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Zimmermann, Anton S.

## Der gesetzliche Rückforderungsanspruch

Leistung – Austauschleistung – Eingriff

2021. Approx. 390 pages.  
forthcoming in August

ISBN 9783161600555  
cloth approx. 100,00 €

ISBN 9783161600838  
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The restitution claim is the crucial corrective in the private law system whenever someone is in possession of an object to which someone else is entitled. In spite of their single goal, the restitution claims of the German Civil Code differ. Anton Zimmermann proposes organizing their coordination according to the way in which the object to be surrendered was acquired.

Dieker, Thomas

## Das Gemeinschaftskonto mit Einzelverfügungsbefugnis

Volume 95  
2021. XVII, 328 pages.

ISBN 9783161550539  
sewn paper 79,00 €

ISBN 9783161550546  
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Rights arising from joint accounts are attributable to respective holders for different legal reasons. When a conflict arises, the legal consequences can vary significantly depending on the categorisation. The results of Thomas Dieker's analysis argue in favour of the collective competence of account holders.

Öry, Marika

## Kollektivität im Haftungsrecht

Die haftungsbegründenden Kategorien Verhalten und Interesse in der Erfassung von Kollektivphänomenen

Volume 94  
2020. XII, 289 pages.

ISBN 9783161594823  
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Can organizations such as corporations »act«? And how does market manipulation affect the interests of the individual market participant? Private liability law is based on a model of reality in which behavior and interests are individualistic categories. Marika Öry challenges this concept with a collectivistic approach.

Rauhut, Tilman

## Aussonderung von Geld

Gegenständliche und wertmäßige Trennung fremden Vermögens von der Insolvenzmasse

Volume 93  
2020. XIII, 209 pages.

ISBN 9783161559808  
cloth 79,00 €

ISBN 9783161559815  
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Common interpretation of sections 47 and 48 of the German Insolvency Code holds that the right to separation from the bankruptcy estate is limited to individual, determinable assets, typically making it impossible to segregate money. Tilman Rauhut counters this doctrine and presents section 48 of the code as a cure for certain types of unjust enrichment in the case of an insolvency, allowing the creditor to segregate a correspondent sum of money in line with what remains of the estate's assets.



Eichten, Rouven

## Der oHG-Anteil im Spannungsfeld von Erb- und Gesellschaftsrecht

### Zur erbrechtlichen Mit- und Fremdverwaltung eines von Todes wegen erworbenen oHG-Anteils

Volume 92  
2020. XXVII, 480 pages.

ISBN 9783161592140  
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ISBN 9783161592157  
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For well over a century, established legal doctrine has been trying to apply inheritance law as it is set out in the German Civil Code to cases involving the inheritance of shares from oHG – offene Handelsgesellschaft – partnerships. Rouven Eichten assesses the situation and comes up with a new system better suited to the existing legal framework.

McColgan, Peter

## Abschied vom Informationsmodell im Recht allgemeiner Geschäftsbedingungen

Volume 91  
2020. XXIII, 360 pages.

ISBN 9783161589669  
cloth 99,00 €

ISBN 9783161589676  
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Nobody reads boilerplate contracts. Despite this, German law prescribes that consumers are given an opportunity to read these standardised clauses. This fundamental contradiction is based on the idea of protecting consumers through information. Peter McColgan's study shows that this concept is ineffective at protecting consumers, and beyond this, cannot be reconciled with the fundamental principles governing this area of law. Going forward, the author proposes alternatives to the status quo.

Feldmann, Riccarda

## Der possessorische Besitzschutz und sein Verhältnis zum petitorischen Recht

### Eine materiellrechtliche und zivilprozessuale Betrachtung

Volume 90  
2020. XXIII, 294 pages.

ISBN 9783161590047  
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German civil law protects the current possessor – even against someone with a superior right, for example, the right of possession or the right of trespass. This generates a conflict between the possessory claim and the substantive claim of the interferer, which concerns both property law and civil procedure law. Riccarda Feldmann explores the goals which the protection of possession pursues in order to formulate basic principles for regulating the conflict between possessory and petitory claims in contemporary law as well as for future legislation.

Hoffmann, Isabel

## Die Verbraucherrolle

### Zur Frage nach den maßgeblichen Kriterien im materiellen Recht und im Prozessrecht

Volume 89  
2019. XXIII, 223 pages.

ISBN 9783161569074  
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When a person enters a contract for purposes outside their trade, business, craft, or profession, countless consumer regulations protect them. The controversial question of whether it is the acting person's intended purpose or the contract partner's perceived one that should define the term »consumer« is examined here by Isabel Hoffmann.

Höhne, Christiane

## Die mangelhafte Leasingsache

Rechtspositionen des Leasingnehmers, Leasinggebers und Lieferanten im Rahmen der leasingtypischen Abtretungskonstruktion

Volume 88  
2019. XIX, 574 pages.

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Should the leased object be defective, the lessee cannot initially assert his rights against the lessor but must refer to the rights arising from product defects as stipulated in the contract which have been transferred to the lessee. In this dissertation, the author deals comprehensively with these issues, describing the problems resulting from this and showing the aligned legal positions of the parties involved in the lease.

Odemer, Hilmar

## Schadensersatz statt der Leistung im Anspruchssystem des Eigentümer-Besitzer-Verhältnisses

Eine Untersuchung zur Anwendbarkeit der §§ 281, 282 BGB auf den vindikatorischen Herausgabeanspruch gemäß § 985 BGB

Volume 87  
2019. XIX, 175 pages.

ISBN 9783161582400  
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Can unlawfully possessed property that is not surrendered be restituted through compensation? According to the Federal Constitutional Court, § 281 of the German Civil Code allows a deadline to be set for just this purpose. However, Hilmar Odemer shows that this cannot be reconciled with the special regulations of § 989 onwards, and instead points the way towards a seamless weaving together of the legislative fabric.

Meier, Johannes

## Das subjektive System der Geschäftsführung ohne Auftrag

Die §§ 677–686 BGB im Lichte der zweigliedrigen subjektiven Theorie

Volume 86  
2019. XXIII, 416 pages.

ISBN 9783161564468  
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For more than a century, German civil law has been preoccupied with the theory of agency without specific authorisation (§§ 677–686 BGB), and even today, its scope is still considered too wide-ranging. Johannes Meier attempts a fresh start by looking at the decisive stages in agency agreements through principals and fine tuning the BGB provisions in line with other legal obligations.

Kuschel, Linda

## Der Erwerb digitaler Werkexemplare zur privaten Nutzung

Volume 85  
2019. XIII, 312 pages.

ISBN 9783161568145  
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Digital content in the form of books, music, or films, has been around and available to buy for quite some time. Yet several legal issues, such as the question of whether second-hand digital copies can be resold, remain unresolved. Linda Kuschel examines the legal framework for the sale of digital content from copyright, contract, and property law perspectives to come up with a coherent concept combining all three.



Mihaylova, Elitza

## Die Garantiewerbehauptung nach § 443 Abs. 1 BGB als Institut des europäischen Marktordnungsrechts

Zum Schutz des Marktes vor adverser Selektion durch eine gesetzliche Marktinformationshaftung und die Inhaltskontrolle vorformulierter Garantiebedingungen

Volume 84  
2019. XIII, 246 pages.

ISBN 9783161567780  
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Liability for declarations of guarantee made in advertising are the focal point of changes in national contract law set in motion by European law. Pursuant to Section 443 (1) of the German Civil Code, declarations of guarantee made in advertising are as binding for the guarantor as guarantee contracts. This liability protects the internal market against market failure due to adverse selection.

Herberger, Marie

## Von der »Schlüsselgewalt« zur reziproken Solidarhaftung

Zugleich ein Beitrag zum Rechtsprinzip der nachwirkenden ehelichen Solidarität

Volume 83  
2019. XXIV, 295 pages.

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The purpose of the perplexing »Schlüsselgewalt«-regulation (maternal power to bind the other to obligations necessary to fulfil family requirements) has been puzzled over ever since it was introduced to the German Civil Code. Demonstrating that one of its objectives is to secure lasting marital solidarity after divorce, Marie Herberger proposes a reformulation de lege ferenda that could restore the regulation's reputation.

König, Christian M.

## Die Stiftung als Instrument der Nachlassplanung

Eine Untersuchung de lege lata zur Stellung der Stiftung im Kontext des deutschen Pflichtteilsrechts mit Überlegungen de lege ferenda im Lichte des novellierten österreichischen Pflichtteilsrechts

Volume 82  
2018. XXII, 339 pages.

ISBN 9783161562242  
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Christian M. König examines the potential that foundations offer for planning estates in German law of compulsory portion. Increasing demand for substantial assets to be protected following an individual's death has prompted this study, in which the author gives a detailed overview of the relevant case law and legal literature, evaluating the various options for using foundations in estate planning, whilst also outlining their limitations.

Hegerfeld, Nicola

## Ärztliche Aufklärungs- und Informationspflichten

Eine Auseinandersetzung mit der Qualität der Kodifizierung der § 630e und § 630c BGB

Volume 81  
2018. XXI, 538 pages.

ISBN 9783161564543  
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Informed consent and its related issues are fundamental to the physician-patient-relationship. Nicola Hegerfeld's precise and detailed analysis of the legal framework setting out these duties reveals potential loopholes and offers suggestions for improvement.



Hörnig, Normen

## Fortbestand akzessorischer Sicherheiten

Eine gesellschaftsrechtliche Lösung am Beispiel der Bürgschaft bei Wegfall des Hauptschuldners

Volume 80  
2018. XVII, 210 pages.

ISBN 9783161559686  
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With cessation of the principal debtor, not only does the main debt cease to exist, but also any dependent securities. For security providers to nevertheless be held liable, a process of separation is usually instigated. Normen Hörnig presents an alternative solution from corporate law.

Philipp, Markus

## Verjährungshemmung durch Rechtsverfolgung

Insbesondere ein Beitrag zur Behandlung verfahrensrechtlich fehlerhafter  
Rechtsverfolgungsmaßnahmen des § 204 Abs. 1 BGB

Volume 79  
2018. XIX, 376 pages.

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The suspension of the statute of limitations due to legal proceedings pursuant to Section 204 (1) of the German Civil Code is of considerable practical significance. It offers the creditor the chance to prevent the limitation period, which in economic terms usually means the loss of the claim, without the involvement of the debtor. Markus Philipp examines just when a procedural error inhibits suspension.

Göbbel, Vincent

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Zur Begründung eines verbandsrechtlichen Prinzips, dessen Verhältnis zur Lehre vom fehlerhaften  
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2018. XV, 370 pages.

ISBN 9783161563416  
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There are various reasons board members, directors or supervisory board members can officiate despite their appointments being invalid. Vincent Göbbel examines to what extent and why an invalid appointment has to be treated as a valid one in German civil law.

Marchlewski, Simon M.

## Das Wechselmodell im Kindschaftsrecht

Abhandlung zu den familien- und verfassungsrechtlichen Grundlagen

Volume 77  
2018. XXI, 397 pages.

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Can a joint physical custody order be forced on a parent by a court? Simon M. Marchlewski analyses the basis for »shared care« in Germany's family and constitutional law as well as the legislation governing the parent-child relationship, before examining possible legal structures as well as legal protections of a future shared care arrangement or one already in use.

Bialluch, Stephanie Madeleine

## Das sogenannte Anleiheschuldverhältnis

Volume 76  
2018. XXI, 349 pages.

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The German Bond Act (Schuldverschreibungsgesetz) groups bondholders together in a special collective, the legal nature of which has not yet been fully examined. Stephanie Madeleine Bialluch ameliorates the situation by analysing and classifying bondholder representation in view of Germany's securities and general civil law, but particularly its law of obligations. Furthermore, she explores the controversially discussed options for terminating bonds.

Waldkirch, Conrad

## Zufall und Zurechnung im Haftungsrecht

Volume 75  
2018. XVII, 472 pages.

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Who has to bear an occurred damage? This is the central question of liability law. Conrad Waldkirch scrutinises in which case a harmful event is deemed to have happened by chance and the harm therefore has to be borne by the damaged party (casum sentit dominus), and when and why another party is deemed liable and thus held responsible.

Hogrebe, Ludwig

## Bindungsgrenzen

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Volume 74  
2018. XXI, 342 pages.

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The binding limits of German private law mediate between the freedom from attachment and the freedom to bind. Protection from unlimited attachment is a patchy and random affair, yet the very existence of binding limits reveals the idea of a civil social order.

Regelsberger, Dominik

## Die Eigenbedarfskündigung durch juristische Personen und Personengesellschaften

Volume 73  
2018. XVIII, 190 pages.

ISBN 9783161559617  
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ISBN 9783161559624  
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Can a BGB company terminate a rental contract on the basis of a partner's own needs? And what about commercial partnerships and legal entities? Dominik Regelsberger subjects the answers given by legal literature and judicature to a critical analysis in this study.

Pfertner, Bernd

## Unternehmerische Entscheidungen des Vorstands

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Volume 72  
2017. XXIV, 258 pages.

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Bernd Pfertner examines the liability function of German Corporate Law's »business judgment rule« (AktG, Section 93) and specifies its scope therein through the constituent elements of the »entrepreneurial decision«.

Raff, Thomas

## Die gewöhnlichen Erhaltungskosten

### Verwendungsersatz und Nutzungszuordnung im Eigentümer-Besitzer-Verhältnis

Volume 71  
2017. XXVI, 569 pages.

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Thomas Raff investigates by way of Roman law, pandectistics, German, French, Austrian, and Polish law, if and to what extent usage and use relate to one another in restitution law. On this basis, he develops a maintenance- and improvement-principle capable of defining the owner-possessor relationship.

Klingbeil, Stefan

## Die Not- und Selbsthilferechte

### Eine dogmatische Rekonstruktion

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The modern state's monopoly on violence makes it difficult to justify the citizen's right to use physical force in certain emergency situations. Stefan Klingbeil shows how traditional legal instruments such as the right to self-defence can be re-interpreted within the normative framework of the constitutional state.

Weigel, Johannes

## Organvermittlung und Arzthaftung

### Regelungskonzept, Verfassungsmäßigkeit, Rechtsnatur und arzthaftungsrechtliche Konsequenzen des Systems der Organvermittlung

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A chronic shortage of donor organs in Germany has seen a system of allocation having to be enforced. In light of recent scandals, Johannes Weigel's study examines how civil law handles the wrongful allocation of donated organs and in particular how the liability of physicians is dealt with in such cases. The author focusses on the complex interplay between constitutional, treatment contract, and organ transplantation law, and looks into the consequences for hospitals and doctors.



Kasper, Tim

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Zur Risikoverteilung beim Sachkauf bei Lieferung mangelhafter Ware unter besonderer Berücksichtigung der Verteilung der Leistungsgefahr im Rahmen der Nacherfüllung

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2017. XXX, 728 pages.

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Tim Kasper examines the transfer of risk in the fulfilment of contracts of sale. Investigating correlations between the law for the delivery of faulty goods and risk distribution, he submits a revised regulation as a contribution to the current proposed legislation.

Hacker, Philipp

## Verhaltensökonomik und Normativität

Die Grenzen des Informationsmodells im Privatrecht und seine Alternativen

Volume 67  
2017. XL, 1022 pages.

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People make mistakes, for example in purchase or investment decisions. Novel strategies of regulation seek to use these insights. However, they can only unfold their full potential once they are reconciled with core legal principles. Eventually, in this way, fair behaviour may even be legally promoted.

Fritzsche, Matthias

## Die juristische Konstruktion des Insolvenzplans als Vertrag

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The insolvency plan is at once one of the most practically important yet academically contested elements of insolvency law. Matthias Fritzsche sets out the historical background of insolvency plan procedure, examines the current debate on its legal classification, and develops a comprehensive contractual explanatory model.

Eickelmann, Sarah

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Volume 65  
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With the retroactive effect in the system of the German Civil Code (BGB), Sarah Eickelmann examines a fundamental dogmatic issue of private law. She probes the purpose and justification of selected retroactive effect regulations in view of their meaning for the BGB system and general adequacy considerations.



Titz, Daniela

## Das Vindikationslegat

### Reformbedürftigkeit und Reformfähigkeit des deutschen Erbrechts

Volume 64  
2017. XXII, 437 pages.

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People often decide that after they die, they would like certain individual possessions to be bequeathed to a particular person. Can current German inheritance law help fulfil this desire, or should introducing a Vindikationslegat (a legacy with effect in rem) alongside existing bequest law be considered?

Jäger, Veronika

## Die Haftung von Partnern einer Partnerschaftsgesellschaft für berufliche Fehler

Volume 63  
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The main concern of Germany's law for regulating companies run by a partnership is professional malpractice liability. How these provisions came to be and what each regulation demands are examined in Veronika Jäger's work. Her development of differentiation criteria and definitions helps make personal liability in such companies (with limited professional liability) more predictable.

Schmitt, Florian

## Beraterhaftung für Insolvenzverschleppungsschäden

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Florian Schmitt analyses whether a company's legal or – especially – its tax advisors can be held liable if their clients delay filing for insolvency. Not only the client, but also third parties such as directors, shareholders and creditors, may attempt to claim compensation for losses resulting from the company's insolvency.

Danwerth, Christopher

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Money Remittance is regulated by the Payment Service Directive. Although it is usually based on cash being paid to a payment service provider who in turn remits the corresponding amount to a payee, the regulations do also cover a vast number of different transactions. After identifying and explaining problem zones, Christopher Danwerth offers new solutions for making sense of a cumbersome subject.

Held, Julia

## Die Anfechtung unentgeltlicher Leistungen gem. § 134 InsO

Volume 60  
2017. XVIII, 549 pages.

ISBN 9783161549977  
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Julia Held deals with the topical issue of contesting services provided free of charge in insolvency cases. She develops her own model for interpreting § 134 of Germany's Insolvency Code, on whose basis the requirements for an unpaid performance are clearly outlined and are applied to current problem constellations.

Fluck, Bernd

## Fehlerhafte Vereinsbeschlüsse

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Volume 59  
2017. XV, 229 pages.

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How should the wrong decisions made by associations be regulated by the law? Bernd Fluck outlines how current rulings are made and puts the diverging opinions about these on trial. To conclude, the author presents a proposal which could lead to greater legal certainty in the remedying of wrong decisions.

Starke, Max Fabian

## EU-Grundrechte und Vertragsrecht

Volume 58  
2016. XVII, 445 pages.

ISBN 9783161549779  
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European fundamental rights have increased practical effects on contract law. The Court of Justice of the European Union has applied fundamental rights in cases regarding unfair terms review, annual leave or insurance premiums to name but a few. Such decisions raise key questions concerning both the structure and substantive impact of the constitutionalisation process of contract law in the union. How do fundamental rights relate to these legal provisions, what is their content, and how far do they reach? Of particular interest is their effect on the principle of private autonomy as well as the importance and meaning of private power for their application. Max Fabian Starke offers a detailed analysis of the CJEU's jurisprudence, linking up European and national doctrines, contract and fundamental right theory.

Plettenberg, Ina

## Vater, Vater, Mutter, Kind – Ein Plädoyer für die rechtliche Mehrvaterschaft

Volume 57  
2016. XII, 152 pages.

ISBN 9783161548390  
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It is not rare for children to have two father-figures, one legally and socially-bound with rights and duties, the other biological but not legally bound. Two EU Court of Human Rights rulings revealed an untenable legal imbalance in the German Civil Code's §1686a regarding this situation. Ina Plettenberg shows how – on the condition that each individual child's welfare is assured – both fathers could be assigned full legal rights, and submits a detailed proposal how it could be done.

Becker, Udo

## Insolvenzverwalterhaftung bei Unternehmensfortführung

Volume 56  
2016. XXIV, 311 pages.

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According to the prevailing view, there are fundamental differences between the regimes governing a corporate director's liability and the liability of an insolvency trustee continuing a corporation as a going concern in insolvency. Udo Becker's study shows however that there are significantly more basic similarities than commonly presumed.

Bartlitz, David

## Die Haftung des Kommanditisten auf der Grundlage kapitalgesellschaftsrechtlicher Prinzipien

Volume 55  
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In this volume, David Bartlitz re-conceives the basic principles of the liability of partners within the limited commercial partnership in German law. In so doing, he adheres to the basic idea that an appropriate reconciliation of interests can be achieved if the principles of liability are based on corporate law.

Zurth, Patrick

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Patrick Zurth lays a dogmatic foundation for the use of protected works and integrates copyright law as a special private law into the doctrine of general civil law. He thereby develops a new understanding of exploitation rights and limitations.

Klose, Martin

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There are various scenarios in German civil law where property is subject to extensive restrictions. Martin Klose examines what remains of the owner's right in such situations and whether the limitations are constitutional.

Zenger, Ralph

## Die Insolvenzanfechtung aus zivilrechtlicher Perspektive

Volume 52  
2016. XIX, 292 pages.

ISBN 9783161546761  
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The legal nature of insolvency proceedings has been disputed since time immemorial. Ralph Zenger reduces it to known civil law principles and in so doing develops a compelling doctrine which provides fair and legal solutions to procedural problems.

Mittelstädt, Morten

## Die Auslegung empfangsbedürftiger Willenserklärungen

### Eine Kritik des herrschenden Methodendualismus



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How is the legal content of declarations of intent which become effective when they have reached their recipient to be determined? Regarding this fundamental private law question, Morten Mittelstädt argues against the unanimous perception that congruent inner-party understanding prevails.

Moussa, Awaalom Daniel

## Das Dogma vom formgerechten Zugang

Zugleich ein Plädoyer für die Trennung von Fragen des Zustandekommens und der Wirksamkeit eines Rechtsgeschäfts

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ISBN 9783161539992  
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According to the doctrine on legal transactions, a contract is concluded when its acceptance reaches the offeror. However, according to consistent case law in Germany, this is not the case if the acceptance (or the general declaration of interest) does not reach the addressee in keeping with the special formal requirements that apply to the contract (or juridical act in general). A. Daniel Moussa examines this prevailing opinion and develops an alternative solution which is based on a clear distinction between the coming into existence of a contract and its effectiveness.

Leszczenski, Anna

## Rückforderung schwiegerelterlicher Zuwendungen

Zugleich ein Beitrag zur dogmatischen Einordnung und Fortentwicklung des familienrechtlichen Vertrages sui generis

Volume 49  
2016. XIV, 176 pages.

ISBN 9783161540394  
cloth 69,00 €

Gratuities within the family and reclaiming them when a marriage or equivalent relationships break down are abiding themes in courts and legal academia. Anna Leszczenski examines the donations made by parents-in-law to develop a consistent and coherent solution for the whole area of kin contributions.

Olshausen, Ralph von

## Die SEPA-Lastschrift: Erfüllung – Aufrechnung – Insolvenz

Ralph von Olshausen examines the legal relationship between parties in Single Euro Payments Area direct debit payments, the legal nature of the payer's right to a refund, the right to set off when such payments are to be made and the effects of insolvency on such transactions, particularly on claims for reimbursement.

Volume 48  
2015. XVII, 380 pages.

ISBN 9783161539244  
cloth 104,00 €

Bartels, Florian

## Insolvenzanfechtung und Leistungen Dritter

Florian Bartels examines the fulfilment of third parties in the field of insolvency rescission law. Analysing a variety of cases he develops a casuistry of multi-party situations in the context of civil and insolvency law. Based on this structure, he demonstrates how to handle these commonplace cases.

Volume 47  
2015. XXIII, 816 pages.

ISBN 9783161537196  
cloth 119,00 €

Schirmer, Jan-Erik

## Das Körperschaftsdelikt

Volume 46  
2015. XV, 270 pages.

ISBN 9783161538957  
cloth 84,00 €

ISBN 9783161556876  
eBook PDF 84,00 €

Can the liability of businesses and managing directors be satisfactorily constructed when the law it is founded on was created over 100 years ago? Jan-Erik Schirmer shows that it is possible – his examination shakes off the historical shackles and brings the liability of private corporations into the present age.

Mackenrodt, Mark-Oliver

## Technologie statt Vertrag?

Sachmangelbegriff, negative Beschaffenheitsvereinbarungen und AGB beim Kauf digitaler Güter

Volume 45  
2015. XX, 302 pages.

ISBN 9783161533914  
cloth 89,00 €

Mark-Oliver Mackenrodt examines fundamental issues of civil law as exemplified by usage restrictions of digital goods which are equipped with technological protection measures. Taking resort to insights of legal and economic theory he conceptualizes a model which allows for a more coherent legal evaluation of usage restrictions, regardless of whether these restrictions have been implemented by means of a contract or by means of technological design. The normative concept of defects of quality which he develops in this model provides for more legal certainty when dealing with novel technological products.

Conow, Andreas

## Vertragsbindung als Freiheitsvoraussetzung

Grundlagen privater Vertragshaftung und Anwendung auf das Gesellschafterdarlehensrecht sowie die Kapitalausstattungspflicht in der GmbH

Volume 44  
2015. XXXI, 306 pages.

ISBN 9783161530654  
cloth 94,00 €

Andreas Conow shows the prerequisites for individual freedom or individual power to shape policies guaranteed by constitutional law. In doing so, he simplifies the involvement of neighboring disciplines in the legislative procedure and provides practical solutions for the conflict of interests between partners and creditors of corporations.

Brand, Marco

## Der Organbesitz

Volume 43  
2015. XV, 245 pages.

ISBN 9783161536717  
cloth 79,00 €

Even though the German Civil Code (BGB) entered into force over a hundred years ago, the attribution of possession to legal entities has not been conclusively clarified yet. Marco Brand takes this as an occasion to develop a closed system for the attribution of possession to private legal entities with particular focus on the civil, corporate and procedural law.

Korch, Stefan

## Haftung und Verhalten

Eine ökonomische Untersuchung des Haftungsrechts unter Berücksichtigung begrenzter Rationalität und komplexer Präferenzen

Volume 42  
2015. XIV, 293 pages.  
ISBN 9783161535024  
cloth 99,00 €

Stefan Korch examines how insights on actual human behavior and preferences could be better integrated into law and economics (behavioral law and economics) using the example of tort law. In particular, he considers unrealistic optimism and the over-confidence bias as well as unstable preferences in relation to assumed rational behavior patterns.

Jahn, Christian H.

## Der Bereicherungsausgleich im Mehrpersonenverhältnis

- dargestellt anhand der Rückabwicklung von Werk- und Dienstleistungen

Volume 41  
2014. XII, 248 pages.  
ISBN 9783161535550  
cloth 89,00 €

How are unjustified enrichments of works and services restituted in a work-sharing economy? Analysing a variety of cases, Christian H. Jahn develops a law-based solution not only for the restitution of works and services, but for the restitution of unjustified enrichments in multi-party situations generally.

Korves, Robert

## Eigentumsunfähige Sachen?

Each private entity's system of property ownership is an expression of its understanding of freedom. This book traces how far our system of ownership reaches and as a result finds itself in the border regions of private possession: can there be ownership of public objects, of corpses or of drugs?

Volume 40  
2014. XI, 167 pages.  
ISBN 9783161536632  
cloth 79,00 €

Riewert, Ina

## Die Rückabwicklung erbrachter Leistungen bei der Kumulation von Rücktritt und Schadensersatz nach § 325 BGB

To what extent are transactions for services already rendered to be reversed when the creditor not only cancels a contract, but also makes a claim for damages? Ina Riewert demonstrates here how termination and damage claims law are applied cumulatively.

Volume 39  
2014. XXIII, 454 pages.  
ISBN 9783161534614  
cloth 124,00 €

Koch, Anncathrin

## Die Kollision von gesellschaftsvertraglicher Abfindungsbeschränkung und Pflichtteilslast in der Person des Gesellschafter-Erben

If the interests of the successor of a membership of a partnership encounter the interests of the decedent's family members, a conflict arises. Focusing on the conflicting principles of the law of succession and partnership law, Anncathrin Koch analyzes whether the financial interests of the heir or the financial interests of the person entitled to a compulsory portion of the estate should be given priority when the compulsory portion is being assessed.

Volume 38  
2014. XXII, 312 pages.  
ISBN 9783161533679  
cloth 94,00 €

Götz, Andreas

## Der Schutz von Betriebs- und Geschäftsgeheimnissen im Zivilverfahren



Volume 37  
2014. LII, 651 pages.  
ISBN 9783161532177  
cloth 139,00 €

Since the German Code of Civil Procedure came into force, the balance between information and confidentiality in civil proceedings has consistently shifted at the expense of confidentiality. Andreas Götz provides a model for protecting secrets in proceedings which includes all stages of the civil procedure and which enables this imbalance to be eliminated.

Schollmeyer, Mario

## Selbstverantwortung und Geschäftsgrundlage

### Zurechnung und Haftung bei Geschäftsgrundlagenstörungen gemäß § 313 BGB

Volume 36  
2014. XXII, 491 pages.  
ISBN 9783161531040  
cloth 124,00 €

The author provides a fresh look at the German doctrine of the foundations of contract. In accordance with the basic structure of German contract law, which imposes liability on the non-performing party, he argues that the frustration of the contract should, under certain circumstances, entail liability of the exonerated party.

Preisner, Mareike

## Das gesetzliche mittreuhänderische Schuldverhältnis kraft gemeinsamer Elternschaft

### Ein Beitrag zur gegenwärtigen Dogmatik des Familienrechts

Volume 35  
2014. XXII, 340 pages.  
ISBN 9783161528675  
cloth 94,00 €

The biological fact of being parents to the same child by law creates a co-fiduciary obligatory relationship between the two parents. Mareike Preisner takes a first comprehensive look at this relationship and shows that it can become the foundation of an entirely new doctrine of private law.

Wagner, Christof

## Die »registrierte« Gesellschaft bürgerlichen Rechts

Volume 34  
2014. XXVIII, 214 pages.  
ISBN 9783161531484  
cloth 79,00 €

Unlike a German general partnership, a German civil law partnership is not generally entered in a public register. Nevertheless, the public can rely on a comparable level of safety in transactions with a civil law partnership in the area of land and corporate law. This is due to the indirect registration of the civil law partnership in these areas as well as to various principals of German civil law.

Lippstreu, Constanze

## Wege der Rechtsangleichung im Vertragsrecht

### Vollharmonisierung, Mindestharmonisierung, optionales Instrument

Volume 33  
2014. XXIV, 377 pages.  
ISBN 9783161531316  
sewn paper 74,00 €

The author analyzes various regulatory approaches, namely full harmonization, minimum harmonization and an optional instrument in contract law, in regard to their suitability for the approximation of contract law in the European Union taking into account the conflict between effectiveness and subsidiarity of European legislation.



Lehnen, Christof

## Vom Grundsatz der komplementäreichen Kommanditistenhaftung

Ein Beitrag zur Enträtselung des § 176 HGB

Volume 32  
2013. XXXI, 375 pages.

ISBN 9783161528774  
cloth 99,00 €

The relationship between the rule and the exception in the case of liability and limitation on liability in the law pertaining to the limited partnership is one of the most difficult issues in corporate law. Christof Lehnen shows that up to now the way this has been mainly understood was diametrically opposed to the intention of the law. He develops an explanatory model to describe the principles of liability intrinsic to the limited partnership and in comparison to the partnership under the Civil Code, a model which is in keeping with the principles.

Schramm, Henrik

## Ungewisse und diffuse Diskriminierung

Gründe privater Willenserklärungen vor den Diskriminierungsverboten des AGG

Volume 31  
2013. XIV, 404 pages.

ISBN 9783161520761  
sewn paper 79,00 €

Selecting applicants is all about discriminating. But under which circumstances is it discrimination when for example a candidate for a rental agreement or a contract of employment does not receive an offer? Henrik Schramm analyzes the features of the bans on discrimination and of the rules of evidence in the General Act on Equal Treatment. He focuses on the practical difficulties involved in the protection against discrimination in private law and the dogmatic status of the disputes pertaining to them.

Ehlgén, Christopher Bolko

## Probabilistische Proportionalhaftung und Haftung für den Verlust von Chancen

Proving causation of harm and damage in an action for medical or legal malpractice often turns out to be an onerous task. Christopher Bolko Ehlgén examines an alternative method of addressing this difficulty: a theory of apportioned liability which grants compensation in an amount proportional to the probability that the defendant actually caused the harm. The author demonstrates that liability based upon a principle of »all or nothing« ultimately leads to more just results.

Volume 30  
2013. XXV, 443 pages.

ISBN 9783161523182  
cloth 119,00 €

Beckhaus, Gesa Kim

## Die Rechtsnatur der Erfüllung

Eine kritische Betrachtung der Erfüllungstheorien unter besonderer Berücksichtigung der Schuldrechtsmodernisierung

Volume 29  
2013. XX, 421 pages.

ISBN 9783161519697  
cloth 94,00 €

Gesa Kim Beckhaus examines the performance theories and the extent to which they comply with the dictates of justice in specific cases and of a coherent system. Based on this, she develops a uniform concept for coping with all different situations of performances in a dogmatically consistent manner.

Zwanzger, Michael

## Der mehrseitige Vertrag

Grundstrukturen, Vertragsschluss, Leistungsstörungen

Volume 28  
2013. XX, 464 pages.  
ISBN 9783161523434  
cloth 114,00 €

The contract law of the German Civil Code is almost consistently tailored to bilateral contracts. Michael Zwanzger examines whether and how its rules can be applied to multilateral contracts in a way that conforms to the system. In doing so, he focuses on the fundamental structures of multilateral contracts, the conclusion of a multilateral contract and the breach of a multilateral contract.

**Becker, Maximilian**

## Absurde Verträge

Volume 27  
2013. XVIII, 354 pages.  
ISBN 9783161523144  
sewn paper 79,00 €

Absurd contracts are contracts for goods or services which are obviously impossible to provide, such as are often found in the realm of esoterics, wonder healing, and other pseudo-medical treatments. To what extent is there an obligation to pay for such goods or services? Where does the boundary to the impossible, which is particularly difficult to determine in this context, lie?

**Fischinger, Philipp S.**

## Die Beschränkung der Erbenhaftung in der Insolvenz

Volume 26  
2013. XXII, 171 pages.  
ISBN 9783161523915  
cloth 74,00 €

Philipp S. Fischinger studies the partially conflicting relationship between bankruptcy law on the one hand and the right of an heir to limit his liability for the debts of the estate on the other hand in cases in which an insolvency proceeding is pending concerning his own or the estate of the deceased. Fischinger favors a legislative change to the German Insolvency Code.

**Samhat, Abbas**

## Die Abgrenzung der Wahlschuld von der elektiven Konkurrenz nach dem BGB

Volume 25  
2012. XXIX, 463 pages.  
ISBN 9783161520327  
cloth 94,00 €

The legal status of the creditors' right of choice is determined in particular by means of the alternative obligation or the elective competition. Abbas Samhat studies these legal concepts, which have become more important with the reform of the law of obligations, rejects the antiquated criteria for distinguishing between them and establishes a new criterion: the obligation to vote.

**Fröde, Christian**

## Willenserklärung, Rechtsgeschäft und Geschäftsfähigkeit

Volume 24  
2012. XIII, 304 pages.  
ISBN 9783161519864  
cloth 94,00 €

Declaration of intent, legal act and contractual capacity are established terms and basic dogmatic concepts. Starting in the late 19th century, however, it was not the concepts which were adapted to the wording of the civil code but rather the understanding of the code to the older concepts. Christian Fröde takes a different approach based on an analysis of the language of the code, the traditional concepts and their formation.

**Thomale, Chris**

## Leistung als Freiheit

### Erfüllungsautonomie im Bereicherungsrecht

Volume 23  
2012. XXXVI, 467 pages.  
ISBN 9783161516672  
cloth 119,00 €

In the law of obligations, performance is a core term and freedom is a core idea. Chris Thomale connects them by subjecting the first three books of the German Civil Code to a fundamental historical, systematic and dogmatic criticism.

Matz, Christoph

## Die Konkretisierung des Werks durch den Besteller

Volume 22  
2012. XVII, 241 pages.

ISBN 9783161518843  
cloth 79,00 €

In the opinion of Christoph Matz, every customer who has signed a contract for work and services is entitled to alter the specifications of the services to be provided. According to the author, this is what the provisions that allocate the risk of loss under German contract law imply. Matz shows what consequences this could have for the remuneration and for the date on which work and services become due. For his dissertation Christoph Matz was awarded the 'Baurechtliche Forschungspreis des Deutschen Baugerichtstags e.V.'

Sedlmeier, Kathleen

## Rechtsgeschäftliche Selbstbestimmung im Verbrauchervertrag

Volume 21  
2012. XX, 582 pages.

ISBN 9783161509339  
cloth 139,00 €

With the aid of the principle of legal self-determination, Kathleen Sedlmeier shows a way of reconciling the special right of consumer contracts which dispense with personal features which are linked to the consumer's inexperience with the general framework of private law.

Richter, Stefan

## Schadenszurechnung bei deliktischer Haftung für fehlerhafte Sekundärmarktinformation

### Zur Exegese des § 826 BGB

Volume 20  
2012. XXI, 385 pages.

ISBN 9783161509384  
cloth 99,00 €

Stefan Richter examines the criteria for liability when Sections 826 and 249 of the German Civil Code are applied to cases of secondary market fraud. As a result of his study he corrects the interpretation of Section 249 Paragraph 1 and reaches the conclusion that hypothetical observations for assessing and attributing the damage are only significant in individual cases.

Becker, Eric

## Schadensersatz nach Fristsetzung im Eigentümer-Besitzer-Verhältnis

Volume 19  
2012. XII, 242 pages.

ISBN 9783161516931  
cloth 79,00 €

How is the relation between the clauses which govern compensatory damages in the law of obligations and those which serve the same purpose in the law of property? Eric Becker explores this subject from a historical perspective and then develops a solution which – in contrast to previous approaches – provides a harmonization of both areas of law, particularly when it comes to compensation for damages after fixing a deadline.

Gregor, Stephan

## Das Bereicherungsverbot

### Ausdruck der Trennung von Schaden und Haftung

Volume 18  
2012. XIX, 273 pages.

ISBN 9783161517044  
sewn paper 69,00 €

Compensatory damages are not meant to enrich the person who suffered the damage. As an acknowledged cornerstone of German law, this so-called prohibition of enrichment conflicts with the recognition of foreign judgements on punitive damages. It not only marks the border between lump sum damages and contractual penalty or between indemnity insurance and wagers but also between compensatory and punitive damages.

Fischinger, Philipp S.

## Kürzungsregelungen bei Haftungshöchstsummen

Eine kritische Analyse de lege lata und de lege ferenda

Volume 17  
2012. XIII, 124 pages.

ISBN 9783161517136  
cloth 74,00 €

If the damages resulting from a major catastrophic event exceed the amount the liable party has to pay irrespective of the party at fault, the claims of the person who suffered the damage are reduced proportionately. These reduction statutes are however often not practical. Philipp S. Fischinger discusses feasible alternatives and advocates a »socialized damages scheme.«

Picker, Christian

## Die betriebliche Übung

Volume 16  
2011. XXI, 489 pages.

ISBN 9783161509896  
cloth 119,00 €

The »company custom and practice« is generally regarded as the regular and uniform repetition of a certain behavior by the employer from which the employees may infer that they are to be granted a benefit or another privilege on a continuing basis. The legal grounds for the validity of the company custom and practice are still in dispute. Christian Picker explains that it is only the employer's will which can be the legal grounds for the validity of »company custom and practice.« Using this as an example, he shows the basic unity of individual labor law and general civil law.

Röck, Sarah

## Die Rechtsfolgen der Existenzvernichtungshaftung

Indisponibilität – Gläubigerbezug – Schadensberechnung

Volume 15  
2011. XIII, 197 pages.

ISBN 9783161509902  
cloth 74,00 €

In principle, partners in a limited liability company are not liable for the obligations of their company. In exceptional cases however there is an obligation to meet claims if the partners have deliberately caused the company's insolvency. Sarah Röck analyzes the legal consequences for destroying the economic basis of a company and shows how the damages resulting from an existence-destroying intervention can be calculated.

Siepmann, Hildrun

## Selbstbehalt bei Verbriefungen

Institutionenökonomische Analyse, rechtliche Rezeption und effektive Umsetzung

Volume 14  
2011. XXVI, 295 pages.

ISBN 9783161508820  
cloth 99,00 €

Retention is intended as a means of decreasing the misdirected incentives in securitizations, which were identified as one of the causes of the international financial crisis in 2007. Hildrun Siepmann studies its potential and its limitations from the perspective of law and economics and proposes a new regulation.

Döll, Yves

## Rückgewährstörungen beim Rücktritt

Eine Untersuchung der Rücktrittfolgen, insbesondere der Wert- und Schadensersatzpflichten

Volume 13  
2011. XXVI, 476 pages.

ISBN 9783161507595  
cloth 114,00 €

If there is an interference with the return of an object after a rescission, it is mainly the liability for compensation for lost value and damages which takes effect. Yves Döll studies the facts and the legal consequences of such interferences with a return and classifies them in order to deal with the numerous issues which arise in this context.

Blomberg, Eva Maria

## Freiheit und Bindung des Erblassers

### Eine Untersuchung erbrechtlicher Verwirklichungsklauseln

Volume 12  
2011. XVI, 321 pages.

ISBN 9783161507038  
cloth 89,00 €

Conditional appointments of an heir allow testators to influence the administration of the estate or even the personal conduct of their heirs. Against the backdrop of the predominance of the testator's wishes, which is intrinsic to the law pertaining to wills, Eva Maria Blomberg studies the admissibility of such lawmaking.

Hedderich, Katharina

## Pflichtversicherung

Volume 11  
2011. XXVIII, 497 pages.

ISBN 9783161506369  
sewn paper 89,00 €

In her sweeping study of the foundations, the systematics and the form of private compulsory insurance, Katharina Hedderich develops the first comprehensive system to answer the question if and to what extent the state is permitted to or has to intervene in private insurance and to regulate this with compulsory insurance.

Korth, Ulrich

## Minderung beim Kauf

Volume 10  
2010. XVIII, 222 pages.

ISBN 9783161506024  
cloth 89,00 €

The right of the purchaser to reduce the purchase price in the event of a deficiency in the purchased goods plays a central role in many cases. However, what is the legal position of the seller who does not want to sell at a reduced purchase price? In his work, Ulrich Korth explores this question.

Wagenknecht, Christopher

## Das System der rechtlichen Kontrolle von Eheverträgen

Volume 9  
2010. XIX, 270 pages.

ISBN 9783161503948  
cloth 79,00 €

During the past years, there has been a controversial discussion pertaining to the judicial decisions on examining the terms of premarital agreements. Christopher Wagenknecht links the basic principles of the dogmatics of private law to the specifics of the relevant cases. He uses concrete examples of cases to illustrate the results of his study and to provide an insight into his findings.

Wall, Fabian

## Das Valutaverhältnis des Vertrags zugunsten Dritter auf den Todesfall – ein Forderungsvermächtnis

### Neubetrachtungen im Anschluss an die »Jahrhundert-Entscheidung« BGHZ 156, 350 ff. und an das »Gesetz zum Pfändungsschutz der Altersvorsorge«

Volume 8  
2010. XLI, 854 pages.

ISBN 9783161504488  
sewn paper 99,00 €

Life insurances enable the policy holder to name another person as the beneficiary in the event of death. Whereas court decisions have ruled that this is a gift inter vivos, Fabian Wall is able, on the basis of current developments in insolvency law, to classify this as a disposition mortis causa (legacy).

Schramm, Annina

## Haftung für Tötung

Eine vergleichende Untersuchung des englischen, französischen und deutschen Rechts zur Fortentwicklung des deutschen Haftungsrechts in Tötungsfällen

Volume 7  
2010. XXIX, 535 pages.

ISBN 9783161501838  
sewn paper 94,00 €

In regard to wrongful death, English, French and German tort law are remarkably different. German tort law restricts claims granted to dependants as a result of a relative's death to cases in which the death caused the loss of an enforceable right to financial support and entirely denies any claim for bereavement damages. In this work, Annina Schramm does a thorough comparison of the three legal systems, identifies the deficiencies of German tort law and their underlying rationale and on this basis advocates an extension of the German wrongful death law. She asserts that bereavement damages for children who are minors, their parents and husband or wife are constitutionally mandatory and should also be granted to other close relatives including common-law spouses. Furthermore, the author elaborates on legal policy and the necessity of granting damages to dependants for the loss of financial support irrespective of a prior legal right to this. Rebutting various counter-arguments given in legal literature, she stresses the possibility of establishing a new, coherent tort law system while leaving its main principles intact.

Miethaner, Tobias

## AGB-Kontrolle versus Individualvereinbarung

Zweck und Grenzen der Inhaltskontrolle vorformulierter Klauseln

Volume 6  
2010. XVI, 289 pages.

ISBN 9783161503313  
sewn paper 74,00 €

It is of great importance when formulating a contract to know whether or not one of the terms is subject to the unfairness test for preformulated contract clauses. In this work, the author defines the scope of individually negotiated contract clauses which are not subject to the judicial unfairness test. He discusses this subject from the perspective of constitutional law, legal theory and European law, and presents a concept which leaves more room for agreements not subject to control, especially in business transactions, but also considers the requests of consumer protection. The author's approach, which includes typical cases, is compared to the judgments of the Federal Court of Justice.

Cziupka, Johannes

## Dispositives Vertragsrecht

Funktionsweise und Qualitätsmerkmale gesetzlicher Regelungsmuster

Volume 5  
2010. XXII, 552 pages.

ISBN 9783161502286  
cloth 104,00 €

Gaps in contracts are inevitable. Psychological limits to foreseeing every contingency combined with high transaction costs prevent contracting parties from closing perfectly complete contracts. The state thus becomes responsible for supporting private autonomy in contract formation by providing contractual gap fillers. Gap fillers in the form of default rules allow the parties either to let the law govern their relationship or to provide for the contrary. Accordingly, such default rules are necessary for any legal system based on the idea of personal autonomy in order for it to function properly. However, the exact purpose and scope as well as the optimal content of these non-mandatory rules is highly controversial. In this work, Johannes Cziupka shows that a comprehensive default-rule analysis requires an interdisciplinary approach that includes an economic analysis of law combined with a philosophical study of private law.

Uffmann, Katharina

## Das Verbot der geltungserhaltenden Reduktion

Volume 4  
2010. XVII, 317 pages.

ISBN 9783161503184  
cloth 89,00 €

The principle of not preserving the validity of an unfair provision in standard terms of business by means of rectification remains generally accepted. This is despite the questionable suitability of such an all-or-nothing legal outcome, amidst a trend towards ever-increasing control of content, and even its contradiction of the statutory system of legal consequences. Katharina Uffmann investigates the viability of this principle, and provides a fresh, methodologically-grounded answer to the hotly debated question of whether a judge should be allowed to remedy the invalidity of such provisions.

Müller, Therese

## Besitzschutz in Europa

Eine rechtsvergleichende Untersuchung über den zivilrechtlichen Schutz der tatsächlichen Sachherrschaft



Volume 3  
2010. XXI, 297 pages.

ISBN 9783161502200  
cloth 89,00 €

In most legal systems, it is not only the owner of property who is protected from being deprived of it or from exercising the actual control over it, but also the person who merely has actual control over the property. Therese Müller provides a comparative analysis of how this protection is structured in substantive and procedural law in various European legal systems. She analyzes the very different goals actually pursued with the protection of the virtual control over property, whose right to exist has repeatedly been doubted in the past. Based on this, the author advocates the inclusion of regulations to protect possession in a potential common European civil code and establishes the basic principles for a practicable and consistent regulation of the protection of possession.

**Kirsten, Stefan**

## Verschuldensunabhängige Schadensersatzhaftung für Sachmängel beim Warenkauf?

Volume 2  
2009. XXVI, 441 pages.

ISBN 9783161498923  
cloth 99,00 €

While numerous legal systems follow the common law approach of strict liability for breach of contract, German law traditionally adheres to the principle of fault. Nevertheless, since the reform of the law of obligations in 2002, more and more scholars have postulated the renunciation of that principle – for the sake of legal certainty and consumer protection, to promote economic efficiency, or in the interest of the unification of European private law. Using the sale of defective goods as a highly relevant example, Stefan Kirsten questions the persuasive power of that postulate. Taking comparative and economic arguments into account, the author proposes a new foundation of the fault principle in contract law.

**Bömer, Guido**

## Besitzmittlungswille und mittelbarer Besitz

Volume 1  
2009. XXV, 282 pages.

ISBN 9783161497698  
cloth 79,00 €

Guido Bömer presents a new look at the institution of indirect possession in German civil law. Indirect possession occurs when a person physically controls an object and that person has the status of a lessee, a pawn creditor or a similar position. The lessor, pawn debtor etc, is said to have indirect possession while the person exercising physical control has direct possession. Indirect possession has great practical importance in the law of secured transactions. According to most courts and legal scholars, indirect possession cannot exist unless the direct possessor acknowledges the indirect possessor's superior position and thus ends when the direct possessor wants it to end. The author challenges this view. For the drafters of the German Civil Code, indirect possession was to be determined by objective factors only. They did not assign any importance to the direct possessor's intentions.

