

Veröffentlichungen zum Verfahrensrecht

Edited by Rolf Stürner

Publications on Procedural Law is a series containing outstanding dissertations and other monographs which deal with problems in procedural law. The concept of procedural law, which unifies the 100 volumes published in this series, is given a broad interpretation and is not limited to one branch of the law or one procedural form. As an example, in the field of civil procedure law there are studies of the procedure leading to a judgment and of enforcement proceedings, including insolvency law, and in the field of criminal procedure law the titles deal with aspects of the preliminary investigation and the main proceedings. Since the first volume was published in 1982, the subjects dealt with mirror the way in which the focal points of the discussion among scholars have shifted. In addition to works on basic issues of national procedural law, the number of comparative studies of procedural law and works on international procedural law has increased during the past few years, and there are many signs of an increasing interest in arbitration law and alternative conflict resolution mechanisms. The *Publications on Procedural Law* is designed to meet the changing needs of those interested in this field.

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Schreiner, Christina

Aktenbeziehung und Anfangsverdacht im Insolvenzstrafverfahren

Zugleich ein Beitrag zum »Doppeltürmodell« des BVerfG

Volume 174
2020. XVIII, 244 pages.

ISBN 9783161593819
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The requirement of initial suspicion is of exceptional importance in protecting the individual in cases of criminal prosecution without cause. Yet the majority of criminal insolvency proceedings are initiated with a lack of tangible evidence. Christina Schreiner develops guidelines for a constitutional handling of the investigation of insolvency offences.

Kern, Verena Dorothea

Urkundenvorlage bei Kartellschadensklagen

Editionspflichten nach der ZPO und der Kartellschadensersatzrichtlinie: Vergleich, Modellcharakter und Umsetzungsvorschlag

Volume 173
2020. XXII, 253 pages.

ISBN 9783161593833
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In order to implement Directive 2014/104/EU, the German legislator has created new provisions concerning the production of documents in antitrust claims for damages. The author analyzes whether these new rules meet the requirements of the directive and how they differ from the general rules for the production of documents in German civil procedure. She asks whether the general rules should be modified, and provides a proposal for a better implementation.

Heil, Benedict

IT-Anwendung im Zivilprozess

Untersuchung zur Anwendung künstlicher Intelligenz im Recht und zum strukturierten elektronischen Verfahren

Volume 172
2020. XXI, 171 pages.

ISBN 9783161595325
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Increasing digitalization and technological progress raise the question of whether and to what extent judicial workload could be reduced by a more extensive use of information technology. Benedict Heil examines this from a theoretical as well as a practice-orientated point of view.

Schreck, Lisa

Die Umsetzung der Mediationsrichtlinie in Frankreich und Deutschland

Eine rechtsvergleichende Untersuchung zur Förderung der Mediation unter besonderer Berücksichtigung der Mediationskostenhilfe

Volume 171
2020. XV, 206 pages.

ISBN 9783161589645
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Lisa Schreck analyses how the Mediation Directive 2008/52/EC was applied to national law in France and Germany and discusses legislative proposals for encouraging mediation in Germany in the long term. The introduction of legal aid for mediation is presented as a promising starting point.



Berzen, Anna K.

Gerichtssaalberichterstattung

Ein zeitgemäßer Rahmen für die Arbeit der Medienvertreter in deutschen Gerichten

Volume 170
2020. XXIX, 442 pages.

ISBN 9783161592553
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Media reporting from German courtrooms is subject to strict rules which have remained largely unchanged since the 1960s. An analysis of the competing rights and protected interests at hand plus a comparative look at English law show that reform of the German rules is overdue.

Köpf, Laura Marlen

Zwangsvollstreckungsmoratorien

Volume 169
2020. XXI, 306 pages.

ISBN 9783161591426
cloth 94,00 €

ISBN 9783161591433
eBook PDF 94,00 €

Although there are numerous judicial, official and statutory automatic stays to halt enforcements, the procedural effects of such respites and their impact on claims have not yet been uniformly examined. Laura Marlen Köpf closes this gap.

Vogt Geisse, Thomas

Aufklärung und Informationskontrolle im Zivilprozess

Eine vergleichende Studie zum deutschen, englischen und US-amerikanischen Recht

Volume 168
2020. XVIII, 223 pages.

ISBN 9783161588884
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Modern civil procedure law has to meet two conflicting challenges: determination of the facts and the protection of confidential information. How the ensuing tension is eased differs considerably within common and civil law systems. Thomas Vogt Geisse discusses the instruments used in German, English and American civil procedures to handle the danger of disclosure and the perilous spread of information. The study also casts new light on the heated discussion regarding secret proof-taking in German civil procedure.

Bsaisou, Marcus

Vollstreckungsimmunität von Zentralbanken

Volume 167
2020. XXIII, 441 pages.

ISBN 9783161590887
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When a foreign state defaults on its debts, the only course of action often left to creditors is to target that state's central bank. To safeguard the bank's vital role in the financial system as well as for national solvency, international law affords these institutions a wide but not unlimited immunity against enforcement measures. Marcus Bsaisou's detailed analysis reveals that in German proceedings a balance between safeguarding central bank immunity and protecting legitimate creditor rights can be struck.

Tunze, Carlo

Der Wegfall der ausgeübten Prozessführungsermächtigung



Volume 166
2020. XVII, 165 pages.

ISBN 9783161590429
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A claim does not necessarily have to be asserted by its holder. Indeed, the legal institution of mutually agreed representative action in Germany allows an external third party to assert the disputed right in their own name. Carlo Tunze analyzes what the discontinuation of this authority means for a process that is already underway.

Jobst, Simon

Das gesellschaftsrechtliche Schiedsverfahren zwischen Privatautonomie und Verfahrensgarantien

Ein deutsch-italienischer Rechtsvergleich über Beschlussmängelstreitigkeiten vor Schiedsgerichten

Volume 165
2020. XXIV, 275 pages.

ISBN 9783161590023
cloth 84,00 €

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eBook PDF 84,00 €

Arbitration is one of the most important alternative methods for resolving disputes. But to what extent can it be employed when it comes to challenging shareholders' resolutions, and what is to be observed during proceedings? Simon Jobst's comparative study takes a critical look at the answers provided by literature and decisions in Germany and Italy.

Eggers, Alexander

Gerichtliche Kontrolle von Vergleichen im kollektiven Rechtsschutz

Eine Untersuchung zum US-amerikanischen, niederländischen und deutschen Recht

Volume 164
2020. XXIII, 374 pages.

ISBN 9783161575440
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Settlements in collective redress typically gain binding force only upon judicial approval. Against the backdrop of new legislation in Germany, Alexander Eggers draws on the experiences gathered in the United States and the Netherlands in order to identify possible problems and propose a framework for this judicial task.

Klein, Fabian

Die Verwertbarkeit gem. 28 USC § 1782(a) erlangter Beweismittel im deutschen Zivilprozess

Volume 163
2019. XVIII, 190 pages.

ISBN 9783161576218
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Under German civil procedural law, a party generally is not obliged to contribute to the production of evidence against his or her own cause. The opposite is true in the US system of pre-trial discovery. This divergence is potentially disruptive because in certain circumstances, 28 U.S.C. § 1782(a) allows the parties in a German civil litigation to seek discovery in the US. Fabian Klein asks how German courts should deal with evidence thus obtained.

Müller, Charlotte Helene

Beweisverbot und Sachvortragsverbot

Materiell rechtswidrig erlangte Informationen im Zivilprozess



Volume 162
2019. XVII, 280 pages.

ISBN 9783161588655
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The debate on admissible evidence provides Charlotte Helene Müller with a backdrop for her study on the use of unlawfully obtained information. At the interface of substantive, procedural and constitutional law, she elaborates the principles, prerequisites and legal consequences of prohibiting the use of information and offers a comprehensive system for dealing with unlawfully obtained information in German civil proceedings.

Proske, Caroline Elisabeth

Expert witness conferencing in Schiedsverfahren

Volume 161
2019. XVII, 196 pages.

ISBN 9783161582738
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Even though enlisting external specialist knowledge through expert witnesses is an integral part of international arbitration, such experts and the closely-linked cross-examinations of their opinions are subject to constant criticism. An alternative is the increasingly widespread practice of expert witness conferencing. But, asks Caroline Elisabeth Proske, is it a profitable and advantageous one compared to the conventional way of dealing with experts and their reports?

Schmidt, Lukas

Die Zusicherung nach Art. 36 EuInsVO

Zugleich ein Beitrag zur Bewältigung grenzüberschreitender Konzerninsolvenzen

Volume 160
2019. XX, 267 pages.

ISBN 9783161583100
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A major innovation of the recast EIR is the introduction of the »undertaking«, which – based on a practice developed in UK law for complex cross-border group insolvencies – aims at avoiding the opening of secondary insolvency proceedings. Under the premise of making the much criticized and in part rejected instrument as operable as possible, Lukas Schmidt deals comprehensively with the regulatory complex of the undertaking.

Kehrberger, Roman F.

Die Materialisierung des Zivilprozessrechts

Der Zivilprozess im modernen Rechtsstaat

Volume 159
2019. XXV, 412 pages.

ISBN 9783161582769
cloth 99,00 €

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Has civil procedure evolved, or should it be evolving towards, taking on tasks such as ensuring social justice or compliance with competition law, rather than merely guaranteeing formal equality? Roman F. Kehrberger's study also outlines the purpose of civil procedure in a society governed by the rule of law.

Standard of Proof in Europe

Ed. by Luboš Tichý



Volume 158
2019. VIII, 323 pages.

ISBN 9783161570209
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eBook PDF 79,00 €

The main purpose of this book is to learn about different approaches to a key problem of procedural law, namely the standard of proof. The second is to assess the various stances adopted by diverse jurisdictions and find an adequate standard. Fourteen outstanding law professors describe and analyse how their national legal systems handle and deal with the problem.

Survey of contents

Pavel Holländer: Proof, theory of truthfulness and the purposes of procedure – *Mark Schweizer*: The standard of proof as a decision threshold – *Christoph Kern*: Probability as an element of the standard of proof – *Magne Strandberg*: The more probable than not standard – a critical approach – *Christoph Althammer/Madeleine Tolani*: Proof of causation in German tort law – *Hans Jürgen Ahrens*: The standard of proof – the German approach – *Walter Rechberger*: The Austrian approach and the inherent connection between the standard of proof and the burden of proof – *Michael Stürmer*: Evaluation of evidence and the standard of proof in the ELI/UNIDROIT European Rules of Civil Procedure – *Jan Balarin*: The Czech approach – *Emmanuel Jeuland*: The standard of proof and the French approach – *Roberto Poli*: The Italian concept of the standard of proof – *John Sorabji*: The English approach to the standard of proof – *Luboš Tichý*: Main problems from the perspective of a comparative analysis

Jurczyk, Friederike

Materialisierung des Zivilverfahrensrechts

Der Einfluss schuldvertraglicher Sonderwertungen zugunsten des Schwächeren auf das Erkenntnisverfahren nach der ZPO

Volume 157
2019. XIX, 239 pages.

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The buzzword »materialisation« describes the increasing influence of special privileges granted by substantive law on civil procedure. Friederike Jurczyk's study examines the current state and relevance of this development in relation to calls for better consumer protection and alternative dispute resolution.

Nissen, Moritz

Das Recht auf Beweis im Zivilprozess

Presenting evidence to a court in order to enforce private rights and receive effective legal protection is recognised as an integral part of guaranteeing fundamental rights today. But to what extent does this actually happen? Moritz Nissen also asks what further obligations courts are under to assess evidence and justify evidence-based decisions.

Volume 156
2019. XLVII, 860 pages.

ISBN 9783161562136
cloth 144,00 €

ISBN 9783161562143
eBook PDF 144,00 €

Horn, Jakob

Der Emergency Arbitrator und die ZPO

The so-called emergency arbitrator is gaining importance in international arbitration. For the first time, Jakob Horn brings it fully into line with German arbitration procedure, argues that emergency awards are enforceable under the New York Convention.

Volume 155
2019. XXI, 252 pages.

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Wörner, Steffen

Das Verbot der vorweggenommenen Beweiswürdigung

Eine Grundlagenstudie zum Beweisverfahren im Zivilprozess

Volume 154
2019. XXII, 403 pages.

ISBN 9783161558351
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Steffen Wörner examines the prohibition of the preemptive evaluation of evidence, a cornerstone of the taking of evidence in civil procedure. He lays bare its normative foundations and develops a model that allows a secure and consistent approach to the prohibition of the preemptive evaluation of evidence.

McCorkle, Alena

Allgemeinkundigkeit

§ 291 ZPO als Rechtsgrundlage richterlicher Internetrecherchen?

Volume 153
2018. XV, 235 pages.

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The Code of Civil Procedure states in § 291 that facts which are common knowledge to the court need not be substantiated by evidence. Courts increasingly use this provision as basis for internet searches without participation of the parties. Alena McCorkle takes a stand against this practice.

Kremer, Mika

Strafprozessuale Angehörigenprivilegien im Rechtsvergleich

Eine Untersuchung zu den Grundlagen eines europäischen Beweisrechts

Volume 152
2018. XXVII, 338 pages.

ISBN 9783161560422
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Why are close relatives of the accused exempt from certain duties in criminal proceedings? How important are these exemptions in the broader framework? Mika Kremer provides answers from a comparative perspective and identifies huge differences in culturally- and historically-close legal systems.

Sunaric, Predrag

Die richtige Partei im zivilprozessualen Erkenntnisverfahren

Sachlegitimation – »Klagerecht« – Prozessführungsbefugnis

Volume 151
2018. XVIII, 158 pages.

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Who, as a party, has the right or the standing to 'conduct' a civil lawsuit or obtain a substantive decision about it? Predrag Sunaric examines the significance of the theoretical construct of standing to sue for Swiss civil procedure today.

Alsfasser, Alexander

Sachaufklärung in der Einzelzwangsvollstreckung

Vermögensbezogene Informationsgewinnung in der Zwangsvollstreckung im Spannungsfeld zwischen Gläubigerinteressen und Schuldnerschutz: Eine Untersuchung de lege lata et ferenda

Volume 150
2018. XXVIII, 251 pages.

ISBN 9783161561641
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eBook PDF 84,00 €

The transparency of assets plays a pivotal role when it comes to effective and efficient foreclosure. The inherent downside to this is an impairment of the debtor's rights – but at what point does an impairment of rights turn into an infringement of rights? In his comprehensive study, Alexander Alsfasser searches for a balance between these two opposing aspects and determines what has to be taken into account regarding EU measures.

Trommler, Stefan

Die Teilklage im Zivilprozess

Eine Untersuchung im Lichte der Prozesstaktik und der Verhaltensanforderungen in Prozesskostenhilfe und Rechtsschutzversicherung

Volume 149
2018. XXVI, 298 pages.

ISBN 9783161558375
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ISBN 9783161558733
eBook PDF 79,00 €

Stefan Trommler examines the pros and cons of raising partial instead of whole claims. Judging them to be a tactical litigation tool, he finds that procedural obligations to bring an action for only part of a claim are inadmissible when they restrict the granting of legal aid or legal expenses insurance benefits.

Hofmann, Philipp Heiner

Der Schutz von Dritten in der Insolvenz des Versicherungsnehmers

Versuch einer Systembildung

Volume 148
2018. XXXIII, 402 pages.

ISBN 9783161555701
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eBook PDF 74,00 €

Insurance policies protecting third parties are a rather common phenomenon. These contracts, however, pose complex legal problems if the policy holder becomes insolvent. Regarding these problems, Philipp Hofmann attempts to reconstruct the relevant legal rules in order to create a coherent system of norms.

Lubrich, Mirjam

Der Gesamtschuldnerückgriff im Zuständigkeitssystem der EuGVVO

Mirjam Lubrich analyses the peculiarities of recourse claims made by jointly liable parties under the framework of the Brussels Ia Regulation, focussing on the issue of jurisdiction.

Volume 147
2018. XXIV, 325 pages.

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Lorenz, Ricarda-Charlotte

Die Dogmatik des Entschädigungsanspruches aus § 198 GVG

Effektiver Rechtsschutz bei überlangen zivilgerichtlichen Verfahren



Volume 146
2018. XXVI, 354 pages.

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Sections 198 – 201 of the Courts Constitution Act grant legal protection in the event of excessive length of judicial proceedings. Ricarda-Charlotte Lorenz analyses whether these remedies meet the requirements of the Basic Law for the Federal Republic of Germany and the European Convention of Human Rights.

Richter, Johannes

Verschleppte Eröffnung von Insolvenzverfahren

Zur unzulässigen Verlängerung von Insolvenzeröffnungsverfahren unter besonderer Berücksichtigung der Insolvenzgeldvorfinanzierung

Volume 145
2018. XVIII, 325 pages.

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When an enterprise files for bankruptcy, the opening proceedings are often a long-drawn-out affair. Court decisions are delayed to allow significant monetary benefits to be reaped from pre-financing. Johannes Richter shows why there is the legal need and regulative necessity for this practice to change, which, although challenging, would also create real opportunities for rebuilding businesses.

Schmidt, Alexander Gerald

Die Nichtzulassung der Revision mangels Erfolgsaussichten

Zur analogen Anwendbarkeit des § 144 Abs. 4 VwGO im Verfahren über die Nichtzulassungsbeschwerde nach § 133 VwGO

Volume 144
2018. XV, 396 pages.

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It is common practice for Germany's Federal Administrative Court to consider an appeal's chances of success as early as the initial stages of admission. But does this conform to current legislation? Alexander Gerald Schmidt examines whether the country's Code of Administrative Court Procedure (VwGO) and its Basic Law allow points of law to be a criteria when determining the admissibility of an appeal.

Wendland, Matthias

Mediation und Zivilprozess

Dogmatische Grundlagen einer allgemeinen Konfliktbehandlungslehre

Volume 143
2017. XXXVIII, 1093 pages.

ISBN 9783161541292
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eBook PDF 149,00 €

The worldwide triumph of mediation may be unique but what is actually the secret of its success? And what indeed is its relationship to civil litigation? By demonstrating the connection between mediation and the golden rule, Matthias Wendland shows ways towards a dogmatic of alternative dispute resolution.



Kotzur, Jonas

Die außergerichtliche Realisierung grenzüberschreitender Verbraucherforderungen

Eine rechtsvergleichende Untersuchung zur Bedeutung der Verbraucherschlichtung

Volume 142
2018. XXV, 341 pages.

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Various Problems can arise during cross-border disputes which deter consumers from exercising their legal rights. Jonas Kotzur suggests out-of-court dispute resolution as an alternative and describes the necessary principles to handle these disputes in the framework of consumer arbitration.

Frohloff, Jan

Verletzung von Schiedsvereinbarungen

Eine Untersuchung des deutschen Schiedsverfahrensrechts zu den Pflichten der Schiedsparteien und den Rechtsfolgen ihrer Verletzung

Volume 141
2017. XXII, 285 pages.

ISBN 9783161553820
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Jan Frohloff examines the obligations arising from arbitration agreements under German law, if a party in breach of an obligation is liable for damages, if an arbitral tribunal has jurisdiction over these disputes, and whether a party can terminate the arbitration agreement in the case of a breach.

Dürr-Auster, Heiko

Die Qualifikation als Gruppen- oder Verbandskläger im kollektiven Rechtsschutz

Einer für alle, aber wer nur?

Volume 140
2017. XXV, 445 pages.

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In many European collective redress mechanisms so-called representative entities or special purpose vehicles are designated to act on behalf of groups of claimants. Heiko Dürr-Auster analyses this model by comparing collective redress in Germany and the Netherlands. From this he develops suggestions for the implementation of Recommendation 2013/396/EU.

Stapf, Beatrice

Die Entwicklung der Rechtskraftlehre im französischen und spanischen Recht

Eine rechtsvergleichende Untersuchung

Volume 139
2017. XXIX, 679 pages.

ISBN 9783161550560
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The doctrine of res judicata is a key concept of civil procedural law and one that has undergone major changes in France and Spain in recent years. This volume undertakes a comparative analysis of the principle of res judicata in the two countries, identifying trends which may have implications for future pan-European developments.



Kasten, Francis

Die »Terminshoheit« des Gerichts und das Recht auf Verteidigung

Zur Terminierung und Vertagung der Hauptverhandlung bei Verhinderung des Verteidigers

Volume 138
2017. XX, 358 pages.

ISBN 9783161553103
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Francis Kasten probes the conflict which arises when the inability of the defence lawyer to attend a trial clashes with the judge's generally accepted supreme right to schedule the hearing. Concealed behind this seemingly pure question of organisation lurks a considerable obstacle to the accused's right to the help of a chosen counsel.

Schilpp, Benjamin

Gesellschafterfremdfinanzierte Auslandsgesellschaften

Kollisionsrechtliche Behandlung des Gesellschafterdarlehensrechts

Volume 137
2017. XXIV, 318 pages.

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As a result of the European Court's rulings on Centros, Überseering and Inspire Art, it became possible for companies with German headquarters to operate in the legal form of another EU member state. »Limited liability at a bargain price!« was the promise seemingly made if, for example, the British »Ltd« form was adopted. However, the legislator reacted by trying to regulate the financing of foreign companies by shareholder loans. Benjamin Schilpp examines whether German law on the matter can be applied to foreign companies when it comes to the conflict of laws.

Scheuing, Christoph

Der Pflichtteilsanspruch in Zwangsvollstreckung und Insolvenz

Eine Untersuchung zu Gehalt und Wirkung des § 852 Abs. 1 ZPO

Volume 136
2017. XXII, 311 pages.

ISBN 9783161550928
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Under Germany's law of succession, the compulsory portion of an estate is an asset that creditors can only access if it has been claimed for by the party entitled to it. In light of the latest legal developments, the tension that this causes is examined closely and reinterpreted in its impact on execution proceedings and insolvency.

Realization of Substantive Law through Legal Proceedings

Ed. by Alexander Bruns and Masabumi Suzuki

Volume 135
2017. VIII, 119 pages.

ISBN 9783161552304
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This volume contains contributions to a symposium that was held according to a tradition of amicable relationship between the law schools of the Albert-Ludwigs-Universität Freiburg and Nagoya University on September 30 – October 1, 2015 in Nagoya on the topic »Realization of Substantive Law through Legal Proceedings«. In a time where the value of law enforcement through courts is incrementally questioned and alternative dispute resolution mechanisms are globally promoted the question of the purpose of civil procedure and the relationship between substantive law and its realization through legal proceedings is of particular relevance. The topic thereby not only concerns traditional civil and civil procedural law, but also labor, patent and private international law. The volume reflects the topic's relevance from a comparative perspective since similar tendencies and questions currently arise in Japan and Germany.

Survey of contents

Civil Procedure and Civil Law

Alexander Bruns: Law Enforcement vs. Dispute Resolution. What is the Primary Purpose of Civil Procedure? – *Miyuki Watanabe:* Dispute Resolution and the Primary Purpose of Civil Procedure in Japan – *Tomohiro Yoshimasa:* Primary Purpose of Civil Procedure. A Perspective from the Japanese Civil Code



Private International Law

Jan von Hein: The Determination and Application of Foreign Law. A Blind Spot of European Private International Law? – *Dai Yokomizo*: Application of Foreign Law in Japanese Courts. Ideal and Reality

Intellectual Property Law

Maximilian Haedicke: Court-Appointed Technical Experts in German Patent Infringement Proceedings and in the Unified Patent System – *Masabumi Suzuki*: Pursuit of Pro-Innovation Patent Proceedings. Recent Experience of Japan

Labor Law

Sebastian Krebber: Alternative and Amicable Resolution of Labour and Employment Law Disputes – *Hajime Wada*: Individual Labor-Related Disputes and ADR in Japan. A Focus on the Labor Tribunal System

Hofmarksrichter, Lucia

Rechtsschutz bei überlangen Gerichtsverfahren im Lichte der Vorgaben des EGMR

Volume 134
2017. XXV, 214 pages.

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The European Court of Human Rights found fault with Germany's lack of effective remedies for court proceedings that take too long. A supplement was subsequently introduced to the country's Court Constitution Act (Sec. 198 et. Seq. GVG) to rectify this. But, as Lucia Hofmarksrichter establishes in this volume, there is still room for improvement. She puts forward her own proposal for the complete implementation of the ECHR's Art. 13 and Art. 6 requirements.

Laugwitz, Fabian

Einvernehmliche Streitbeilegung internationaler Wirtschaftsstreitigkeiten unter den ADR-Regeln der Internationalen Handelskammer (ICC)

Volume 133
2016. XIX, 328 pages.

ISBN 9783161546679
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Cross border business disputes can, inter alia, be solved by way of amicable dispute resolution. Nowadays, a wide range of rules of procedure designed to facilitate such settlements is available to international commercial traders. With the ICC's Alternative Dispute Resolution Rules Fabian Laugwitz examines one of these rules of procedures and outlines its effect in the individual legal systems.

Eslami, Nassim

Die Nichtöffentlichkeit des Schiedsverfahrens

Volume 132
2016. XX, 459 pages.

ISBN 9783161547133
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Arbitration is an essential component in the system of dispute resolution, but its element of secrecy has attracted significant criticism in recent years, especially regarding investment cases. And while the topic of confidentiality in arbitration has been extensively discussed, the broad consensus remains that such proceedings are of a non-public nature. Nassim Eslami analyses the question of whether greater transparency is necessary to conform this nature jurisdictionally. The book's focus is on commercial arbitration, but questions of investment arbitration are also taken into account.

Wallimann, Matthias

Der Unmittelbarkeitsgrundsatz im Zivilprozess

Dogmatik und Zukunftsperspektiven eines Verfahrensgrundsatzes im 21. Jahrhundert – zugleich ein Beitrag zur allgemeinen Verfahrenslehre

Volume 131
2016. XX, 407 pages.

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eBook PDF 94,00 €

The principle of immediacy is a traditional one in the German Code of Civil Procedure. Based on the findings of comparative law and historical development, Matthias Wallimann analyses the scope and the current value of the immediacy principle and draws conclusions for its future prospects in German Civil Procedure Law.

Thöne, Meik

Die Abschaffung des Exequaturverfahrens und die EuGVVO

Bestandsaufnahme, Bewertung, Ausblick

Volume 130
2016. IX, 289 pages.

ISBN 9783161543098
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eBook PDF 74,00 €

With the updated EU Convention on Jurisdiction and the Enforcement of Judgements, the European legislator has further lowered the obstacles to cross-border enforcement of rulings. The creation of an unrestricted European area of justice is however still faced with the continued necessity for downstream adjustment and protection instruments.

Holzmann, Manuel

Das Regressrisiko des Befreiungsgläubigers

Schuldbefreiungsansprüche in der Insolvenz des Befreiungsschuldners

Volume 129
2016. XV, 181 pages.

ISBN 9783161546143
sewn paper 69,00 €

ISBN 9783161546242
eBook PDF 69,00 €

The creditor's rights and the risk involved in claiming release of an obligation in insolvency proceedings is a subject which has hardly been touched on until now. Manuel Holzmann investigates releasing creditor's liability in this situation and in particular examines how far the fulfilment from discharge claims can be made part of the contest.

Wimalasena, Philip

Die Veröffentlichung von Schiedssprüchen als Beitrag zur Normbildung

Commercial arbitration is an important and much-used dispute resolution option in today's global trade. Its success, however, comes at a price. Unlike their court counterparts, arbitral proceedings are generally confidential and decisions rarely become public. As a result, legal development in many areas of commercial life is increasingly being hampered. This has consequences not only for the involved parties, but also for the norm-building process as a whole. Against this background, Philip Wimalasena calls for more transparency in commercial arbitration and for the systematic publication of arbitral awards. He analyses the structural prerequisites of a comprehensive publication practice and makes concrete recommendations for the anonymous publication of arbitral decisions.

Volume 128
2016. XVII, 360 pages.

ISBN 9783161543265
sewn paper 79,00 €

ISBN 9783161546402
eBook PDF 79,00 €

Reiling, Florian

Das US-amerikanische Discovery-Verfahren im Rahmen deutscher gerichtlicher Auseinandersetzungen

Eine Untersuchung unter rechtsvergleichenden Gesichtspunkten sowie unter besonderer Berücksichtigung des Verfahrens nach 28 U.S.C. § 1782 (a) als Beweisbeschaffungsmöglichkeit für Patentstreitigkeiten vor deutschen Gerichten



Volume 127
2016. XXII, 424 pages.

ISBN 9783161545528
sewn paper 74,00 €
ISBN 9783161546860
eBook PDF 74,00 €

Parties involved in German court proceedings sometimes depend on information which is located in the USA to either substantiate a claim or defend against one being asserted by another company or individual. In order to obtain this often essential evidence, parties can refer to the foreign litigation provision 28 USC 1782 (a) that authorizes US district courts to oblige opposing parties to provide relevant information for use in cases outside the USA. Florian Reiling illuminates what is required to initiate its use in patent litigations. At the same time, he discusses whether and to what extent the German Code of Civil Procedure and its underlying principles allow use to be made of evidence acquired by way of 28 USC 1782 (a) and whether it is admissible to pending cases.

Schmidt, Gabriel Ludwig

Der Vergleich in FamFG-Verfahren

Zugleich eine Untersuchung der Grenzen der Dispositionsfreiheit über Verfahrensgegenstand und Verfahrensende in Familiensachen und der Freiwilligen Gerichtsbarkeit

Volume 126
2016. XII, 173 pages.

ISBN 9783161541018
cloth 79,00 €
ISBN 9783161548000
eBook PDF 79,00 €

Reaching a final settlement is an ideal way to resolve conflicts amicably. Gabriel Ludwig Schmidt examines under which conditions and how a court proceeding in family or other voluntary jurisdiction matters can be settled by the parties.

Stoffer, Hannah

Wie viel Privatisierung »verträgt« das strafprozessuale Ermittlungsverfahren?

Eine Untersuchung zur Zulässigkeit privater Beweisbeschaffung und zur Verwertbarkeit auf diese Weise erlangter Beweismittel im Strafverfahren

Volume 125
2016. XXVII, 637 pages.

ISBN 9783161533716
sewn paper 99,00 €

A world-wide central theme in procedural rule discussions is currently the privatization of the prosecution process. Hannah Stoffer presents the actual and legal facets in the context of their relevant case groupings and develops an overall concept to the question of when the state has to permit the admission of evidence generated through private investigations.

Klöpfer, Matthias

Missbrauch im Europäischen Zivilverfahrensrecht

There are times when European civil procedural law seems to actually encourage abuse of law and circumvention strategies. Matthias Klöpfer examines if and how Europe's so-called prohibition of abuse of law principle can serve as a union-wide approach to regulate abuse of procedure.

Volume 124
2016. XXV, 432 pages.

ISBN 9783161542558
sewn paper 69,00 €
ISBN 9783161545931
eBook PDF 69,00 €

Bettinger, Nicole Jasmin

Prozessmodelle im Zivilverfahrensrecht

Erfolg des Hauptverhandlungsmodells auch in der Schweiz?

Volume 123
2016. XVIII, 314 pages.

ISBN 9783161543005
sewn paper 74,00 €
ISBN 9783161546273
eBook PDF 74,00 €

In order to grant full legal protection, procedural law has to balance formality and flexibility – but without neglecting law's cultural aspect. This is why three different types of structural models emerged, with the main hearing model gradually replacing the trial and Italian-canonical models in reforms of various legal cultures. In the case of Switzerland, each of its 26 cantons had its own civil procedure rules up until 2011 when the Swiss Confederation decided to finally follow its neighbour's example and unify these into a single set. The author examines the Swiss legislature's streamlining of a plethora of cantonal rules and different implementations of procedural models and asks how this relates to current civil law development.

Wendt, Stephan

Die einstweilige Räumungsverfügung des § 940a Abs. 2 ZPO

Volume 122
2015. XXIII, 430 pages.

ISBN 9783161541889
sewn paper 99,00 €

The German Code of Civil Procedure was recently amended to make it easier for landlords to evict the likes of nomadic tenants. Stephan Wendt has discovered regulatory shortcomings and comes up with a solution to better protect landlords.

Dickler, Jana Felicia

Schiedsgerichtsbarkeit und Reform der EuGVVO

Standort Europa zwischen Stagnation und Fortschritt

Volume 121
2015. XII, 241 pages.

ISBN 9783161539862
sewn paper 74,00 €

One of the most interesting questions currently occupying European civil procedural law must surely be that of the relationship between state jurisdiction and arbitration. Against the backdrop of the reform of the regulation on jurisdiction and the recognition and enforcement of judgments in civil and public matters, Jana Dickler suggests how the conflict-laden points of contact between the two forms of jurisdiction might be set out anew.

Geiger, Caroline

Kollektiver Rechtsschutz im Zivilprozess

Die Gruppenklage zur Durchsetzung von Massenschäden und ihre Auswirkungen

Volume 120
2015. XV, 300 pages.

ISBN 9783161540271
sewn paper 69,00 €

The increased availability of mass-produced goods and the huge amount of services on offer often leads to numerous consumers suffering damages as a result of identical or similar incidents. Caroline Geiger illustrates and analyzes the existing modes of redress in Germany, the American class action system and the reforms taking place in the most important EU member states. The author taps into the controversial European discussion on the subject and recommends the establishment of class action in German law.

Heinson, Dennis

IT-Forensik

Zur Erhebung und Verwertung von Beweisen aus informationstechnischen Systemen

Volume 119
2015. XIX, 451 pages.

ISBN 9783161537011
sewn paper 74,00 €

Gathering digital evidence from computers, smartphones and other information technology systems and its subsequent presentation in court have become common practice in legal investigations. But when does data achieve high probative value? How ought it be recovered and analyzed? Dennis Heinson presents the technical and legal aspects of IT forensics in a clear manner and delivers comprehensive answers to as yet unsettled legal questions.

Okonska, Agnieszka

Die Widerklage im Zivilprozessrecht der Europäischen Union und ihrer Mitgliedstaaten

Volume 118
2015. XLVI, 672 pages.

ISBN 9783161538575
sewn paper 109,00 €

The procedures of all European Union member states and the contracting states of the Lugano Convention are familiar with the counterclaim. Agnieszka Okońska examines the interaction of national provisions and the regulations of the EU law on counterclaims (the Brussels I Regulation, Small Claims Regulation and the Maintenance Regulation). The author identifies conflicts and prepares solutions to them.

König, Dominik

Die Haftung bei der Eigenverwaltung

Eine Untersuchung der Haftung des eigenverwaltenden Schuldners einschließlich der Haftung der Geschäftsleiter bei der Eigenverwaltung von Gesellschaften

Volume 117
2015. XXIX, 386 pages.

ISBN 9783161539657
cloth 109,00 €

Self-administration proceedings are an alternative form of dealing with insolvency whereby the debtor manages the business under supervision of a trustee. Dominik König investigates the unresolved question of how the debtor bears liability for breach of duties within this system. He examines the self-administration liability of natural persons and of corporations, taking into account the liability of managing directors with regard to the latter.

Wolber, Johannes

Schuldnerschutz im Europäischen Zwangsvollstreckungsrecht

Eine rechtsvergleichende und kollisionsrechtliche Untersuchung der schuldnerschützenden Vorschriften im Europäischen Zwangsvollstreckungsrecht mit einem Schwerpunkt auf der Kontenpfändung

Volume 116
2015. XXVIII, 325 pages.

ISBN 9783161538308
sewn paper 89,00 €

Johannes Wolber examines the protection of debtors in the law of enforcement from a comparative and historical perspective. He develops guidelines for the protection of debtors in cross-border enforcement of judgments within the EU, particularly with regard to the European Account Preservation Order.

Stangl, Roland

Die kollisionsrechtliche Umsetzung des Art. 13 EuInsVO

Methodenfindung im Spannungsfeld mitgliedstaatlicher Rechtsstrukturen

Volume 115
2015. XXIII, 391 pages.

ISBN 9783161538650
sewn paper 94,00 €

ISBN 9783161556890
eBook PDF 94,00 €

The decision as to which conflict rules are applied under article 13 of the European Insolvency Regulation has up until now often been based on national structures in the legal fields of the transfer of assets, insolvency avoidance and the conflict of laws. Roland Stangl points out existing differences and explores the options for a Europe-wide uniformed solution.

Wagner, Tobias

Die Erledigung im Mahnverfahren



Volume 114
2015. XX, 260 pages.
ISBN 9783161537219
sewn paper 74,00 €

How should a »settlement in payment collection proceedings« be handled within all the various possible stages of such a process? Tobias Wagner takes to task the hitherto advocated solutions and offers as a resolution a concrete suggestion for legislation which would guarantee a uniform response for each stage of the process.

Prozessrecht und materielles Recht

Liber Amicorum für Wolfram Henckel aus Anlass seines 90. Geburtstages

Hrsg. v. Joachim Münch in Zus.-Arb. m. der Göttinger Rechtswissenschaftlichen Gesellschaft e.V.

Volume 113
2015. X, 392 pages.

With this Liber Amicorum Germany's academia of civil procedure law honours one of its most important scholars, Wolfram Henckel, in the occasion of his 90th Birthday on April 21st, 2015. This collection of essays from friends, students and colleagues, has been given the title »Procedural and Substantive Law«, which encompasses his complete lifework and for which he still stands today as the central reference.

ISBN 9783161538117
cloth 99,00 €

Survey of contents

Martin Ahrens: Zu Risiken und Nebenwirkungen – *Reinhard Bork:* Die Vorsatzanfechtung von Gesellschafterleistungen analog § 93 InsO – *Jürgen Costede:* Zur Parteilchre im Zivilprozeßrecht – *Erwin Deutsch:* Vorsatz und Fahrlässigkeit in § 276 BGB – Ihre Beziehung zueinander – *Uwe Diederichsen:* Der »Konkurs« einer Idylle – Jurisprudenz als literaturwissenschaftlicher Gewinn – *Diederich Eckardt:* Das »Erwerbsverbot« des § 91 InsO – *Ulrich Foerste:* »Zeugenausschalten« durch prozesstaktische Klage – *Hans-Friedhelm Gaul:* T radition, Stagnation und schrittweiser Fortschritt im Insolvenzrecht – Eine Zwischenbilanz der neuen Rechtsinstitute: Insolvenzplan, Restschuldbefreiung und Verbraucherinsolvenzverfahren – *Walter Gerhardt:* Zum Einfluss Wolfram Henckels für die Insolvenzrechtsreform – *Rüdiger Krause:* Die Insolvenzanfechtung von Arbeitsentgeltzahlungen – Neues Insolvenzrecht qua Zuständigkeitsverlagerung? – *Bruno M. Kübler:* S chuldverschreibungen in der Insolvenz – Verfahrensrechtliche Streitfragen – Erfahrungsbericht aus einer Finanzdienstleisterinsolvenz – *Volker Lipp:* Rechtsschutz gegen den Richter: Rechtsbehelfe bei Verletzungen von Verfahrensgrundrechten im Zivilprozess – *Wolfgang Marotzke:* Die Verzinsung anfechtungsrechtlicher Rückzahlungsansprüche – *Joachim Münch:* Vorbeugender Rechtsschutz im Zivilprozessrecht – *Hans Prütting:* Prozessrecht und materielles Recht – *Bruno Rimmelspacher:* Vollstreckungsstandschaft in Fällen der Drittermächtigung – *Herbert Roth:* Veränderungen des Zivilprozeßrechts durch »Materialisierung«? – *Eberhard Schilken:* Ergänzende Gedanken zur Bedeutung des § 117 InsO – *Ekkehard Schumann:* Gerichte im Visier von parlamentarischen Untersuchungsausschüssen – *Andreas Spickhoff:* Streitgegenstände im Haftpflichtprozess – *Rolf Stürmer:* Verfahrensrecht und materielle Gerechtigkeit

Kahlert, Heiner

Vertraulichkeit im Schiedsverfahren

Eine Untersuchung nach deutschem Recht mit internationalen Bezügen

Volume 112
2015. XVI, 438 pages.
ISBN 9783161537790
sewn paper 89,00 €

Confidentiality in arbitration touches many different private and public interests. Should decisions rendered by arbitral tribunals be made public? Can arbitral proceedings be confidential if one of the parties is a state? Heiner Kahlert explores these and many other questions in his comprehensive treatise on confidentiality in arbitration.

Schmidt, Johannes

Rechtssicherheit im europäischen Zivilverfahrensrecht

Eine Analyse der Entscheidungen des EuGH zum EuGVÜ und der EuGVVO

Volume 111
2015. XIII, 309 pages.
ISBN 9783161538018
sewn paper 69,00 €

When interpreting the Brussels Convention and the Brussels I Regulation, the European Court of Justice (ECJ) has regularly employed the concept of legal certainty in various contexts. Johannes Schmidt questions if and to what extent the case law of the ECJ actually contributes to legal certainty.



Kühne, Ulrich

Amicus Curiae

Richterliche Informationsbeschaffung durch Beteiligung Dritter

Volume 110
2015. XXIV, 371 pages.

ISBN 9783161531477
sewn paper 79,00 €

Ulrich Kühne analyses *amicus curiae* participation in American, English and French courts and examines whether or not German law has functional equivalents. Focusing on his findings, he develops guidelines for a cautious participation of *amici curiae* in proceedings which have a particularly widespread impact.

Lühmann, Tobias B.

Die Rechtskraft des Schiedsspruchs im deutschen und US-amerikanischen Recht

Zugleich ein Beitrag zur Bedeutung des Parteiwillens für die Bestimmung der Schiedsspruchwirkungen

Volume 109
2014. XXXI, 394 pages.

ISBN 9783161535802
sewn paper 94,00 €

Tobias B. Lühmann examines the extent to which the res judicata doctrine reflects the private nature of an arbitral award under German and US law, and also explores how both systems deal with conflicting decisions. Against this backdrop, he develops his own theory, arguing for more party autonomy and a less rigid interpretation of res judicata.

Müller, Simon

Die Ablieferung nach § 817 Abs.2 ZPO

Volume 108
2014. XXVIII, 280 pages.

ISBN 9783161535956
sewn paper 74,00 €

The procedure of distraining goods is problematic if these goods do not belong to the debtor. The question as to if and in which cases a third person loses his goods depends on the legal nature of the application process, a controversial issue since the establishment of the German Code of Civil Procedure. An analysis of the historical development of the enforcement as well as of public law in general can create a new approach to solving the above mentioned questions.

Diakonis, Antonios

Grundfragen der Beweiserhebung von Amts wegen im Zivilprozess

Zugleich ein Beitrag zur Auslegung der §§ 142ff. und 448 ZPO

Volume 107
2014. XIV, 331 pages.

ISBN 9783161534447
sewn paper 79,00 €

In this thesis, the author attempts to shed light on a new dimension of the right to take evidence and, from this perspective, seeks to contribute to the interpretation of Articles 142 – 144 and 448 of the Code of Civil Procedure. He sees his study as an appeal to the judge to play an active role in the giving of evidence and in doing so not to distort the nature of civil proceedings.

Niehoff, Gerrit Cornelius

Verfahrenskonzentration durch compulsory counterclaims in den US-amerikanischen Zivilprozessordnungen

Volume 106
2014. XXV, 286 pages.

ISBN 9783161534539
sewn paper 74,00 €

Under US law, efficient conduct of litigation is achieved not only by the preclusion rules of res judicata, but also by compulsory counterclaim rules addressed to the defendant. Gerrit Cornelius Niehoff provides a concise study of these rules and develops measures of defendant protection.

Hübner, Rudolf

Ausländisches Recht vor deutschen Gerichten

Grundlagen und europäische Perspektiven der Ermittlung ausländischen Rechts im gerichtlichen Verfahren

Volume 105
2014. XXIV, 468 pages.

ISBN 9783161534645
sewn paper 94,00 €

The ascertainment of foreign law is a classical procedural problem: it is difficult and therefore error-prone. In order to deal with this problem properly, an accurate adjustment of procedural economics and legal certainty, as well as the procedural rights of the parties and the procedural objective to deliver judgments in accordance with substantive law, is indispensable.

Holterhus, Till Patrik

Beweisführung in der Europäischen Fusionskontrolle

Regelungserfordernis und Regelungsbestand im Spannungsfeld von Wahrheit und Wahrscheinlichkeit

Volume 104
2014. XXIII, 260 pages.

ISBN 9783161531583
sewn paper 69,00 €

Assuming a difference between evidentiary approaches for proving actual facts and proving competitive probabilities, Till Patrik Holterhus develops and organizes the different concepts of evidence law as they overlap in European administrative law, procedural law and merger control.

Möbius, Simon

Das Prinzip der Rechtsschutzgleichheit im Recht der Prozesskostenhilfe

Volume 103
2014. XV, 372 pages.

ISBN 9783161528927
sewn paper 89,00 €

Simon Möbius deals with the applicable law pertaining to legal aid, including the latest legislative reform. He explains this legal institution's grounds for validity under constitutional law and provides guidelines for a legally compliant application of the law. He concludes by showing how equal protection of the law can be achieved in all areas.

Hauck, Pierre

Heimliche Strafverfolgung und Schutz der Privatheit

Eine vergleichende und interdisziplinäre Analyse des deutschen und englischen Rechts unter Berücksichtigung der Strafverfolgung in der Europäischen Union und im Völkerstrafrecht

Volume 102
2014. XLIX, 836 pages.

ISBN 9783161519192
cloth 159,00 €

Undercover agents, wiretapping, online searches: Covert law enforcement is increasing. Pierre Hauck compares German law, English law, European Union law and international criminal law. The author provides a clear picture of the completely different functional allocation of the protection of privacy to the laws of criminal procedure, constitutional laws and human rights laws.

Die Zukunft des Zivilprozesses

Freiburger Symposion am 27. April 2013 anlässlich des 70. Geburtstages von Rolf Stürner
Hrsg. v. Alexander Bruns, Joachim Münch u. Astrid Stadler

Volume 101
2014. IX, 121 pages.

ISBN 9783161530883
sewn paper 64,00 €

This edited volume combines the lectures and speeches held at the symposium for Rolf Stürmer's 70th birthday. They deal with the preoccupation with dogmatics clearly defined by the maxims and objectives of civil procedure as well as the future relevance of dogmatics in view of the diversification and internationalization of civil procedure. In addition, using procedural law for consumer issues and appellate law as examples, the authors discuss how current civil procedure can be correctly shaped or altered as a social phenomenon in order to feasibly ensure its future viability and its effectiveness.

Survey of contents

Matthias Jestaedt: Begrüßung – *Joachim Münch*: Grundfragen des Zivilprozesses. Sinngehalte der Lehre vom Prozeßzweck – *Alexander Bruns*: Maximendenken im Zivilprozessrecht. Irrweg oder Zukunftschance? – *Herbert Roth*: Empfiehlt sich ein Sonderprozessrecht für Verbraucher? – *Christoph Althammer*: Die Zukunft des Rechtsmittelsystems – *Astrid Stadler*: Laudatio

El-Ghazi, Mohamad

Die Zuordnung von Gesetzesverletzungen zu Sach- und Verfahrensrüge in der strafprozessualen Revision

In spite of its significance for appellate law in criminal proceedings, until now no one has succeeded in giving a satisfactory answer to the question of the boundaries between the scope of substantive and procedural reprimands. Mohamad El-Ghazi attempts to make a contribution to the dogmatic classification of the categories of reprimands by showing the weaknesses of the previous approach and providing a solution which he develops on the basis of the divergent natures of substantive and procedural reprimands.

Volume 100
2014. XIII, 343 pages.

ISBN 9783161527999
sewn paper 79,00 €

Mantzouranis, Ioannis

Die notwendige Streitgenossenschaft im Zivilprozess

Beitrag zu einem rein prozessualen Verständnis des Rechtsinstituts der notwendigen Streitgenossenschaft

Volume 99
2013. XXI, 423 pages.

ISBN 9783161528118
sewn paper 89,00 €

The necessary joinder of parties, which is addressed in section 62 of the German Code of Civil Procedure, is widely considered to be governed, at least in part, by substantive law. Ioannis Mantzouranis develops a new, strictly procedural approach to the institution of necessary joinder, which has been long overdue since the so-called 'emancipation of the German procedural thinking from the shackles of substantive law'.

Kimmerle, Maximiliane

Befriedigungsverfügungen nach Art. 24 EuGVÜ/31 EuGVO

Zur Umgehung der Hauptsachegerichtsstände gem. Art. 2,5 ff. EUGVÜ/EUGVO durch Maßnahmen des nationalen einstweiligen Rechtsschutzes

Volume 98
2013. XXI, 310 pages.

ISBN 9783161527715
sewn paper 74,00 €

Today, provisional measures are increasingly taking the place of regular civil proceedings. The result is the undermining of the rules of jurisdiction which focus on the place of jurisdiction for the main proceedings and which only partially regulate provisional measures. Maximiliane Kimmerle develops a proposal for a solution which includes the planned reform of the European Regulation on Jurisdiction and Enforcement of Judgments.

Niedermaier, Tilman

Schieds- und Schiedsverfahrensvereinbarungen in strukturellen Ungleichgewichtslagen

Ein deutsch-U.S.-amerikanischer Rechtsvergleich mit Schlaglichtern auf weitere Rechtsordnungen



Volume 97
2013. XXXI, 404 pages.

ISBN 9783161526688
sewn paper 94,00 €

The German Arbitration Law of 1998 is particularly intended to meet the requirements of international commerce. One characteristic of international commercial disputes is a balance of power between the parties. However, structural imbalances between parties do occur not only in domestic and non-commercial disputes. In the recent years, issues raised by such imbalances in arbitration have received increasing attention in case law and legal scholarship in the United States. Tilman Niedermaier compares the law in Germany and the United States. Taking into account recent developments in EU law, he assesses to what extent the interests of parties with unequal bargaining power in arbitration can be safeguarded under German law.

Jocksch, Christian

Das Freigabeverfahren gem. § 246a AktG im System des einstweiligen Rechtsschutzes

Volume 96
2013. XVIII, 253 pages.

ISBN 9783161524240
sewn paper 74,00 €

Approval proceedings under section 246a of the German Stock Corporation ActG enable stock corporations to enforce shareholders' resolutions in spite of pending actions for rescission. Christian Jocksch examines this procedure from the perspective of civil procedure law. Exploring the interaction between corporate law and civil procedure law, he draws conclusions which would not be revealed in an analysis of approval proceedings merely from the perspective of corporate law.

Wendenburg, Felix

Der Schutz der schwächeren Partei in der Mediation

Volume 95
2013. XX, 413 pages.

ISBN 9783161523458
sewn paper 89,00 €

Mediation not only enables and promotes self-determination in conflicts – it also requires it. If the bargaining power of the parties to the conflict is structurally unequally spread, there is a risk that the weaker party is taken advantage of by (and to the benefit of) the stronger one. Felix Wendenburg tries to answer the fundamental question of how to deal with this risk.

Dittmer, Jana

Die Feststellung der Zahlungsunfähigkeit von Gesellschaften mit beschränkter Haftung

Volume 94
2013. XXVIII, 250 pages.

ISBN 9783161524059
sewn paper 64,00 €

Determining bankruptcy is one of the most important aspects in bankruptcy law, since this is the most common reason for the opening of insolvency proceedings. Jana Dittmer deals with current issues and provides guidance and proposals for handling the reason for bankruptcy filing.

Neyses, Andrea

Die Insolvenzanfechtung in Mehrpersonenverhältnissen

Volume 93
2012. XXI, 420 pages.

ISBN 9783161519550
sewn paper 89,00 €

The law pertaining to contesting insolvency enables the insolvency administrator to reverse those legal effects which are prejudicial to the creditor. Particular problems arise when several parties have an interest in the contestable movement of assets. Andrea Neyses deals with these multi-party relationships and in a critical analysis of judicial decisions develops an independent approach to the solution of this problem.

Mencke, Christian

Die zivilprozessuale Beiladung im Klageverfahren gem. § 148 AktG

Volume 92
2012. XXII, 239 pages.

ISBN 9783161519246
sewn paper 64,00 €

In German civil procedure, the summons (*Beiladung*) as a form of the participation of a third party is virtually unknown. Since 2005 however, section 148 of the German Stock Corporation Act does provide for a summons to certain third parties in the case of a certain procedure in which shareholders sue in their own name for compensation for their stock corporation – without any further definition of the meaning of this summons. Christian Mencke investigates and clarifies the meaning.

Putzke, Christina

Rechtsbeugung in Kollegialgerichten

Zur Bestimmung des tatbestandsmäßigen Verhaltens

Volume 91
2012. XI, 201 pages.

ISBN 9783161518317
sewn paper 64,00 €

Thieves, murderers and arsonists render themselves liable to prosecution if they commit robbery, murder or arson. Their punishment is necessary and self-evident. Although this necessity cannot be seriously denied even among judges, their punishment is by no means a matter of course. Christina Putzke deals with the difficulties that arise in this context and shows that these problems can be solved. According to the clarification she provides, judges could also be punished as a matter of course for a perversion of justice.

Landbrecht, Johannes

Teil-Sachentscheidungen und Ökonomie der Streitbeilegung

Eine rechtsvergleichende Untersuchung zu Bindungswirkung und Statthaftigkeit gerichtlicher Teilentscheidungen

Volume 90
2012. XXXII, 396 pages.

ISBN 9783161519291
sewn paper 89,00 €

»Bifurcating« court proceedings can reduce time and costs. Based on his review and comparison of the procedures applied by English, French, German, and Swiss courts, Johannes Landbrecht therefore proposes guidelines for the granting of »partial decisions« in order to create more efficient dispute resolution.

Heiß, Thomas A.

Anerkenntnis und Anerkenntnisurteil im Zivilprozess

Volume 89
2012. XI, 203 pages.

ISBN 9783161519499
sewn paper 69,00 €

In German civil procedure, the defendant can accept the legal claim made by the plaintiff, forcing the court to rule in accordance with that claim – without assessing the matter in dispute. Thomas Alexander Heiß examines the mechanism which makes this possible and describes the acknowledgement, its prerequisites and the limits of its impact based on the private autonomy established in substantive civil law.

Glunz, Benjamin

Psychologische Effekte beim gerichtlichen Einsatz von Videotechnik

Eine empirische und rechtsvergleichende Untersuchung zum US-amerikanischen, australischen und deutschen Zivilprozess

Volume 88
2012. XXX, 430 pages.

ISBN 9783161517365
sewn paper 89,00 €

Courtroom videoconferencing with the parties and the witnesses in civil court procedures does entail psychological effects. Benjamin Glunz gives a detailed description of these effects, examines their compatibility with the American, Australian and German law of civil procedure and calls for a careful handling of this medium.

Schwabenbauer, Peter

Der Zweifelssatz im Strafprozessrecht

Volume 87
2012. XIV, 193 pages.

ISBN 9783161517860
sewn paper 74,00 €

The principle of *in dubio pro reo* is considered a fundamental part of German substantive criminal law. It has been debatable for a long time whether and if so to what extent it should also be applied in the law of criminal procedure. Peter Schwabenbauer deals with this issue, focusing on fundamental, systematic and practical considerations.



Weichbrodt, Johannes

Der verbotene Beweis im Straf- und Zivilprozess

Zur Rolle strafprozessualer Beweisverbote bei der Durchsetzung zivilrechtlicher Ansprüche

Volume 86
2012. XX, 410 pages.

ISBN 9783161516771
cloth 79,00 €

The exclusionary rule is seen as a barrier to ascertaining the truth, and is dealt with differently in criminal and civil proceedings. On the basis of a procedural understanding of truth and the common principles of the rules of procedure, Johannes Weichbrodt develops a uniform solution to the issue of illicit evidence at the interface between civil and criminal procedure.

Majer, Christian F.

Die Räumungsvollstreckung und ihre effektive Durchsetzung

Volume 85
2012. XV, 168 pages.

ISBN 9783161517921
sewn paper 54,00 €

Christian F. Majer studies the difficulties of actually enforcing an eviction, such as the inclusion of a third party or the charges for the handling of movable property. He then proposes solutions in order to allow for the constitutional requirement of an efficient eviction.

Schmidt, Andreas

Der Beweis des Versicherungsfalls im deutschen, U.S.-amerikanischen und englischen Recht

Volume 84
2011. XX, 367 pages.

ISBN 9783161517037
sewn paper 74,00 €

The enforceability of claims arising from an insurance contract depends largely on whether or not it is possible for the insured to prove the occurrence of the insurance contingency in a court of law. The legal systems in Germany, the USA and England have developed some similar and some different devices to obtain fair outcomes.

Reforms of Civil Procedure in Germany and Norway

Ed. by Volker Lipp and Halvard H. Fredriksen

Volume 83
2011. XI, 452 pages.

ISBN 9783161509131
sewn paper 94,00 €

Norwegian civil procedure used to be heavily influenced by German and Austrian law. Even the new Civil Procedure Act of 2005 does not represent a full break with the German roots of Norwegian civil procedure. Further, although not a member of the European Union, the Norwegian participation in the European Economic Area leaves the approximation of the laws of civil procedure in the EU relevant also in the Norwegian context. Considering the common heritage and acknowledging the common challenges on the national and European level, the stage should be set for a fruitful comparison of German and Norwegian civil procedure.

A major obstacle for genuine interaction of German and Norwegian law on civil procedure has always been the language barrier. Thus, a very first German translation of the 2005 Act has been prepared and annexed to this book together with an English translation.

With contributions by:

Christoph Althammer, Inge Lorange Backer, Halvard H. Fredriksen, Ulrich Haas, Wolfgang Hau, Burkhard Hess, Volker Lipp, Henry J. Mæland, Anna Nylund, Jørn Ø. Sunde

Pflughaupt, Matthias

Prozessökonomie

Verfassungsrechtliche Anatomie und Belastbarkeit eines gern bemühten Arguments



Volume 82
2011. XVI, 380 pages.
ISBN 9783161508646
sewn paper 94,00 €

Judicial economy is a phenomenon which characterizes some proceedings. However, what demands can it make on the law if it has no clear expression in the rules of procedure? By using constitutional law, Matthias Pflughaupt attempts to answer this question which is significant for the application of the law.

Mom, Andreas

Kollektiver Rechtsschutz in den Niederlanden

Volume 81
2011. XXV, 497 pages.
ISBN 9783161501784
sewn paper 94,00 €

For a comparative approach in the field of private enforcement, Dutch law offers an interesting variety of legal instruments. The Netherlands not only has the right of collective action in civil law, but also a recent regulation concerning collective redress in mass tort cases. Andreas Mom analyzes the legislation of collective action and the corresponding jurisprudence and examines the similarities and the differences between the Dutch and the German solutions. Of special interest is the Act on Collective Settlement of Mass Damages of 2005, which for the first time provides a judicial collective procedure in order to rationalize and economize mass claims. In addition to the details of the provisions and the first experiences with this procedure, the author deals in particular with the »opt-out« mechanism chosen by the legislator and the international aspects of the bill. In conclusion, he summarizes the main results of his research by giving an outlook on the further development of collective action and mass litigation in Germany.

Lange, Sonja

Das begrenzte Gruppenverfahren

Konzeption eines Verfahrens zur Bewältigung von Großschäden auf der Basis des Kapitalanleger-Musterverfahrensgesetzes

Volume 80
2011. XVII, 362 pages.
ISBN 9783161508745
sewn paper 79,00 €

On the basis of the German Capital Markets Model Case Act Sonja Lange develops a model of a limited group action generally applicable on major claims. The procedural model is based on an analysis of the constitutional framework and differentiated in the European legal context.

Winker, Monika

Die Missbrauchsgebühr im Prozessrecht

Ein Beitrag zu Missbrauchsgebühren nach § 34 Abs. 2 BVerfGG und nach § 192 Abs. 1 Nr. 2 SGG im Kontext prozessualer Kostensanktionen

Volume 79
2011. XXVIII, 306 pages.
ISBN 9783161508295
sewn paper 74,00 €

Cost disadvantages or sanctions due to litigation misconduct have permeated numerous historical, foreign, international and German codes of procedure. Although there are few regulations for this, Monika Winker shows how commonplace these have become and provides a detailed study of the specific characteristics of fines for litigation abuse. She assesses the legality and the expedience of the norms and their application.

Böning, Daniela

Grundpfandrechte in Deutschland und den USA

Unter besonderer Berücksichtigung des Rechts des Bundesstaates Kalifornien

Volume 78
2011. XXVIII, 363 pages.
ISBN 9783161507250
sewn paper 79,00 €

Daniela Böning provides a detailed comparison and analysis of American mortgage law and the law in Germany. In addition to the property law regulations, she also discusses the bankruptcy law regulations that are significant for the position of the mortgage creditor.

Sawang, Judith

Geheimhaltung und rechtliches Gehör im Schiedsverfahren nach deutschem Recht

Volume 77
2010. XXI, 368 pages.

ISBN 9783161505379
sewn paper 89,00 €

Taking the highest judicial authority into account, Judith Sawang examines if and how trade and industrial secrets can be brought into arbitral proceedings without having to forego the protection of secrecy vis-à-vis the opposing party.

Engel, Martin

Collaborative Law

Mediation ohne Mediator

Volume 76
2010. XVI, 325 pages.

ISBN 9783161505560
sewn paper 89,00 €

Martin Engel studies collaborative law, a new method of alternative dispute resolution, which can be compared to mediation without a mediator. The author analyzes the procedure's basis with regard to negotiation theory as well as its legal background and develops a practicable framework for the application of collaborative law in Germany.

Kleinheisterkamp, Daniela

Kreditwesengesetz und Strafverfahren

Zur Bedeutung des »nemo-tenetur«-Prinzips für das bankaufsichtliche Verfahren

Volume 75
2010. XXIV, 485 pages.

ISBN 9783161502514
sewn paper 74,00 €

Nemo tenetur se ipsum accusare – nowadays, the privilege against self-incrimination plays its major role in administrative procedures rather than in criminal proceedings. Daniela Kleinheisterkamp analyzes if and to what extent requirements of constitutional law are undermined if information gained in administrative procedures is also used in criminal proceedings and thus diverted from its intended use. This question is particularly relevant for bank supervision authorities, who have the right to request information from individuals and companies. In her doctoral thesis, the author examines the compatibility of such rights to information with the privilege against self-incrimination. Her study is based on the constitutional foundation and definition of the content of the privilege against self-incrimination for both individuals and companies.

Norouzi, Ali B.

Die audiovisuelle Vernehmung von Auslandszeugen

Ein Beitrag zum transnationalen Beweisrecht im deutschen Strafprozess

Volume 74
2010. XVII, 295 pages.

ISBN 9783161496578
sewn paper 74,00 €

Cross-border criminality requires cross-border criminal prosecution, and it is often necessary to interrogate witnesses in another country. Thanks to the German Code of Criminal Procedure, this can be done directly by video interrogation. This does however lead to new legal problems. When is the court obligated to order a video interrogation? When is it allowed to accept a record of interrogation from a foreign country? To what extent can the accused influence this by filing a motion for the admission of evidence? Which law should be applied to the interrogation? What practical arrangements have to be made in doing so? Ali B. Norouzi looks into this new type of question. He shows that the new technological medium can be adapted smoothly to the structure of principles in criminal proceedings and also provides a theoretical framework for transnational evidence in German criminal proceedings.

Zwickel, Martin

Bürgernahe Ziviljustiz: Die französische jurisdiction de proximité aus deutscher Sicht

Zugleich ein Beitrag zur Definition eines Gesamtmodells bürgernahe Justiz

Volume 73
2010. XXIX, 405 pages.
ISBN 9783161504570
sewn paper 79,00 €

Martin Zwickel analyzes the measures to guarantee local access to justice or citizen-oriented justice taken in France and Germany and compares all these measures with the new French »jurisdiction de proximité.« He provides a comprehensive study of this new measure from a German point of view and shows the necessity of a general model for local access to justice or for a citizen-oriented justice.

Bernhard, Jochen

Kartellrechtlicher Individualschutz durch Sammelklagen

Europäische Kollektivklagen zwischen Effizienz und Effektivität

Volume 72
2010. XXV, 378 pages.
ISBN 9783161504518
sewn paper 89,00 €

Jochen Bernhard comments on the legislative plans of the EU Commission for the introduction of class actions into European competition law. He compares them to the traditional approach in the German cartel damage claim against cement producers and creates an alternative draft for a European directive.

Spohnheimer, Frank

Gestaltungsfreiheit bei antezipiertem Legalanerkenntnis des Schiedsspruchs

Zugleich ein Beitrag zur Gewährung rechtlichen Gehörs in Schiedsverfahren und zur Aufhebung von Schiedssprüchen

Volume 71
2010. XXXIV, 512 pages.
ISBN 9783161504822
sewn paper 79,00 €

Arbitration owes its popularity in part to the large amount of control it affords parties over the procedure used. Frank Spohnheimer investigates the extent to which the legal system places arbitral awards and legally binding judgements of the state courts on an equal footing. At the center of it all is the right to be heard.

Kranjic, Christian

»... dass er treu und gewissenhaft übertragen werde.«

Zum Dolmetschen im Strafverfahren

Volume 70
2010. XVI, 237 pages.
ISBN 9783161502743
sewn paper 59,00 €

Defendants who do not have a good command of the German language are dependent on the help of an interpreter. Criminal law scholars and criminal law practitioners act on the assumption that it is only a literal translation which will ensure *correct* interpreting and that only through this will the court's interest in criminal prosecution as well as the accused's interest in his/her defence be protected. Translators take a completely different stance. They point out that literal translations as a criterion for successful interpreting are completely useless. Christian Kranjic uses these findings to answer the question of how interpreting should be done in criminal proceedings. The key question is whether the interpreter is acting on behalf of the court, the witness or the accused and whose interests he is considering when doing the interpreting.

Beckhaus, Gerrit M.

Die Bewältigung von Informationsdefiziten bei der Sachverhaltsaufklärung

Die Enforcement-Richtlinie als Ausgangspunkt für die Einführung einer allgemeinen Informationsleistungspflicht in das deutsche Zivilrecht

Volume 69
2010. XXIII, 454 pages.
ISBN 9783161503962
sewn paper 79,00 €

Gerrit M. Beckhaus studies the extent to which German law enables the holder of a claim to obtain the information necessary for its enforcement. Against the backdrop of the harmonization of European law, he develops a proposal for legislation to cope with the conflict of interests between providing information and maintaining secrecy.

Berentelg, Maria

Die Act of State-Doktrin als Zukunftsmodell für Deutschland?

Zur Nachprüfung fremder Hoheitsakte durch staatliche Gerichte

Volume 68
2010. XXI, 309 pages.

ISBN 9783161502422
sewn paper 79,00 €

Civil courts are increasingly being confronted with the problem of how to deal with foreign acts of state which interfere with private legal positions. Maria Berentelg does a comparative study of the solutions in the USA and in Germany. The American act of state doctrine does not provide for an investigation of foreign acts of state due to judicial self-restraint in regard to foreign affairs. The author outlines the legal framework for a model of this kind in Germany. She focuses on the standards in fundamental rights and the extent to which foreign affairs and the idea of judicial self-restraint can determine how to deal with foreign acts of state in Germany as well. The author rejects adopting the American model, does however advocate taking foreign affairs into consideration within the framework of the ordre public.

Fiedler, Lilly

Class Actions zur Durchsetzung des europäischen Kartellrechts

Nutzen und mögliche prozessuale Ausgestaltung von kollektiven Rechtsschutzverfahren im deutschen Recht zur privaten Durchsetzung des europäischen Kartellrechts

Volume 66
2010. XXVII, 347 pages.

ISBN 9783161502804
sewn paper 74,00 €

Although class actions are well known in the U.S., they are traditionally not part of the procedural system in continental European countries such as Germany. In order to strengthen private enforcement of European antitrust law, the European Commission is planning to introduce class actions or comparable forms of collective actions. In light of this, Lilly Fiedler develops concrete proposals for the regulation of collective actions.

Schwieren, Friederike

Die Kostenbelastung des Gläubigers bei der Räumungsvollstreckung

Möglichkeiten zur Kostensenkung de lege lata und verfassungsrechtliche Grenzen der Kostenbelastung unter dem Gesichtspunkt effektiven Rechtsschutzes

Volume 65
2010. XIV, 278 pages.

ISBN 9783161503153
sewn paper 74,00 €

The high costs of enforcing an eviction judgement can be a serious obstacle for the creditor trying to enforce the judgement. For this reason several eviction methods have been developed which deviate from the expensive eviction proceedings stipulated by law. Friederike Schwieren examines the legitimacy and efficiency of these methods developed by the judiciary to reduce the costs of an eviction and discusses the constitutional limits to the creditor's monetary burden in the light of effective legal protection.

Fredriksen, Halvard H.

Europäische Vorlageverfahren und nationales Zivilprozessrecht

Eine Untersuchung der Vorlageverfahren an den EFTA-Gerichtshof und den EuGH als Bestandteile des norwegischen bzw. des deutschen Zivilprozesses

Volume 64
2009. XXI, 391 pages.

ISBN 9783161500183
sewn paper 89,00 €

The preliminary reference procedure of the Court of the European Free Trade Association (EFTA) represents an interesting and unique attempt to copy the preliminary ruling procedure of the ECJ without at the same time having to take over the supranational elements of the Community legal order. Patterned after the European Union procedure, it is designed as interlocutory proceedings within a pending legal action before the national court which is doing the submission. This results inevitably in a close interaction between national procedural law and European law. Against this backdrop, Halvard Haukeland Fredriksen investigates and compares the integration of the two preliminary reference procedures into the civil procedural law of Norway and Germany.



Quast, Anna

Rechtskräftiger Titel des Zedenten und Schutz des Schuldners

Vorgaben der Vertragsfreiheit zur Argumentation im Schuldrecht

Volume 63
2009. XIX, 330 pages.

ISBN 9783161500091
sewn paper 79,00 €

In this work, Anna Quast studies the major issue of debtor protection in the law of assignment against the backdrop of two recent judgments given by the Federal Supreme Court of Germany. In doing so, she draws on freedom of contract as a constitutional term and shows that there is no ban on a discrimination against the debtor because of the assignment. In place of this, the author proposes a more flexible balancing of interests, examines the protection of the debtor in his interest to know who his creditor is and suggests a way of improving the debtor's position. In conclusion, the author returns to the original issues of the assignor in possession of an executory title and shows how this problem can be solved by using the basic principles she developed.

Mayer, Claudia

Sicherheitsleistung durch Bankbürgschaft im Zivilprozess

Zugleich ein Beitrag zur Erstattungsfähigkeit von Vollstreckungs- und Vollstreckungsabwehrkosten

Volume 62
2009. XXX, 375 pages.

ISBN 9783161501241
sewn paper 69,00 €

Bank guarantees are the common means of security in German civil proceedings. In spite of comprehensive judicial decisions on this subject, there are still many debatable questions. Claudia Mayer describes the particularities and statutory requirements of procedural securities and studies in particular the liability for the costs of the security provided either by the judgement creditor in order to start enforcement proceedings or by the judgement debtor in order to avoid the enforcement. She also deals with the suitability of foreign banks as guarantors for the proceedings. Taking the latest judicial decisions into account, the author analyzes potential bases for claims for the reimbursability of the creditor's enforcement costs or the costs of the debtor's counter- or resistance action.

Weber, Michael

Europäisches Zivilprozessrecht und Demokratieprinzip

Internationale Zuständigkeit und gegenseitige Anerkennung im Gerichtssystem der Europäischen Union und der USA

Volume 61
2009. XIV, 281 pages.

ISBN 9783161500237
sewn paper 74,00 €

In the European Union, the mutual recognition of judicial decisions has become an obligation which has been extended considerably in the past few years. In many cases, default judgments from other member states have to be recognized even if it is obvious that the initial court has wrongly claimed to have jurisdiction. In the USA, the state courts are obligated to refuse recognition in comparable cases. The EU explains the general waiver of grounds for non-enforcement with the improved cross-border legal redress and the mutual trust in the administration of justice. Michael Weber questions whether or not the trust in effective judicial reviews in the member state of origin conforms to the constitutional standards which apply according to the German Basic Law for the democratic legitimation of judicial decisions and the transfer of sovereignty to other states.

Bergmeister, Felix

Kapitalanleger – Musterverfahrensgesetz (KapMuG)

Bestandsaufnahme und Reformempfehlung aus der Perspektive von Recht und Praxis der US-amerikanischen Securities Class Action

Volume 60
2009. XXX, 411 pages.

ISBN 9783161499135
sewn paper 79,00 €

The German Capital Markets Model Case Act (KapMuG), in effect since November 1, 2005, has introduced group litigation to German securities law. Felix Bergmeister compares and contrasts this new device with the U.S. securities class action and analyzes the extent to which the regulatory goals of the statute have been accomplished. He finds that it falls short on two essential levels: It does not relieve courts of their heavy caseloads, nor does it, as it set out to do, create sufficient incentives for investors to join a KapMuG proceeding. He goes on to discuss the options for improving the KapMuG and, after rejecting the implementation of U.S.-style class actions in Germany, details a proposal for legislative reform.



Muthorst, Olaf

Das Beweisverbot

Grundlegung und Konkretisierung rechtlicher Grenzen der Beweiserhebung und der Beweisverwertung im Zivil-, Straf- und Verwaltungsverfahren

Volume 59
2009. XVII, 417 pages.

ISBN 9783161499210
sewn paper 79,00 €

The exclusion of evidence has been a controversial subject for a long time, but this has always applied to special types of procedures only. In this work, Olaf Muthorst attempts to outline a general theory of the exclusion of evidence which can be used for all judicial and official proceedings. He bases this theory of the exclusion of evidence on the idea that evidence is subject to the law, as are the entire proceedings. Ascertaining individual cases in which evidence is excluded is a question of shaping and applying substitutional law. Thus it is possible to find criteria for determining when the evidence is unnecessary or inadmissible.

Spernath, Valentin

Die Schutzschrift in zivilrechtlichen Verfahren

Volume 58
2009. XIII, 160 pages.

ISBN 9783161498039
sewn paper 49,00 €

Valentin Spernath explains the function of the protective letter. The protective letter in German civil law suits is a statement of defence deposited in court to avoid injunctions and decisions in proceedings in which the rights of the defendant to a prior hearing is excluded by law or may be excluded by the court. Unlike other studies done on this subject, in this work the author deals not only with the proceedings of interim injunctions but also with the principles of the protective letter and illustrates these by means of different legal actions, including the proceedings to obtain a declaration of enforceability according to EC law. The author also answers questions arising from the recognition of the legal effects of the protective letter, such as who is obligated to pay for the protective letter, and suggests a statutory regulation.

Heese, Michael

Gläubigerinformation in der Insolvenz

Eine vergleichende Untersuchung des U.S.-amerikanischen und deutschen Rechts zur Verbesserung des Gläubigerschutzes im Insolvenzverfahren

Volume 56
2008. XXXV, 492 pages.

ISBN 9783161497384
sewn paper 99,00 €

Michael Heese has developed the first system of creditors' information in insolvency on the basis of German constitutional law and a comparative analysis of American insolvency law in the form of the *Bankruptcy Code*. From a creditor's perspective, information in a case of bankruptcy is the basis for enforcing claims, for participation in the proceedings, and for the transparency of the proceedings. Michael Heese provides a comprehensive analysis of the shortcomings of the current restrictive prevailing opinion in Germany regarding information as expressed in legislation, judicial opinions, and scholarly commentary. His analysis is based primarily on the goals of the information system, the constitutional guarantees which must be considered when implementing these goals, and a comparison with American law. The author's observations regarding the weaknesses in current German law result in his suggestions for legislative reforms to the extent that the weaknesses cannot be addressed in a manner that conforms to the existing system.

Kuhn, Tomas

Ersatzaussonderungsrecht und Drittwiderspruchsklage

Volume 55
2008. XX, 290 pages.

ISBN 9783161496189
sewn paper 89,00 €

The right of separation and third party proceedings are enforcement measures which can be used to claim that an object is not part of the assets of the liable party. Tomas Kuhn begins by examining the right of separation for substitutes in insolvency law. He then looks into the question of a parallel in individual compulsory execution. Based on the idea that there is a parallelism in the two liability systems and on the concept of the solvent debtor in compulsory execution, he advocates such a »third party proceedings for substitutes« if the material claim is not for money. The author is also in favor of both protective measures in the law of execution in the case of a sale which has no legal basis. In this, the author also sees an argument against the reacquisition in rem by the person having no authority to do so.

Glaser, Michael

Der Rechtsschutz nach § 98 Abs. 2 Satz 2 StPO

Eine methodologische Untersuchung zur Leistungsfähigkeit des § 98 Abs. 2 Satz 2 StPO als allgemeine Rechtsschutzvorschrift gegenüber nicht-richterlich angeordneten Grundrechtseingriffen im Ermittlungsverfahren

Volume 54
2008. XX, 412 pages.

ISBN 9783161495724
cloth 114,00 €

The guarantee of 'effective' legal protection in Article 19 Subsection 4 Sentence 1 of the German Basic Law applies to preliminary investigations in criminal proceedings as well. Based on this fundamental right, court rulings and legal writers have developed a system of legal protection which should also permit a declaratory judgment on non-judicial encroachment on fundamental rights. Michael Glaser refutes the approaches which have been developed by using the historical-genetic and the constitutional interpretation as well as after having excluded a possible analogous legal application. In doing so, he takes the current developments in the law of criminal procedure into consideration. In his proposal for a law, the author concludes with an outlook of how it would be possible to implement the legal protection mandate in the German Basic Law in a future reform of criminal proceedings.

Foerster, Max

Transfer der Ergebnisse von Strafverfahren in nachfolgende Zivilverfahren

Volume 53
2008. XXIII, 543 pages.

ISBN 9783161496585
sewn paper 79,00 €

Max Foerster studies the significance of criminal proceedings for subsequent civil proceedings. Legal practice often leads to unpredictable and thus inadmissible elements of surprise in the subsequent civil proceedings. Based on the principle of separation, court rulings are often in a separation dilemma, resulting in an undifferentiated transfer. The author proves that this dilemma can only be solved by *res judicata*. In order to illustrate this, he develops a proposal for a law for the asymmetrical transfer of final sentences which protects the rights of all those concerned. According to his proposal, the *res judicata* of such judgments against the person convicted applies to civil proceedings as well. This solution fits in well with the structures of the various courts and would strengthen procedural law and thus increase efficiency.

Grawe, Stefan

Die strafprozessuale Zufallsverwendung

Zufallsfunde und andere Zweckdivergenzen bei der Informationsverwendung im Strafverfahren

Volume 52
2008. XII, 415 pages.

ISBN 9783161496592
sewn paper 89,00 €

To what extent may information which has been obtained for other purposes or outside the criminal proceedings be used in criminal prosecution? Stefan Grawe deals with this question and the previous answers to it, tracing these back to their origins. In doing so, he studies the various phenomena related to changes in purpose when using information in criminal proceedings, in particular the occurrence and the applicability of so-called accidental discoveries. He explores the different ways of looking at this in court rulings and legal dogmatics, some of which he expands upon, others of which he rejects as no longer in keeping with the times. At the conclusion of his work, the author provides a solution to these problems and reveals several unexpected results of his investigation.

Niklas, Boris Alexander

Die subjektive Reichweite von Schiedsvereinbarungen

Eine systematische Darstellung unter besonderer Berücksichtigung der Mehrparteischiedsgerichtsbarkeit

Volume 51
2008. XXI, 297 pages.

ISBN 9783161495496
sewn paper 89,00 €

The arbitration agreement is the key issue in all arbitration proceedings. Boris Niklas studies its subjective range in order to determine who can become a party to arbitration proceedings on the basis of a concrete arbitration agreement. In doing so, he attaches special significance to multiparty arbitral jurisdiction, a phenomenon which is often put into practice but which is still fraught with considerable uncertainties. The author gives a systematic outline of the subjective range of arbitration agreements on the basis of the legal relationship between the persons involved. He shows that the contractual and the modifying character of arbitration agreements must be taken into account more often than has been done up to now. On this basis, Boris Niklas examines potential prerequisites for consent and obligations when a third party is included in arbitration proceedings.

Andrews, Neil

The Modern Civil Process

Judicial and Alternative Forms of Dispute Resolution in England

Volume 50
2008. IX, 318 pages.

ISBN 9783161495328
sewn paper 94,00 €

Neil Andrews presents the first comprehensive examination of the English system of civil justice, embracing not only court proceedings but mediation and arbitration. He provides an up-to-date account of recent changes within the English system of civil justice writing in a succinct and accessible style. He explains the main institutions of civil litigation before the English courts, but notes the limitations and problems of court litigation, despite reforms to this formal and public system of adjudication. Many business and consumer disputes are now resolved by settlement negotiations, notably by resort to mediation. There has also been a resurgence of interest in arbitration.

Neil Andrews' quest for more satisfactory means of handling disputes is driven by various factors: the high cost of formal litigation; disputants' preference for confidentiality, control, speediness, and flexibility of outcome and Government's interest in economy. Furthermore, he states that English courts are keen to encourage resort to alternative forms of civil justice, notably mediation. Legal advisors, not just in England, are now familiar with the possibility that a dispute might

proceed through various 'tiers': settlement discussions, mediated discussion, arbitration or court proceedings. These developments are part of a modern trend in many Western legal systems to reduce the problem of excessive and expensive resort to court proceedings.

Keil, Ulrich

Die Systematik privatrechtlicher Rechtsprechungsänderungen

Volume 49
2007. XXI, 294 pages.

ISBN 9783161494789
sewn paper 74,00 €

In this work, Ulrich Keil deals with the question of whether or not there is a system to the changing of court decisions by the Federal Civil Court. He focuses on the fact that German law, unlike Anglo-Saxon law, is a codified and not a case law system. Thus, German lawyers are not as used to distinguishing among precedents as their counterparts in Anglo-Saxon countries are. The author identifies three major cases of changes by German courts: changes as announced, changes following another court decision and unexpected changes, each of which is described with the problems it involves, the variations, the chances and the risks. Based on this, the author explores methods for the protection of confidence and the prediction of forthcoming court decisions.

Ritz, Philipp

Die Geheimhaltung im Schiedsverfahren nach schweizerischem Recht

Volume 48
2007. XXVI, 265 pages.

ISBN 9783161494178
sewn paper 74,00 €

It is undisputed that arbitration proceedings are only open to the persons required to decide the dispute. After having determined the legal basis and the extent of this principle under Swiss law, Philipp Ritz shows whether and to what extent the parties and all other participants are obligated to keep the existence of the proceedings and the information they have obtained confidential. He looks at the scope of protection of such information during and after closure of the proceedings, including challenge and enforcement proceedings before state courts. He also examines the legality of disclosing a piece of evidence to the arbitrators to the exclusion of the other parties. This book presents practical solutions for the busy practitioner and may also be of interest for arbitral tribunals sitting in civil law countries other than Switzerland.

Illmer, Martin

Der Arglistenwand an der Schnittstelle von staatlicher Gerichtsbarkeit und Schiedsgerichtsbarkeit

Volume 47
2007. XIII, 170 pages.

ISBN 9783161493560
sewn paper 54,00 €

How can the parties in a legal dispute which is subject to an arbitration agreement be stopped from using the interface of the mutually exclusive jurisdictions of state court proceedings and arbitration in order to evade the proceedings completely or to have the opportunity to file a lawsuit twice? After systematizing and evaluating the rather vague principle of bad faith in paragraph 242 of the German Civil Code, Martin Illmer provides a solution to stop such attempts by using the precise and clear mechanisms of procedural law.

Adloff, Daniel

Vorlagepflichten und Beweisvereitelung im deutschen und französischen Zivilprozess

Volume 46
2007. XXXI, 544 pages.

ISBN 9783161493201
sewn paper 84,00 €

The outcome of civil proceedings can depend upon whether or not the party bearing the burden of proof is given access to evidence which it does not already have itself. Daniel Adloff does a comparative study of the prerequisites and the scope of the litigants' and third party's obligation to produce evidence. He focuses on the question of how the courts can react if evidence is lost, is withheld arbitrarily or even destroyed. Ascertaining the truth is the necessary prerequisite for the effectuation of subjective rights. However, this must be done in accordance with clearly defined rules and protect confidential information. Daniel Adloff has drawn up suggestions for dealing with these problems. In doing so, he also describes the increasing influence of international rules and regulations and the special aspects which pertain to pre-trial taking of evidence and to intellectual property rights.

Kern, Christoph A.

Justice between Simplification and Formalism

A Discussion and Critique of the World Bank Sponsored Lex Mundi Project on Efficiency of Civil Procedure

Volume 45
2007. XI, 180 pages.

ISBN 9783161492471
sewn paper 59,00 €

A recent study in the field of comparative economics (or, more precisely, »numerical comparative law«) constructed an index of procedural formalism of dispute resolution for more than 100 countries and analyzed the relationship between procedural formalism and certain aspects of quality of the judicial systems. The study's results suggest a strong relationship between legal origins, formalism, and the »quality of dispute resolution«. Not surprisingly, the study closes with a recommendation for reform. What makes this study so important is not only its findings, backed by an amount of data which seems to be a guarantee for the study's universal validity, but also the financial support of the World Bank – an indicator of the Bank's interest in these questions. Similar studies in the area of banking, securities, and corporate law have

received much attention from the legal community. However, for the recent study on civil procedure, this is not the case. Christoph Kern provides a first critical approach to the study from the perspective of a legal scholar. He does not suggest a mere »re-coding«, but focuses on the methodology and the underlying legal questions. After an extensive discussion of the »input« to the study, the author turns to the way the study combines the data and, in particular, how it interprets the results. He concludes that the study leaves a mixed impression and that, therefore, doubts remain as to its results and interpretation.

Schnabl, Daniel

Die Anhörungsrüge nach § 321a ZPO

Gewährleistung von Verfahrensgrundrechten durch die Fachgerichte

Volume 44
2007. XI, 272 pages.

ISBN 9783161492228
sewn paper 74,00 €

The right to be heard is one of the essential guarantees in court proceedings granted by Article 103 I of the German Basic Law. Daniel Schnabl examines the new Section 321a, which was changed as of January 1, 2005 and provides an additional safeguard for the right to be heard in the German Code of Civil Procedure and in other procedural codes. Thus the significance of this topic transcends the code of civil procedure. The author gives detailed answers to legal and constitutional issues which are related to this new regulation. In conclusion, he examines whether or not the current version of Section 321a of the German Code of Civil Procedure is compatible with the rule of real legal protection which ensues from the general right to have recourse to a court. The author received an award from the »Dr. Feldbausch-Stiftung« for this thesis.

Rink, Florian

Die Sicherheit von Grundpfandrechten in Deutschland und England

Volume 43
2006. XXVII, 362 pages.

ISBN 9783161491429
sewn paper 89,00 €

For mortgagees, it is of considerable significance that the security they have been granted can stand the test as well if the debtor is insolvent. From the perspective of comparative law, Florian Rink examines the position of mortgages in the system of land law, their enforceability in individual cases and their effectiveness in insolvency, which is given particular attention. In addition to the power of realization given to the mortgagee and the insolvency administrator, he analyzes the possibilities of including the mortgages in a rehabilitation of the debtor. He discusses the problem of the formation of groups and the coordination in the insolvency plan proceedings from the perspective of the mortgages in order to compare these with the concept of English law following the reorganization of insolvency law. In conclusion, he sheds light on the effectiveness of contesting the insolvency proceedings in both legal systems.

Breyer, Michael

Kostenorientierte Steuerung des Zivilprozesses

Das deutsche, englische und amerikanische Prozesskostensystem im Vergleich

Volume 42
2006. XVII, 263 pages.

ISBN 9783161489846
sewn paper 69,00 €

The implementation of the law in civil proceedings is largely a question of costs. Michael Breyer gives a systematic outline of the German, English and American model for the costs of litigation and analyzes their respective efficiency. In his analysis done on the basis of comparative law, he begins by dealing with the total costs to be paid by the parties in civil proceedings and by examining the allocation of these among the parties with the alternatives of a loser-pays rule and a liability for procedural misconduct. In conclusion, he analyzes the possibilities the parties have of availing themselves of a third party in order to finance and insure their proceedings. Since the German model proves to be very efficient, the author voices his support for a further development of the existing system.

Atteslander-Dürrenmatt, Agnes H.

Der Prozessvergleich im internationalen Verhältnis

Unter besonderer Berücksichtigung anerkennungs- und vollstreckungsrechtlicher Fragen im grenzüberschreitenden Rechtsverkehr der Schweiz

Volume 41
2006. XXIII, 229 pages.

ISBN 9783161488672
sewn paper 69,00 €

Due to the various procedural forms and the insufficient regulation of recognition and enforcement, it is difficult to enforce a judicial settlement in international legal relations. Agnes H. Atteslander-Dürrenmatt examines the possibilities and boundaries of enforcing judicial settlements in Switzerland's cross-border legal transactions. She shows that the only way to respond to most of the uncertain recognition and enforcement proceedings in judicial settlements is by making a settlement in the form of a judgment or a similar form of dispute settlement. However, it is not only the recognition and enforcement of judicial settlements which should be regulated in international treaties and autonomous law; the judicial settlement must also become a real substitute judgment with the force of a final judgment.

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Schafft, Thomas

Selektion von Rechtsmittelverfahren durch gesetzliche Zugangsbeschränkungen

Volume 40
 2005. XIII, 247 pages.

ISBN 9783161487866
 sewn paper 44,00 €

Thomas Schafft discusses the selection of appellate proceedings. Under German law the right to appeal is not generally granted as such, and is also not at the discretion of the appellate court, as it is for example in the case of the US Supreme Court. German constitutional law requires explicit legislative guidance on which court decisions may be appealed and which may not be appealed. Over the years many different techniques to solve this problem have been used and tested in the various branches of the German legal system. In this work, the author evaluates these methods by applying an economic analysis of law to the judicial procedures and to the hierarchy of justice.

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Kofmel Ehrenzeller, Sabine

Der vorläufige Rechtsschutz im internationalen Verhältnis

Grundlagen

Volume 39
2005. XL, 606 pages.

ISBN 9783161485282
sewn paper 104,00 €

The internationalization of lifestyles has created a demand for an international harmonization of transnational provisional relief in civil cases. Sabine Kofmel Ehrenzeller develops fundamental principles of provisional relief in civil law, laying the cornerstones for this harmonization. In doing so, she gives an in-depth description of issues pertaining to the national and international law of civil procedure and also demonstrates the significance of international human rights and state sovereignty for transnational provisional relief.

Mossler, Sven

Beschleunigter Rechtsschutz für Zahlungsgläubiger in Europa

Eine rechtsvergleichende Untersuchung zur vorweggenommenen Befriedigung bei Anhängigkeit der Hauptsache

Volume 38
2004. XIV, 220 pages.

ISBN 9783161484629
sewn paper 69,00 €

Good granting of justice demands just results and fast decisions as well. The problem of lengthy court proceedings is not quite the same in all legal systems, but in Germany it can happen that the plaintiff has to wait for several years until he obtains an executory title. The disadvantages and risks of the passage of time, which in the worst case can lead to insolvency, are born by the plaintiff alone. Against this backdrop, Sven Mossler argues in favor of the creation of an institute for anticipated payment of a creditor, taking the systems in Italy, France and England as an example, and he gives a concrete proposal for this legislation.

Reichenbach, Sandy Bernd

§ 1004 BGB als Grundlage von Beweisverboten

Zur Verwertbarkeit persönlichkeitsrechtsbeeinträchtigender Beweismittel im Zivilprozess

Volume 37
2004. XIII, 252 pages.

ISBN 9783161484827
sewn paper 74,00 €

Sandy Bernd Reichenbach deals with the current discussions surrounding the admissibility of evidence which has been obtained illegally. The use of secret video and audio recordings, electronic surveillance and other evidence which has been obtained illegally continues to be a matter of dispute, given that there are no provisions for this in the law. Its inadmissibility is often determined by weighing the constitutional interests of those concerned in individual cases. Doing this however means a failure to take into account the priority of simple statutory law. In addition the use of evidence in civil proceedings which invades personal privacy is a private and not a sovereign injury by the party giving evidence to the party against whom the evidence is given. Thus its inadmissibility can only result from the claim to compel someone to refrain from doing something which is a part of Section 1004 of the German Civil Code. The law of civil procedure is not an obstacle to reverting to this instrument of civil law.

Scheuermann, Isabel

Internationales Zivilverfahrensrecht bei Verträgen im Internet

Eine rechtsvergleichende Untersuchung des deutschen, europäischen und US-amerikanischen Zuständigkeitsrechts sowie der Anerkennung und Vollstreckung von Gerichtsentscheidungen im deutsch-amerikanischen Rechtsverkehr

Volume 36
2004. XXIII, 305 pages.

ISBN 9783161482885
sewn paper 79,00 €

The Internet is the ideal basis for global electronic commerce. Isabel Scheuermann examines the jurisdiction of courts in Europe and the US over parties that concluded a contract online. She compares German and European law to U.S. law and draws conclusions for the recognition and enforcement of U.S. judgments in Germany. Using examples mostly based on original U.S. cases, she illustrates how the rules on international jurisdiction of courts and recognition of judgments can be applied in practice.

Kwaschik, Annett

Die Parteivernehmung und der Grundsatz der Waffengleichheit im Zivilprozeß

Zugleich ein Beitrag zur Konkretisierung von Rechtsprinzipien



Volume 35
2004. XXI, 345 pages.

ISBN 9783161482588
sewn paper 74,00 €

In this work, Annett Kwaschik questions the justification for the restrictive regulations regarding the interrogation of a party in view of the procedural principles which are based on the German Code of Civil Procedure. She begins with the discussion about how the issue of the »private conversation« has been dealt with in German civil procedure as a reaction to the case of *Dombo Beheer*, which was decided by the European Court of Human Rights. In this decision, the principle of equality of weapons is used as an argument for the compensatory intervention of the courts in the private conversation. The study focuses on the question of whether the principle of equality of arms can be used as an argument for changing the application of section 445 of the German Code of Civil Procedure through court rulings and changing the legal structure of the interrogation of the parties.

McGuire, Mary-Rose

Verfahrenskoordination und Verjährungsunterbrechung im Europäischen Prozessrecht

Volume 34
2004. XX, 424 pages.

ISBN 9783161482878
sewn paper 89,00 €

In the context of the *lis pendens* rule (Art. 27 Brussels Regulation and Art. 21 Lugano Convention) the question of limitation of action has often been discussed. The lack of coordination between European Civil Procedure Law and the national Statutes on Limitation of Action can deprive the plaintiff of his lawful remedy in cross border litigation: where the action has to be brought within a specific time limit and the time limit expires before the bar of *lis pendens* has been lifted, the dismissal of the second set of proceedings according to Art. 27 Brussels Regulation will not only protract the resolution of the dispute, but deprive the plaintiff of his right to sue.

A discussion of the scope of Art. 27 Brussels Regulation and a comparison of the national Statutes on Limitation can show that the problem results directly from the combination of the European *lis pendens* rule and the possibility of non-recognition according to Art. 32 Brussels Regulation. If the European Civil Procedure Law prohibits parallel proceedings in the member states, it has to prevent the plaintiff who as a result of failure of the first set of proceedings brings a successive claim in another Member State, from being time-barred. Mary-Rose McGuire claims that the problem could easily be solved by an amendment of the Brussels Regulation.

Timmerbeil, Sven

Witness Coaching und Adversary System

Der Einfluss der Parteien und ihrer Prozessbevollmächtigten auf Zeugen und Sachverständige im deutschen und U.S.-amerikanischen Zivilprozess

Volume 33
2004. XXI, 227 pages.

ISBN 9783161482892
sewn paper 64,00 €

While in the U.S. the adversary system including cross-examination, witness coaching and partisan experts exists, the German civil trial is dominated by the judge who also examines the witnesses. As a consequence, in Germany no cross-examination and no witness coaching takes place and in most cases the expert witnesses are appointed by the judge. Despite these differences both systems have one aspect in common, the goal of truth-seeking. This book analyzes the differences of both civil trial systems with respect to witness coaching, a topic not discussed in Germany yet.

Gärditz, Klaus Ferdinand

Strafprozess und Prävention

Entwurf einer verfassungsrechtlichen Zuständigkeit- und Funktionenordnung

Volume 31
2003. XV, 475 pages.

ISBN 9783161479656
sewn paper 79,00 €

Klaus Gärditz develops a legal framework for criminal prosecution and protection against threats to public safety under constitutional law. He examines the constitutional principle of the separation of powers, in particular the federal allocation of competences in the areas of legislation, implementation of a law and jurisdiction..

Ziegert, Kathrin

Die Interventionswirkung

Volume 30
2003. XVI, 302 pages.

ISBN 9783161479144
sewn paper 74,00 €

Section 68 of the German Code of Civil Procedure provides for the application of the decision of a legal dispute within certain limits to a follow-up trial between one of the parties of the preliminary trial and a third party when that party was involved in the preliminary trial through third party intervention or third party notice. Kathrin Ziegert gives a comprehensive analysis of the legal nature, requirements and scope of the so-called 'intervention effect', its consideration in appellate proceedings and its use in re-trials as well as its transferability to an independent procedure of taking evidence.

Kohler, Marius

Die Entwicklung des schwedischen Zivilprozeßrechts

Eine rezeptionshistorische Strukturanalyse der Grundlagen des modernen schwedischen Verfahrensrechts

Volume 29
2002. XXII, 598 pages.

ISBN 9783161478536
sewn paper 109,00 €

This volume provides the first comprehensive examination of the development of the Swedish law of civil procedure. The author's goal is to disprove the theory of the largely autochthonous development of Swedish procedural law. Marius Kohler tries to reach this goal in a methodical manner with the help of a structural analysis from the standpoint of comparative law. For this comparison, he uses the laws of Germany, Austria, France and England, and in addition those of the U.S.A., Canada and Australia. He also deals with the development of modern Swedish jurisprudence in the field of civil law as well as those connections between Sweden and its European neighbors which are supposedly non-juridical, i.e. those which are of a cultural, political or economic nature.

Reischl, Klaus

Die objektiven Grenzen der Rechtskraft im Zivilprozeß

Volume 28
2002. XXIII, 328 pages.

ISBN 9783161477928
sewn paper 74,00 €

The German code of civil procedure contains a rule which outlines the scope of *res judicata*. Klaus Reischl shows that the prevailing opinion on this rule is the result of a misinterpretation. He examines the development of the idea of *res judicata* from the standpoint of history and legal theory and analyzes the intrinsic value of the rule. He provides a version of interpreting the rule which not only takes the procedural understanding of the effect of the judgment into consideration but also deals with the structure of the judgment.

Toepel, Friedrich

Grundstrukturen des Sachverständigenbeweises im Strafprozeßrecht

Volume 27
2002. XVI, 453 pages.

ISBN 9783161476563
cloth 104,00 €

In this work, the author defines the bounds within which a successful cooperation between a tribunal and an expert assisting this tribunal has to take place. He examines in detail the functions of a judge and/or jury and the expert in the law of evidence, and proposes a solution for the problems of product liability which were the focus of the 1993 decision of the U.S. Supreme Court 'Daubert v. Merrell Dow Pharmaceuticals'. He clarifies the concept of the standard of proof in criminal cases with the help of Keith Lehrer's philosophical system developed in his book on 'Self-Trust'. He also defends the view that law and fact can be clearly distinguished from each other, but that there is no intrinsic quality that shows whether something is fact or law. It is the legal system itself which draws the borderline.

Kleinheisterkamp, Thomas

Prozeßführung über gepfändete Geldforderungen

Volume 25
2001. XI, 167 pages.

ISBN 9783161475238
sewn paper 49,00 €

Based on a dogmatic categorization of the authorization to collect a debt (Section 836, Subsection 1 of the Code of Civil Procedure), Thomas Kleinheisterkamp examines the legal consequences of litigation pertaining to the execution of a debt. He develops a whole system which gives priority to the protection of the third party debtor but does not neglect the interests of the judgment creditor and the judgment debtor, which also merit protection.

Görtz-Leible, Monika

Die Beschlagnahmeverbote des § 97 Abs.1 StPO im Lichte der Zeugnisverweigerungsrechte

Volume 24
2000. XVI, 357 pages.

ISBN 9783161473234
sewn paper 54,00 €

At present, there is a lively discussion among scholars and those responsible for judicial decisions surrounding the content and the scope of the prohibition of impounding. Up to now, they have not been able to reach an agreement, even on fundamental questions. Monika Görtz-Leible deals with the content and limits of Section 97 Sub-Section 1 of the Code of Criminal Procedure on the basis of the witness's right to decline to answer questions and works out a system for interpreting the prohibition of impounding. In doing so, she shows the connections between constitutional law, the relationship between Sections 94, 95 and 97 of the Code of Criminal Procedure and the rights of the witnesses to decline to answer questions.



Rott, Thilo

Vereinheitlichung des Rechts der Mobiliarsicherheiten

Möglichkeiten und Grenzen im Kollisions-, Europa-, Sach- und Vollstreckungsrecht unter Berücksichtigung des US-amerikanischen Systems der Kreditsicherheiten

Volume 23
2000. XXVIII, 244 pages.

ISBN 9783161473227
sewn paper 49,00 €

Presently, the law relating to security interests in movable goods varies greatly within Europe. The different national regimes are a substantial obstacle to securing transnational commercial transactions within the European Union. Thilo Rott examines different proposals for solving the problem, giving special attention to the harmonization process which has taken place in the USA. The options discussed range from harmonizing the national conflict laws to creating one uniform law of secured transactions. Apart from discussing legislative models, he deals with the question of whether the member states of the European Union are obliged by reason of the fundamental freedoms guaranteed by the EU-Treaty to mutually recognize the various national security interests. Finally, the author pleads for a new right of lien under the German law of execution serving functions similar to certain forms of general liens under US state law.

Jacoby, Florian

Der Musterprozeßvertrag

Die gewillkürte Bindung an gerichtliche Entscheidungen

Volume 22
2000. XIV, 267 pages.

ISBN 9783161472855
sewn paper 49,00 €

Florian Jacoby presents a thorough examination of the standard procedural agreement, making a distinction among the three parts of the agreement. In the agreement to a commitment, the parties concerned make the decision in the test case legally binding for their dispute. In the standstill agreement, the parties to the contract make procedural and substantive arrangements in order to establish the privity of contract in addition to the binding authority of the decision made in the test case. The procedural agreement determines the procedural arrangements with which the parties to the contract want to influence the test case. Florian Jacoby does a detailed analysis of the legal nature, the prerequisites for and effects of the individual agreements.

Oepen, Klaus

Massefremde Masse

Die Erstreckung von Insolvenzverfahren auf Forderungen von Insolvenz- oder Massegläubigern gegen zusätzliche Schuldner

Volume 21
1999. XIV, 208 pages.

ISBN 9783161470813
sewn paper 49,00 €

Klaus Oepen deals with the various extension rules which state that bankruptcy proceedings have an effect on creditors' claims against additional debtors. These rules fall into two categories: The rules of the first category provide the liquidator with the exclusive competence to collect the claims concerned as if those claims belonged to the bankrupt's estate. The rules of the second category apply if an insolvency is cleared up by a settlement between the creditors and the bankrupt. Those rules stipulate that the cuts granted to the bankrupt shall be considered as equally granted to the additional debtor as if his estate were part of the bankrupt's estate. Klaus Oepen does a detailed analysis of the consequences implied by the extension rules.

Bertele, Joachim

Souveränität und Verfahrensrecht

Eine Untersuchung der aus dem Völkerrecht ableitbaren Grenzen staatlicher extraterritorialer Jurisdiktion im Verfahrensrecht

Volume 20
1998. XX, 660 pages.

ISBN 9783161470486
sewn paper 94,00 €

How can a plaintiff sue effectively to obtain his rights when the defendant resides abroad and the defendant's assets and/or the necessary evidence are also situated in another country? Which court has jurisdiction, what consequences could this have for legal assistance and which rules govern discovery proceedings? These matters are generally regulated by national law. However it is often maintained that limits to extraterritorial jurisdiction can be derived from international law and the concept of sovereignty. The author attempts to define those limits stemming from governmental practice and applies them to the procedural laws of England, the USA and Germany, arriving at a result which is more Anglo-American than German. He deals with a variety of procedural institutions, among which are the Mareva injunctions, Anton Piller orders, American and English pretrial discoveries and their German equivalents.



Volume 19
1998. XL, 926 pages.
ISBN 9783161468872
cloth 199,00 €

Otte, Karsten

Umfassende Streitentscheidung durch Beachtung von Sachzusammenhängen

Gerechtigkeit durch Verfahrensabstimmung?

Volume 18
1998. XXVI, 444 pages.
ISBN 9783161469923
sewn paper 59,00 €

Städtler, Hans J.

Grundpfandrechte in der Insolvenz

Eine rechtsvergleichende Untersuchung der Effektivität von Grundpfandrechten in der Insolvenz des Schuldners in Deutschland und Frankreich

Volume 17
1998. XX, 328 pages.
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Riepl, Frank

Informationelle Selbstbestimmung im Strafverfahren

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1997. XXII, 323 pages.
ISBN 9783161467929
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Bruns, Alexander

Informationsansprüche im Medienpersönlichkeitsrecht

Volume 15
1996. XVII, 181 pages.
ISBN 9783161466106
sewn paper 79,00 €

Hauck, Gerswith

»Schiedshängigkeit« und Verjährungsunterbrechung nach § 220 BGB

Unter besonderer Berücksichtigung des Verfahrens nach ZPO, ICC-SchO, UNICITRAL-SchO und ZPO-E/UNICITRAL-MG

Volume 14
1996. XV, 163 pages.
ISBN 9783161465796
sewn paper 54,00 €

Koshiyama, Kazuhiro

Rechtskraftwirkungen und Urteilsanerkennung nach amerikanischem, deutschem und japanischem Recht

Volume 13
1995. XVIII, 167 pages.
ISBN 9783161464515
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Koch, Birgit

Rechtsschutz durch Gegendarstellung in Frankreich und Deutschland

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1994. XI, 188 pages.
ISBN 9783161463402
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Miras, Antonio

Die Entwicklung des spanischen Zivilprozeßrechts

Von den Anfängen bis zur Gegenwart



Volume 10
1994. XIX, 295 pages.
ISBN 9783161462061
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Krause, Rainer

Urteilswirkungen gegenüber Dritten im US-amerikanischen Zivilprozeßrecht

Eine rechtsvergleichende Untersuchung zu den subjektiven Grenzen der Rechtskraft

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1993. XII, 154 pages.

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Lames, Peter

Rechtsfortbildung als Prozeßzweck

Zur Dogmatik des Zivilverfahrensrechts

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1992. XI, 107 pages.

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Müller, Henning E

Behördliche Geheimhaltung und Entlastungsvorbringen des Angeklagten

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1992. VIII, 107 pages.

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Marotzke, Wolfgang

Von der schutzgesetzlichen Unterlassungsklage zur Verbandsklage

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1991. XV, 229 pages.

ISBN 9783161456855
sewn paper 44,00 €

Bosch, Wolfgang

Rechtskraft und Rechtshängigkeit im Schiedsverfahren

Volume 4
1989. VII, 98 pages.

ISBN 9783166455242
sewn paper 39,00 €

Bohnert, Joachim

Ordnungswidrigkeiten und Jugendrecht

Eine Zusammenstellung

Volume 3
1989. XXIV, 421 pages.

ISBN 9783166454580
sewn paper 89,00 €

Stadler, Astrid

Der Schutz des Unternehmensgeheimnisses im deutschen und U.S.-amerikanischen Zivilprozeß und im Rechtshilfeverfahren

Volume 1
1982. XI, 103 pages.

ISBN 9783166445304
hardcover 44,00 €

Stürner, Rolf

Die richterliche Aufklärung im Zivilprozeß