, but mainly of finding out under which conditions this theory can be applied to contractual changes to prevent them from nullity.

Muscheler, Karlheinz

## Universalsukzession und Vonselbsterwerb

### Die rechtstechnischen Grundlagen des deutschen Erbrechts



Volume 68  
unrevised e-book edition 2019;  
Original edition 2002 2002.  
X, 272 pages.

ISBN 9783161579233  
eBook PDF 114,00 €

In the years to come, when the assets accumulated after the war are passed on to the next generation, the law of inheritance will become increasingly important. Karlheinz Muscheler deals with the two legal and technical principles of the German law of inheritance: the principle of universal succession and that of direct acquisition. His objective is to describe as precisely as possible how both of these principles work as well as those legal rules which have been recognized as an exception to them. At the same time the author also examines the background of both principles to be found in legal history, in comparative law and in legal policy.

Brors, Christiane

## Die Abschaffung der Fürsorgepflicht

Versuch einer vertragstheoretischen Neubegründung der Nebenpflichten des Arbeitgebers

Volume 67  
2002. XIV, 271 pages.

ISBN 9783161478406  
cloth 109,00 €

ISBN 9783161579189  
eBook PDF 109,00 €

Christiane Brors examines the employer's general duty to provide social and medical assistance. She dismisses this as an empty phrase and replaces it with a model drawn up in accordance with the theory of contract. This model takes the actual economic functions and conditions of the contract of employment into consideration and explains the boundaries within which legal decisions are allowed to deal with the employer's expectations and to make them law.

Jänich, Volker

## Geistiges Eigentum – eine Komplementärserscheinung zum Sacheigentum?

Volume 66  
2002. XXVII, 408 pages.

ISBN 9783161476471  
cloth 129,00 €

ISBN 9783161579219  
eBook PDF 129,00 €

The term 'intellectual property' has been popular in Germany for the last 10 years. In spite of this, the term has aroused some animosity among those who claim that it blurs the differences between tangible property and intangible property rights. Is intellectual property a subjective right or a theory which describes the reason for the validity of a subjective right? In order to answer this question it is necessary to do an extensive comparison of tangible property and intellectual property, which is what Volker Jänich has done in this work. He begins by showing how the term developed and defining its numerous meanings. He compares the position of tangible property and intellectual property in present law and concludes his work with an analysis of the conclusions to be reached on the basis of the similarity of their structures.

Heinemann, Andreas

## Immaterialgüterschutz in der Wettbewerbsordnung

Eine grundlagenorientierte Untersuchung zum Kartellrecht des geistigen Eigentums

Volume 65  
unrevised e-book edition 2019;  
Original edition 2002 2002.  
XXXIV, 688 pages.

ISBN 9783161579622  
eBook PDF 149,00 €

The relationship between intellectual property protection and competition law has always been one of the most controversial issues in competition law and policy. Andreas Heinemann gives a survey of intellectual property competition law in the USA, Germany, the European Union and in international economic law, including an economic analysis of the subject matter. He criticizes the traditional approach, according to which an intellectual property law is immune to the application of antitrust law, and maintains that reflections must be made within the interpretation of competition law rules. In this way it will be possible to achieve a balance between the protection of intellectual property and competition policy.

Giesen, Richard

## Tarifvertragliche Rechtsgestaltung für den Betrieb

Gegenstand und Reichweite betrieblicher und betriebsverfassungsrechtlicher Tarifnormen

Volume 64  
2002. XXXI, 619 pages.

ISBN 9783161477676  
cloth 159,00 €

ISBN 9783161579226  
eBook PDF 159,00 €

Richard Giesen examines the power of trade unions and employers' associations given them by German labor law. The German law of collective agreements enables the parties concerned to enact statutes which deal with questions pertaining to the enterprise and the works constitution. The provisions contained in it have often influenced the entrepreneurial decisions made by employers. In his study, Richard Giesen deals with the question of the scope of this influence. He gives clear answers to this question, basing these on German constitutional law and on the Works Council Constitution Act.

Ellger, Reinhard

## Bereicherung durch Eingriff

Das Konzept des Zuweisungsgehalts im Spannungsfeld von Ausschließlichkeitsrecht und Wettbewerbsfreiheit

Volume 63  
2002. XXXIX, 934 pages.

ISBN 9783161475757  
cloth 159,00 €

ISBN 9783161579202  
eBook PDF 159,00 €

Reinhard Ellger examines the recovery of pecuniary advantages which the party who has been unjustly enriched obtained by intervening without any legal basis in the protected legal sphere of the party at whose cost the enrichment took place. His suggestion for a solution is based on the allocative effect of absolute, subjective property rights as a criterion for the scope of application of the action of unjust enrichment and its limits. In this context, Reinhard Ellger deals with the economic functions of exclusive property rights and freedom of competition. In addition, he applies the results of his economics analysis to the field of legal theory and uses them to outline a concept of allocation.

Katzenmeier, Christian

## Arzthaftung

Volume 62  
unrevised e-book edition 2019;  
Original edition 2002 2002.  
XXIII, 636 pages.

ISBN 9783161578946  
eBook PDF 134,00 €

There has been an international tightening of medical malpractice law. In the USA, high liability risks have already led to forms of a 'defensive medicine' and to a 'medical malpractice crisis.' New Zealand and some Scandinavian countries have decided to replace liability for medical malpractice with insurance coverage for patients who suffered damage. In this work, Christian Katzenmeier takes a look at the German law pertaining to liability for medical malpractice and deals with the laws of other countries as well. He underlines the significance of the principle of fault for doctors willing to take risks but also wanting to practice their profession freely and conscientiously in the 21st century.

Schur, Wolfgang

## Leistung und Sorgfalt

Zugleich ein Beitrag zur Lehre von der Pflicht im Bürgerlichen Recht

Volume 61  
2001. XX, 390 pages.

ISBN 9783161476525  
cloth 129,00 €

ISBN 9783161579196  
eBook PDF 129,00 €

German contract law distinguishes between the obligation to perform a specific service and the duty to take due care. Wolfgang Schur shows that both kinds of duties are related to objects of legal protection. The obligation to perform protects the right of performance, and the duty to take due care protects the absolute rights of the parties concerned, such as life, health, property etc. as well as the liberty of decision when signing a contract and participation in a personal relationship created by the obligation. The author analyzes the different kinds of duties arising from the obligation and shows how the neglect of one's duty can be determined, thus contributing to the discussion concerning the reform of German contract law.

Reppen, Tilman

## Die soziale Aufgabe des Privatrechts

Eine Grundfrage in Wissenschaft und Kodifikation am Ende des 19. Jahrhunderts



Volume 60  
2001. XXII, 583 pages.

ISBN 9783161475160  
cloth 139,00 €

ISBN 9783161579172  
eBook PDF 139,00 €

Tilman Repgen deals with the only question of general principle which is not normative or dogmatic and which was discussed intensely after the first draft of the BGB (German Civil Code) in 1888 and up to the resolution passed by the Reichstag in 1896: the question of the social challenge of private law. This is the first time that this discussion has been studied systematically, and the author's purpose is to establish what effect it had on the BGB. He shows that the previous concept of the social model is in fact outdated. With this study, Tilman Repgen makes a significant contribution to the discussion about the fundamental principles of German private law.

Stoffels, Markus

## Gesetzlich nicht geregelte Schuldverträge

### Rechtsfindung und Inhaltskontrolle

Volume 59  
2001. XXIII, 693 pages.

ISBN 9783161476549  
cloth 174,00 €

ISBN 9783161579158  
eBook PDF 174,00 €

In this work, Markus Stoffels focuses on various types of modern contracts, such as for example leasing or franchising agreements, and shows ways of developing a systematic concept for determining the law for these, of checking the content of the law pertaining to these and of monitoring the content of these agreements, which are usually formulated in advance, effectively. In doing so, what he discovers is, apart from the concrete subject under examination, of general significance for the law pertaining to the general terms and conditions of trade or business. In conclusion, the author asks if and in what way the current system concerning contracts needs to be changed. In this respect, this analysis can also be regarded as a contribution to the current discussion on the reform of the law of obligations.

Huber, Peter

## Irrtumsanfechtung und Sachmängelhaftung

### Eine Studie zur Konkurrenzfrage vor dem Hintergrund der internationalen Vereinheitlichung des Vertragsrechts

Volume 58  
2001. XXX, 378 pages.

ISBN 9783161475955  
cloth 134,00 €

ISBN 9783161579035  
eBook PDF 134,00 €

The author deals with the question of whether the seller of defective goods can avoid a contract under the law of error or misrepresentation or whether he is limited to his rights under the law pertaining to sales. He bases his study on German law, but also covers recent international efforts to harmonize contract law, such as the CISG, the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law.

Schwarze, Roland

## Vorvertragliche Verständigungspflichten

Volume 57  
2001. XVII, 381 pages.

ISBN 9783161476099  
cloth 129,00 €

ISBN 9783161579127  
eBook PDF 129,00 €

In this work, the author deals with an aspect which is important for the dogmatic explanation of the pre-contractual duty to inform and which had been neglected up to now. He shows that a considerable part of those duties to inform which are determined by judicial decisions is based on the rules which are valid for the mutual consent and the agreement on the content and fundamental principles of the contract. Roland Schwarze explains that the duty to inform can originate from the duty to understand the material intent of the other party correctly, provided that one party is in possession of facts which could be of substantial importance to the other party. This work is a contribution to a better understanding of the formulation of pre-contractual duties to inform in judicial decisions.

Sieker, Susanne

## Umgehungsgeschäfte

### Typische Strukturen und Mechanismen ihrer Bekämpfung

Volume 56  
2001. XVII, 233 pages.

ISBN 9783161476020  
cloth 104,00 €

ISBN 9783161579066  
eBook PDF 104,00 €

In the German legal system both the interpretation of statutes according to their purpose as determined by the legislature (*teleologische Interpretation*) and their expansion by judge-made law (*richterliche Rechtsfortbildung*) are recognised as general concepts to combat the abuse of the law. A separate doctrine on how to cope with circumvention strategies, as suggested by certain legal authors, is therefore not necessary. Moreover, there is no need to create special legal provisions which prohibit transactions that are concluded merely to circumvent existing statutes. But courts can prevent circumvention by taking recourse to the interpretation of the relevant statute (*teleologische Interpretation*) or its expansion by judge-made law (*richterliche Rechtsfortbildung*). Susanne Sieker describes four main circumvention strategies. She shows how these general methods, based on a previous qualification of the relevant facts, are to be applied in order to combat strategies of circumvention effectively.

Matusche-Beckmann, Annemarie

## Das Organisationsverschulden

Volume 55  
2001. XXXIII, 434 pages.

ISBN 9783161474798  
cloth 139,00 €

ISBN 9783161579165  
eBook PDF 139,00 €

Annemarie Matusche-Beckmann lays a dogmatic foundation for organizational negligence. As an example of this, she takes a look at cases in which this applies, for example the liability of hospital authorities and doctors for negligence in organizing, as well as manufacturer's liability. Furthermore, she focuses on the effects of organizational negligence in corporate law.

Dethloff, Nina

## Europäisierung des Wettbewerbsrechts

### Einfluss des europäischen Rechts auf das Sach- und Kollisionsrecht des unlauteren Wettbewerbs

Volume 54  
unrevised e-book edition 2019;  
Original edition 2001 2001.  
XVI, 342 pages.

ISBN 9783161580260  
eBook PDF 109,00 €

Increasing cross-border advertising and sales activities and the growth of e-commerce in particular have resulted in a rising number of breaches of the law on competition affecting several countries simultaneously. In the absence of a harmonization of the law against unfair competition in Europe for cross-border competition, the question is which country's law should be applied. A detailed analysis given in this book shows that the application of the laws of all those countries in which the effects of an act are felt does not work in the case of multistate acts of competition such as advertising or marketing on the internet. The author thus develops guidelines for a European system of conflict of law rules in the area of unfair competition that take both the conflict of law perspective and the Community law perspective into consideration.

Hofer, Sibylle

## Freiheit ohne Grenzen?

### Privatrechtstheoretische Diskussion im 19. Jahrhundert

Volume 53  
unrevised e-book edition 2019;  
Original edition 2001 2001.  
XIII, 313 pages.

ISBN 9783161580253  
eBook PDF 94,00 €

Sibylle Hofer analyzes the various attitudes towards contractual freedom as the basis for private law in the 19th century. She examines the discussions about Roman and German private law and about certain dogmatic questions which took place at that time. This gives us an insight into the prevailing opinions about the basic idea of private law. In this analysis, she also deals with the economics of the 19th century, in which the fundamental structure of private law was discussed intensively. Furthermore, she proves that the opinions expressed by economists often influenced the legal debate.

Peifer, Karl-Nikolaus

## Individualität im Zivilrecht

### Der Schutz persönlicher, gegenständlicher und wettbewerblicher Individualität im Persönlichkeitsrecht, Immaterialgüterrecht und Recht der Unternehmen



Volume 52  
2001. XIX, 617 pages.

ISBN 9783161475009  
cloth 139,00 €

ISBN 9783161578854  
eBook PDF 139,00 €

What is the future of the private individual in the context of a society which has become increasingly interested in commercializing personal features, works and expressions? To what extent is there a conflict between the Western belief in individuality as a value and the current attempts to marginalize individuality within the context of intellectual property laws? Do companies have a commercial personality? These questions are answered by a concept of individuality that can be traced back to the cultural roots of a fundamental value of Western societies. Using these roots, the author develops a frame for the protection of individuality within the existing legal provisions.

Merkt, Hanno

## Unternehmenspublizität

### Die Offenlegung von Unternehmensdaten als Korrelat der Marktteilnahme

Volume 51  
unrevised e-book edition 2019;  
Original edition 2001 2001.  
XXXI, 563 pages.

ISBN 9783161579615  
eBook PDF 129,00 €

Based on an introduction dealing with developmental history and comparative law in the E.U. and in the U.S.A. as well as an outline of the economic factors, Hanno Merkt lays a legal and dogmatic foundation for corporate disclosure. Using capital market disclosure as his point of departure, he establishes protection of the individual and of market functions as the main functional and dogmatic pillars of disclosure. He then outlines an extensive system of corporate disclosure in which on the one hand market chronology, and on the other hand the intensity of the demands made on the market are the central parameters for content and extent of the disclosure by the corporation. On the basis of these reflections, Hanno Merkt makes suggestions for the prevailing practice and the law in force for corporate disclosure.

Sandmann, Bernd

## Die Haftung von Arbeitnehmern, Geschäftsführern und leitenden Angestellten

### Zugleich ein Beitrag zu den Grundprinzipien der Haftung und Haftungsprivilegierung

Volume 50  
2001. XXVII, 645 pages.

ISBN 9783161475115  
cloth 159,00 €

ISBN 9783161579097  
eBook PDF 159,00 €

The author has created fundamental principles for limiting employees' liability, basing these on German law. He extends these principles to include the responsibility of managing directors in private German companies. These fundamental principles are then used to explain why managing directors are not given the same limited liability as employees. The liability of the managing director is only limited when the damages are restricted to the responsibility of the company. The author has developed criteria for defining these areas of responsibility pertaining to the company and those pertaining to the managing director, and extends these definitions of responsibility pertaining to employees and managing directors to determine the hitherto hardly investigated liabilities of members of the executive staff.

Escher-Weingart, Christina

## Reform durch Deregulierung im Kapitalgesellschaftsrecht

### Eine Analyse der Reformmöglichkeiten unter besonderer Berücksichtigung des Gläubiger- und Anlegerschutzes

Volume 49  
2001. XIV, 374 pages.

ISBN 9783161474361  
cloth 119,00 €

ISBN 9783161579011  
eBook PDF 119,00 €

Is the protection of creditors stipulated in German corporate law really necessary, or should the system be restructured around a set of rules oriented towards a flexible capital market? In this book, the author explains why she favors the second alternative. In doing so, she offers a thorough examination of the rules which protect creditors and investors and outlines the basis for a new set of rules.

Würthwein, Susanne

## Schadensersatz für Verlust der Nutzungsmöglichkeit einer Sache oder für entgangene Gebrauchsvorteile?

### Zur Dogmatik des Schadensersatzrechts

Volume 48  
2001. XVII, 496 pages.

ISBN 9783161474385  
cloth 129,00 €

ISBN 9783161578793  
eBook PDF 129,00 €

The problem of compensation for the temporary loss of the use of something is of far-reaching practical relevance and of prime importance for understanding our law of damages. Susanne Würthwein looks into the fundamental significance of the freedom to dispose of an object or the significance of its actual use in our legal system. Based on the real damage incurred, she also reveals the basic assessment structures of our law of damages and develops a fair dogmatic approach to the solution of this problem.

Heinrich, Christian

## Formale Freiheit und materiale Gerechtigkeit

### Die Grundlagen der Vertragsfreiheit und Vertragskontrolle am Beispiel ausgewählter Probleme des Arbeitsrechts

Volume 47  
2000. XXVII, 632 pages.

ISBN 9783161473814  
cloth 184,00 €

ISBN 9783161579004  
eBook PDF 184,00 €

Christian Heinrich examines the relationship between contractual freedom and contractual control and undertakes a dogmatic structuring of contractual freedom and its limitations. His goal is not only to stimulate the discussion of this subject among scholars and to show the criteria for future government projects. By analyzing numerous individual cases and outlining a basic theoretical concept, he also attempts to make it easier for legal experts who draw up contracts and for judges to disassociate themselves from autonomous shaping of the law and heteronomous controls.

Bittner, Claudia

## Europäisches und internationales Betriebsrentenrecht

### Grenzüberschreitende betriebliche Altersversorgung im Spannungsfeld von europäischem und internationalem Betriebsrentenrecht

Volume 46  
2000. XXXII, 540 pages.

ISBN 9783161473784  
cloth 149,00 €

ISBN 9783161579042  
eBook PDF 149,00 €

In this work, Claudia Bittner examines the German system of supplementary pensions in the context of international labour relations from two different angles, European law and private international law. In the section on European law, she focuses on freedom of movement and the freedom to provide services in the field of pensions. In the section on conflict of laws, she deals with all those questions relating to the applicable law in transnational settings. European pensions law and private international pensions law are viewed as interdependent legal solutions to problems arising from the internationalization of labour relations.

Eberl-Borges, Christina

## Die Erbauseinandersetzung

Volume 45  
unrevised e-book edition 2019;  
Original edition 2000 2000.  
XXV, 504 pages.

ISBN 9783161578847  
eBook PDF 129,00 €

The law pertaining to a community of heirs and the distribution of an estate is of considerable significance for legal practice and for jurisprudence, since as a rule an estate passes into the ownership of not just one but of several heirs. Christina Eberl-Borges submits a detailed analysis of the distribution of the estate including questions of liability and retransfer. She also considers those aspects related to corporate law. She deals with the legal nature of the community of heirs as a joint ownership and describes the particular characteristics of the agreement made between the joint heirs.

Survey of contents

### Einführung Grundlagen

Die Rechtsnatur der Gesamthand Erbgemeinschaft – Die Funktion der Auseinandersetzung im Kontext der Erbgemeinschaft – Die Struktur der Erbauseinandersetzung – Die Rechtsnatur der Erbauseinandersetzungvereinbarung  
**Der Ablauf der Erbauseinandersetzung**

Nicht von den Miterben zu betreibende Erbauseinandersetzung – Die in den Händen der Erbgemeinschaft liegende Erbauseinandersetzung

### Die inhaltliche Ausgestaltung der Erbauseinandersetzung

Die Auseinandersetzung nach den Regeln des BGB: die gesetzliche Auseinandersetzungsmethode ohne Modifikationen – Die Auseinandersetzung abweichend von den Regeln des BGB – Methoden der Teilausinandersetzung

### Die Folgen der Erbauseinandersetzung für die Haftung der Miterben

Der Wegfall der Haftungsbeschränkungsmöglichkeit aus § 2059 I 1 - Die teilschuldnerische Haftung der Miterben in den Fällen der §§ 2060, 2061 I 2 – Ausschluß der Nachlaßverwaltung (§ 2062 2. HS)

### Störungen bei oder nach Durchführung der Erbauseinandersetzung

Die einzelnen Störungen bei vereinbarter Verteilung der Nachlaßgegenstände – Die Rückabwicklung einer Erbauseinandersetzung – Besondere Formen der Erbauseinandersetzung durch Teilung – Andere Arten der Erbauseinandersetzung  
Ergebnisse

Weber, Christoph

## Privatautonomie und Außeneinfluß im Gesellschaftsrecht

Volume 44  
2000. XVI, 393 pages.

ISBN 9783161473500  
cloth 139,00 €

ISBN 9783161579080  
eBook PDF 139,00 €

What boundaries does the legal system set for including outsiders in the decision-making process carried out by the members of a company? In this work, Christoph Weber makes an important contribution to determining the possibilities and the limits of private autonomy and to the efforts to develop a 'General Section on Corporate Law.' His concept consists of returning to general and civil law principles regarding the extent to which self-determination may be relinquished, which will lead to a clear widening of the scope of action when granting influence to third parties who are not part of the corporation.

Kaiser, Dagmar

## Die Rückabwicklung gegenseitiger Verträge wegen Nicht- und Schlechterfüllung nach BGB

### Rücktritts-, Bereicherungs- und Schadensersatzrecht

Volume 43  
2000. XIX, 561 pages.

ISBN 9783161473876  
cloth 139,00 €

ISBN 9783161579134  
eBook PDF 139,00 €

How can a creditor react to breach of contract or to a bad performance of contractual duty? Should he rescind the contract, demand compensation for breach of contract or assert a claim for restitution of unjustified enrichment of the debtor? Dagmar Kaiser examines these questions in detail and proposes a two-stage claim for damages. This proposal provides for a combination of compensation and rescission of the contract.

Lipp, Volker

## Freiheit und Fürsorge: Der Mensch als Rechtsperson

### Zu Funktion und Stellung der rechtlichen Betreuung im Privatrecht

Volume 42  
unrevised e-book edition 2019;  
Original edition 2000 2000.  
IX, 276 pages.

ISBN 9783161581502  
eBook PDF 79,00 €

How can freedom and self-determination be realized within and by the law if somebody is in fact unable to decide for himself? In a comparative and thorough analysis, Volker Lipp shows how various institutions of private law perform this task in different ways. He discusses the many forms of incapacity and substituted judgment, including guardianship, and develops an integrative concept that is of significance not only for German law but also for the discussion on European private law. Against this background, a legal representative of an adult who is incapacitated has to establish the autonomy of the adult concerned in relation to others as well as in relation to the state in case he has not made provisions himself.

Raab, Thomas

## Austauschverträge mit Drittbeteiligung

Volume 41  
1999. XXVII, 587 pages.

ISBN 9783161471698  
cloth 159,00 €

ISBN 9783161579110  
eBook PDF 159,00 €

The system of contractual law is based on the relationship between two parties, the debtor and the creditor. However in the present-day economic systems, in which there is a more widespread division of labor, more and more contractual relationships are linked together, at least in economic terms, due to the fact that the debtor avails himself of another person or typically of another company in order to fulfil his obligation. Thomas Raab examines whether and to what extent third party participation in individual contractual relationships affects the legal evaluation of an interference with the performance of an obligation and its fulfilment.

Busche, Jan

## Privatautonomie und Kontrahierungszwang

Volume 40  
1999. XXIV, 722 pages.

ISBN 9783161472169  
cloth 194,00 €

ISBN 9783161579103  
eBook PDF 194,00 €

Jan Busche describes the significance of the obligation to contract in modern private law. He theorizes that the real basis of individual self-determination, which is the economic and intellectual faculty of self-determination by the individual, has been disrupted in many ways. However the functional principle of private autonomy, which is recognized by the German legal system, demands that each individual be given the possibility of self-determination. This applies in particular to freedom of contract, which is the most important manifestation of private autonomy. Against this background, Jan Busche develops his concept of the general obligation to contract as a legal institution and as an integral part of the system of the law of contract.

Survey of contents

### I. Privatautonomie und Kontrahierungszwang im System des Privatrechts

Beschreibung des Untersuchungsgegenstandes – Theorie der Privatautonomie – Vertragsfreiheit als Teil der Privatautonomie – Bindung der Vertragsbegründungsfreiheit durch Kontrahierungszwang

### II. Der allgemeine Kontrahierungszwang

Allgemeiner Kontrahierungszwang und Präponderanz vertraglicher Selbstbestimmung – Allgemeiner Kontrahierungszwang und Anspruchssystem des BGB – Allgemeiner Kontrahierungszwang: Konturen eines privatrechtlichen Rechtsinstituts

### III. Der besondere Kontrahierungszwang: Struktur und Funktion

Ergänzende Vertragsbegründungskontrolle durch Deliktsrecht – dargestellt am Beispiel der Wirkung spezieller Gleichheitssätze

### IV. Der besondere Kontrahierungszwang in Spezialgesetzen

Verbot der Behinderung und Diskriminierung – Anschluß- und Versorgungspflicht im Energierecht – Abnahmepflicht nach dem Stromeinspeisungsgesetz – Besonderer Kontrahierungszwang in Spezialgesetzen: Strukturen und Funktionen

### V. Kontrahierungszwang im Lichte der (De-)Regulierung einzelner Wirtschaftsbereiche am Beispiel des Zugangs zu 'Netzwerken'

Energiewirtschaft – Telekommunikation – Bankdienstleistungen

### VI. Allgemeiner und besonderer Kontrahierungszwang im System des Privatrechts

Relativität der Vertragsbegründungsfreiheit – Allgemeiner Kontrahierungszwang und Institution des Vertrages: Die *actio ad contrahendo*

Sachsen Gessaphe, Karl A. von

## Der Betreuer als gesetzlicher Vertreter für eingeschränkt Selbstbestimmungsfähige

### Modell einer mehrstufigen Eingangsschwelle der Betreuung und des Einwilligungsvorbehalts

Volume 39  
1999. XXX, 532 pages.

ISBN 9783161471704  
cloth 159,00 €

ISBN 9783161579073  
eBook PDF 159,00 €

Guardianship or curatorship ordered in case of physical incapacity is done as a care-giving measure for those concerned, but is at the same time an intervention in their self-determination. The legal requirements for ordering such a guardianship do not, however, take this double function into consideration, and fail to make allowances for the degree to which the capacity for self-determination ought to be restricted. In this work, Karl August Prinz von Sachsen Gessaphe develops a diversified and flexible model for ordering a guardianship and for the reservation of consent, applying this in particular to the extent of the incapacity of self-determination required under the law.

Looschelders, Dirk

## Die Mitverantwortlichkeit des Geschädigten im Privatrecht

Volume 38  
1999. XLII, 681 pages.

ISBN 9783161471681  
cloth 159,00 €

ISBN 9783161579059  
eBook PDF 159,00 €

In the case of traffic accidents and other incidents which cause damage, the injured party often shares responsibility for the damage. However up to now it has not been quite clear what the dogmatic basis for dealing with this problem is. Dirk Looschelders deals with contributory negligence of the injured party on the basis of comparative law. In general, negligence pertains to illegal conduct; however it is not illegal to contribute to damage to oneself. On the basis of his own dogmatic deliberations, the author examines the factual prerequisites for contributory negligence of the injured party in accordance with § 254 of the BGB (Civil Code). He concludes his book with a detailed discussion of the general principles for allocating the damage to the party that caused the damage and the injured party.

Wendehorst, Christiane

## Anspruch und Ausgleich

### Theorie einer Vorteils- und Nachteilsausgleichung im Schuldrecht

Volume 37  
1999. XXXVII, 659 pages.

ISBN 9783161471438  
cloth 159,00 €

ISBN 9783161578649  
eBook PDF 159,00 €

Various theories of corrective justice, being either tautological or empty, have failed to reconcile the Aristotelian formula of annulling gains and losses with the modern law of obligations. Christiane Wendehorst suggests a solution by giving a specific definition of gain and loss and adding the private law claim to the Aristotelian formula as a given factor that does not itself rest on the idea of annulment. Applying what she calls Allocentric Analysis to the German law of obligations, she discovers the 'Statikprinzip' as a modern reformulation of Aristotle and as a basic principle underlying private law.

Bodewig, Theo

## Der Rückruf fehlerhafter Produkte

**Eine Untersuchung der Rückruffpflichten und Rückrufansprüche nach dem Recht Deutschlands, der Europäischen Union und der USA**

Volume 36  
1999. XXVI, 486 pages.

ISBN 9783161468834  
cloth 129,00 €

ISBN 9783161578960  
eBook PDF 129,00 €

More and more defective products are having to be recalled, and in spite of the experience many companies have had in this area there has been no real basis established for this in civil law up to the present time. Are these recall actions the result of manufacturer fairness or are they a legal obligation? Since each company has an obligation to monitor its products constantly, the manufacturer's responsibility for its products does not end when the product is placed on the market. Theo Bodewig deals not only with European experiences in recalling defective products, taking into consideration the Products Liability Directive and the Products Safety Directive of the European Union, he incorporates USA experiences with recall actions as well.

Volume 35  
1998. XXII, 583 pages.

ISBN 9783161469831  
cloth 149,00 €

ISBN 9783161579028  
eBook PDF 149,00 €

Dauner-Lieb, Barbara

## Unternehmen in Sondervermögen

**Haftung und Haftungsbeschränkung. Zugleich ein Beitrag zum Unternehmen im Erbgang**

Volume 34  
1998. XXIX, 474 pages.

ISBN 9783161469824  
cloth 174,00 €

ISBN 9783161578694  
eBook PDF 174,00 €

Beckmann, Roland M.

## Nichtigkeit und Personenschutz

**Parteibezogene Einschränkung der Nichtigkeit von Rechtsgeschäften**

Volume 33  
unrevised e-book edition 2019;  
Original edition 1998 1998.  
XXII, 849 pages.

ISBN 9783161581496  
eBook PDF 114,00 €

Wagner, Gerhard

## Prozeßverträge

**Privatautonomie im Verfahrensrecht**

Wagner, Gerhard

## Prozeßverträge

**Privatautonomie im Verfahrensrecht**

Volume 33  
Unchanged paper edition 2020; first  
edition 1998. XXII, 849 pages.

ISBN 9783161594410  
paper 114,00 €

Gerhard Wagner explores the law of contracts in its application to procedural questions. »Litigation contracts« such as forum selection, mediation and arbitration clauses are widely popular, as they allow the parties to customize the ordinary process of dispute resolution. Procedural contracts enhance the efficiency of the legal process without sacrificing the public interest in a well-functioning judicial system. The book breaks down widely held prejudices against private autonomy in civil procedure and dispenses with doctrinal complexities that hold little normative water.

Volume 32  
1998. XXV, 599 pages.

ISBN 9783161470219  
cloth 139,00 €

ISBN 9783161578670  
eBook PDF 139,00 €

Luttermann, Claus

## Unternehmen, Kapital und Genußrechte

Eine Studie über Grundlagen der Unternehmensfinanzierung und zum internationalen  
Kapitalmarktrecht

Volume 31  
1998. XXVII, 681 pages.

ISBN 9783161469381  
cloth 159,00 €

ISBN 9783161578663  
eBook PDF 159,00 €

Drexl, Josef

## Die wirtschaftliche Selbstbestimmung des Verbrauchers

Eine Studie zum Privat- und Wirtschaftsrecht unter Berücksichtigung gemeinschaftsrechtlicher Bezüge

Volume 30  
1998. XVIII, 520 pages.

ISBN 9783161469848  
cloth 139,00 €

ISBN 9783161578779  
eBook PDF 139,00 €

Ekkenga, Jens

## Anlegerschutz, Rechnungslegung und Kapitalmarkt

Eine vergleichende Studie zum europäischen, deutschen und britischen Bilanz-, Gesellschafts- und  
Kapitalmarktrecht

Volume 29  
1998. XX, 506 pages.

ISBN 9783161469817  
cloth 139,00 €

ISBN 9783161578656  
eBook PDF 139,00 €

Assmann, Dorothea

## Die Vormerkung (§ 883 BGB)

