Mitbestimmung Und Demokratieprinzip Jus Privatum

English summary: In spite of its liberal stance, German private law has numerous regulations aimed at protecting the contracting party from the disadvantages of his/her own decision. Based on this fact, Klaus Ulrich Schmolke traces the requirements and limits of legal paternalistic intervention in the freedom of contract and, using the insight gained from this, he develops a concept of the conditions for the justification of legal paternalism in private contractual relationships. German description: Das aufklarerische Ideal des freien und selbstbestimmten Menschen bildet einen Eckpfeiler des deutschen Privatrechts. Es findet seinen Ausdruck im Prinzip der Privatautonomie und ihrer wichtigsten Auspragung, der Vertragsfreiheit. Aus dieser liberalen Grundhaltung speist sich eine weitgehende Ablehnung rechtspaternalistischer Freiheitsbeschrankung. Diesen antipaternalistischen Bekenntnissen zum Trotz ist das Zivilrecht von zahlreichen paternalistischen Regelungen durchsetzt. Dieses Paternalismusparadox nimmt Klaus Ulrich Schmolke zum Anlass, den Voraussetzungen und Grenzen rechtspaternalistischer Intervention in die Freiheit zur vertraglichen Selbstbindung nachzuspuren und aus den hierbei gewonnenen Erkenntnissen eine Konzeption der Zulassigkeitsbedingungen von Rechtspaternalismus im vertraglichen Privatrechtsverkehr zu entwickeln. Hierfur lotet er das Potential der verhaltensokonomischen Einsichten uber das menschliche Entscheidungsverhalten zur Begrundung rechtspaternalistischer Intervention in die Vertragsfreiheit aus. Seine Ergebnisse uberpruft er anhand der Referenzgebiete des Familien-, Gesellschafts- und Verbraucherrechts.
Political jurisprudence is the branch of jurisprudence that treats law as an aspect of human experience called "the political". This is an approach that many contemporary jurists, those whose work presupposes the autonomy of legal order, tend to suppress. In this book, Martin Loughlin assessesthe contribution made by political jurists and explains its contemporary significance. Political jurists maintain that the essential characteristics of modern legal order can only be revealed by considering how political authority is constituted. The political is orientated to the fact that people are organized into territorially-bounded units within which authoritative governingarrangements have been established, but the authority of this way of viewing the world is strengthened only through institution-building. Law may be an aspect of the political, but to perform its authority-generating functions effectively it must operate relatively autonomously. The political andthe legal operate relationally, without one being reduced to the other. Loughlin introduces the rich literature of political jurisprudence through essays on innovative political jurists such as Hobbes, Burke, Constant, Romano, and Schmitt, and on such central themes as political right, institutionalism, constitutional legality, and reason of state. Building on hisearlier books, The Idea of Public Law (OUP 2003) and Foundations of Public Law (OUP 2010), this collection extends his account of this influential strand of European legal thought.
English summary: Jochen Mohr assesses and harmonizes the interpretation of contract law on the one hand and competition and regulatory law on the other, using the example of follow-up contracts being caught under the sanction of nullity for violations of competition or regulatory law. To this end, he also makes the current findings and theories in the fields of competition economics and regulatory theory bear fruit. German description: Bei Vertragen uber Massenguter setzt die Vertragsfreiheit als Funktionsbedingung einen wirksamen Wettbewerb auf der Marktgegenseite voraus, der durch das Wettbewerbsrecht und das Recht der Regulierung der Netzsektoren Energie, Telekommunikation und Eisenbahnen geschutzt wird. Diese Rechtsbereiche konnen das Vertragsrecht aber nur dann von den negativen Folgen privater Machtbildung entlasten, wenn sie ihrerseits der chancengleichen Selbstbestimmung der Burger verpflichtet sind. Eben dies wird derzeit unter Berufung auf wohlfahrtsokonomische und gemeinwohlbezogene Gesichtspunkte in Abrede gestellt. So sieht die herrschende Ansicht Folgevertrage von Unternehmen mit der Marktgegenseite als wirksam an, obwohl sich in ihnen der Wettbewerbsverstoss gerade manifestiert. Vor diesem Hintergrund setzt sich die Untersuchung zum Ziel, die rechtlichen und okonomischen Grundlagen des wirtschaftsbezogenen Vertragsrechts, des Wettbewerbsrechts und des Regulierungsrechts aufeinander a bzustimmen, um die Marktteilnehmer effektiv vor antikompetitiven Verhaltensweisen zu schutzen.
English summary: Michael Nietsch examines the prerequisites and the effects of the release procedure and considers its impact on the system of the control of resolutions. German description: Die Einfuhrung der 16 III UmwG, 246a, 319 VI, 327e II AktG hat dazu gefuhrt, dass sich die Beschlusskontrolle bei den betroffenen Strukturanderungen zunehmend vom ordentlichen Verfahren in das sog. aFreigabeverfahren verlagert. Lasst sich einerseits feststellen, dass man dem Problem der arauberischen Anfechtungsklagen damit besser Herr wird, sind die sich daraus ergebenden Konsequenzen kaum mehr zu ubersehen: Die Entscheidung findet in einem summarischen Verfahren unter weitgehender Ausserachtlassung der Prufung des Anfechtungsgrunds statt und schafft durch die ihr verliehene Bestandsschutzanordnung praktisch vollendete Tatsachen. Die vorliegende Untersuchung behandelt die Voraussetzungen und Wirkungen des Freigabeverfahrens, ordnet dieses in die Dogmatik des Beschlussmangelrechts ein und spricht sich unter Berucksichtigung verbands-, verfahrens- und verfassungsrechtlicher Grundsatze fur ein Verstandnis des Freigabeverfahrens als materiell-akzessorisches Eilverfahren aus.
Offering a unique conceptual approach to the Law of Treaties this insightful Research Handbook not only sets out the foundational issues, but identifies tensions within the field, including formalism vs flexibility, integrity vs flexibility, and unifor
English summary: Against the backdrop of continuing efforts to achieve greater European harmonization, Jan Lieder identifies and critically assesses the basic structural and evaluation principles of the legal succession - as exemplified by the assignment of receivables, debt and contract acquisition and the transfer of ownership for movable and immovable property - in German civil law and civil procedural law as well as in international and European private law. German description: Vor dem Hintergrund der anhaltenden Harmonisierungsbestrebungen auf europaischer Ebene unternimmt es

Jan Lieder, die grundlegenden Struktur- und Wertungsprinzipien der rechtsgeschaftlichen Sukzession - exemplifiziert anhand der Forderungszession, Schuld- und Vertragsubernahme sowie der Ubereignung von beweglichen und unbeweglichen Sachen - im deutschen Zivilrecht und Zivilprozessrecht sowie im Internationalen und Europaischen Privatrecht herauszuarbeiten und kritisch zu wurdigen. Dabei bedient er sich eines methodenpluralistischen Ansatzes. Im Vordergrund steht die rechtsdogmatische Durchdringung des Sukzessionsrechts, die auch rechtsgeschichtliche, rechtsvergleichende und rechtstatsachliche Erkenntnisse in die Betrachtung einbezieht. Auf dieser Grundlage und unter Berucksichtigung der okonomischen Theorie erarbeitet der Autor rechtspolitische Reformvorschlage.

Die Frage nach einer moglichen Heilung eines fehlerhaften Rechtsgeschafts wirft sogleich die Frage nach der Endgultigkeit von deren Fehlerhaftigkeit auf. Denn obwohl die Zivilrechtsordnung bei einer Fehlerhaftigkeit eines Rechtsgeschafts jedenfalls im Grundsatz die fehlende Wirksamkeit oder die Moglichkeit einer Aufhebung des Rechtsverhaltnisses vorsieht, werden diese Rechtsfolgen durch das Rechtsinstitut der Heilung teilweise erheblich eingeschrankt. Abgesehen von wenigen einzelnen Regelungen im allgemeinen Zivilrecht ist das Rechtsinstitut der Heilung nicht generell fur die gesamte Zivilrechtsordnung kodifiziert, findet sich aber in nahezu jedem Teilgebiet des Zivilrechts. Sebastian Mock untersucht das Konzept der Heilung anhand dieser einzelnen (besonderen) Regelungen und entwickelt aus diesen allgemeine Grundsatze fur die Heilung fehlerhafter Rechtsgeschafte.

The ever increasing relevance of European law which involves replacement or supplementation of and interaction with national law not only affects the states in Europe but also, and foremost, the citizens. The rights of the citizens in Europe are protected by the European Fundamental Rights and Freedoms. The aim of this textbook is to grasp and illustrate the meaning of these rights and to integrate it into a coherent system. For this purpose the book not only deals with the pertinent law of the European Union and the European Community, but also with the European Convention for the Protection of Human Rights and Fundamental Freedoms which, too, is becoming more and more important.

English summary: Employee participation in the works council and the supervisory board is often understood as an element of democracy in the business world. Sebastian Kolbe questions this approach and does a normative comparison of codetermination with the constitutional principle of democracy. German description: Die historisch gewachsene Arbeitnehmer-Mitbestimmung in Betriebs- und Aufsichtsrat folgt seit jeher dem Leitbild der Demokratie in Betrieb und Unternehmen. Auch heute noch sehen sich Betriebsrate und Gewerkschaften als Element der Demokratie in der Wirtschaft und wird die Arbeitnehmerteilhabe nach dem BetrVG und den Mitbestimmungsgesetzen in der juristischen Diskussion noch aus dem Demokratieprinzip erklart. Uber die normativen Grundlagen und Folgen dieser Zuordnung wird demgegenuber kaum diskutiert, obgleich die betriebliche Demokratie und die Unternehmensdemokratie weder dem umfassenden Anspruch noch dem strikten Legitimationsgebot der staatsverfassungsrechtlichen Demokratie gerecht werden (konnen). Vor diesem Hintergrund unterzieht Sebastian Kolbe die Strukturen des Mitbestimmungsrechts auf betrieblicher wie auf Unternehmensebene einem normativen Vergleich mit dem Demokratieprinzip.

Legal historian G. Edward White recently described it as the "most widely circulated and cited unpublished manuscript in twentieth-century American legal scholarship since Hart & Sacks' Legal Process materials." It began the re-evaluation of law in the Gilded Age, and gave it its current name of Classical Legal Thought. It was also one of the first and most influential of the works that introduced European critical theory and structuralism into the study of American law. This reprint comes with a substantial new Introduction that puts the work in context and relates it to current scholarship in the field. It should interest historians generally as well as readers curious about how our legal system got its special modern character --

This book takes a fresh look at the most dynamic area of American law today, comprising the fields of copyright, patent, trademark, trade secrecy, publicity rights, and misappropriation. Topics range from copyright in private letters to defensive patenting of business methods, from moral rights in the visual arts to the banking of trademarks, from the impact of the court of patent appeals to the management of Mickey Mouse. The history and political science of intellectual property law, the challenge of digitization, the many statutes and judge-made doctrines, and the interplay with antitrust principles are all examined. The treatment is both positive (oriented toward understanding the law as it is) and normative (oriented to the reform of the law). Previous analyses have tended to overlook the paradox that expanding intellectual property rights can effectively reduce the amount of new intellectual property by raising the creators' input costs. Those analyses have also failed to integrate the fields of intellectual property law. They have failed as well to integrate intellectual property law with the law of physical property, overlooking the many economic and legal-doctrinal parallels. This book demonstrates the fundamental economic rationality of intellectual property law, but is sympathetic to critics who believe that in recent decades Congress and the courts have gone too far in the creation and protection of intellectual property rights. Table of Contents: Introduction 1. The Economic Theory of Property 2. How to Think about Copyright 3. A Formal Model of Copyright 4. Basic Copyright Doctrines 5. Copyright in Unpublished Works 6. Fair Use, Parody, and Burlesque 7. The Economics of Trademark Law 8. The Optimal Duration of Copyrights and Trademarks 9. The Legal Protection of Postmodern Art 10. Moral Rights and the Visual Artists Rights Act 11. The Economics of Patent Law 12. The Patent Court: A Statistical Evaluation 13. The Economics of Trade Secrecy Law 14. Antitrust and Intellectual Property 15. The Political Economy of Intellectual Property Law Conclusion Acknowledgments Index Reviews of this book: Chicago law professor William Landes and his polymath colleague Richard Posner have produced a fascinating new book...[The Economic Structure of Intellectual Property Law] is a broad-ranging analysis of how intellectual property should and does work...Shakespeare's copying from Plutarch, Microsoft's incentives to hide the source code for Windows, and Andy Warhol's right to copyright a Brillo pad box as art are all analyzed, as is the question of the status of the all-bran cereal called 'All-Bran.' --Nicholas Thompson, New York Sun Reviews of this book: Landes and Posner, each widely respected in the intersection of law and economics, investigate the right mix of protection and use of intellectual property (IP)...This volume provides a broad and coherent approach to the economics and law of IP. The economics is important, understandable, and valuable. --R. A. Miller, Choice Intellectual property is the most important public policy issue that most policymakers don't yet get. It is America's most important export, and affects an increasingly wide range of social and economic life. In this extraordinary work, two of America's leading scholars in the law and economics movement test the pretensions of intellectual property law against the rationality of economics. Their conclusions will surprise advocates from both sides of this increasingly contentious debate. Their analysis will help move the debate beyond the simplistic ideas that now tend to dominate. --Lawrence Lessig, Stanford Law School, author of The Future of Ideas: The Fate of the Commons in a Connected World An image from modern mythology depicts the day that Einstein, pondering a blackboard covered with sophisticated calculations, came to the life-defining discovery: Time = $$. Landes and Posner, in the role of that mythological Einstein, reveal at every turn how perceptions of economic efficiency pervade legal doctrine. This is a fascinating and resourceful book. Every page reveals fresh, provocative, and surprising insights into the forces that shape law. --Pierre N. Leval, Judge, U.S. Court of Appeals, Second Circuit The most important book ever written on intellectual property. --William Patry, former copyright counsel to the U.S. House of Representatives, Judiciary Committee Given the immense and growing importance of intellectual property to modern economies, this book should be welcomed, even devoured, by readers who want

to understand how the legal system affects the development, protection, use, and profitability of this peculiar form of property. The book is the first to view the whole landscape of the law of intellectual property from a functionalist (economic) perspective. Its examination of the principles and doctrines of patent law, copyright law, trade secret law, and trademark law is unique in scope, highly accessible, and altogether greatly rewarding. --Steven Shavell, Harvard Law School, author of Foundations of Economic Analysis of Law

The book provides rule-by-rule commentaries on European contract law (general contract law, consumer contract law, the law of sale and related services), dealing with its modern manifestations as well as its historical and comparative foundations. After the collapse of the European Commission's plans to codify European contract law it is timely to reflect on what has been achieved over the past three to four decades, and for an assessment of the current situation. In particular, the production of a bewildering number of reference texts has contributed to a complex picture of European contract laws rather than a European contract law. The present book adopts a broad perspective and an integrative approach. All relevant reference texts (from the CISG to the Draft Common European Sales Law) are critically examined and compared with each other. As far as the acquis commun (ie the traditional private law as laid down in the national codifications) is concerned, the Principles of European Contract Law have been chosen as a point of departure. The rules contained in that document have, however, been complemented with some chapters, sections, and individual provisions drawn from other sources, primarily in order to account for the quickly growing acquis communautaire in the field of consumer contract law. In addition, the book ties the discussion concerning the reference texts back to the pertinent historical and comparative background; and it thus investigates whether, and to what extent, these texts can be taken to be genuinely European in nature, ie to constitute a manifestation of a common core of European contract law. Where this is not the case, the question is asked whether, and for what reasons, they should be seen as points of departure for the further development of European contract law.

"This publication is a collection of papers of the second meeting of the Dornburg Research Group on New Administrative Law which was held in London in May 2007"--Acknowledgments.

Die gerichtliche Tatsachenfeststellung ist in ihrer praktischen Bedeutung kaum zu uberschatzen, ihre gesetzliche Regelung jedoch ist rudimentar. In der Uberzeugung, dass traditionelle Methoden der juristischen Hermeneutik nicht geeignet sind, dem Begriff der "freien Beweiswurdigung" Kontur zu verleihen, nahert sich Mark Schweizer dem Begriff mit Methoden der Wahrscheinlichkeitstheorie. Er zeigt, wie eine vollstandig rationale Beweiswurdigungstheorie aussehen konnte und wie diese mit der tatsachlichen, intuitiven, richterlichen Uberzeugungsbildung kontrastiert. Daraus resultieren Erkenntnisse, wie der Vorgang der Beweiswurdigung verbessert werden kann. Welchen Grad die richterliche Uberzeugung zur Wahrheit strittiger Tatsachenbehauptungen erreichen muss, ehe in einem Zivilverfahren fur die beweisbelastete Partei entschieden werden darf - gemeinhin als "Beweismass" bezeichnet - untersucht der Autor in einem zweiten Teil aus der Perspektive der Entscheidungstheorie und kommt zu dem Schluss, dass ein striktes Festhalten am Regelbeweismass der "personlichen Gewissheit" nicht zu rechtfertigen ist.

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

Die Versteigerung ist ein wettbewerbliches Verfahren zur Preisbildung. Zentrale Figur ist der Versteigerer, dem es im Interesse des Einlieferers obliegt, durch taktisch kluges Handeln und Schaffung einer geeigneten Atmosphare einen moglichst hohen Zuschlagspreis zu erreichen. Dabei unterliegt der Versteigerer einer Interessenkollision, weil er rechtlich zu absoluter Neutralitat zwischen Einlieferer und Bietern verpflichtet ist, das Interesse des Einlieferers an einem moglichst hohen Preis aber mit seinem eigenen wirtschaftlichen Interesse korreliert. Bernhard Kresse befasst sich mit den Rechtsbeziehungen zwischen den Beteiligten, dem Mechanismus des Vertragsschlusses bei der Auktion und mit der rechtlichen Bewertung verschiedener Verhaltensweisen des Versteigerers und der ubrigen Beteiligten. Dabei macht er Erkenntnisse aus der Auktionstheorie fruchtbar. Behandelt werden auch Aspekte der umgekehrten Versteigerung, der Ausschreibung und der Internetauktion.

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

This new edition of European Contract Law examines the contract rules of several different European jurisdictions, including the most important civilian systems and English common law, while attempting to articulate general principles which are common in all of them. While the first editionwas limited to a comparative analysis of the rules on formation and validity of contracts, agency, third party beneficiaries, and assignment, the second edition now also includes contractual remedies and various updates and revisions of the first edition, especially in the light of the recentchanges to the French Code civil. Furthermore, the book comprises a wealth of translated extracts of legislation, cases, and academic literature, comprehensively covering all aspects of contract law. The book was originally published in German to considerable acclaim. This English edition has beentranslated by Gill Mertens, building on the work done by the translator of the first edition, Tony Weir.This edition will be invaluable to scholars and practitioners in Europe and beyond.

English summary: No other concept has ever been of such a far-reaching significance for our social, economic and legal order than the concept of money. Yet no universal conclusion can be drawn from the age-old debates on the nature and function of money. The general objective of this study is therefore to provide some contextualization for the key motifs in the history of money -dematerialization, Europeanization, devaluation - within the scope of legal doctrine. German description: Fur unsere Gesellschafts-, Wirtschafts- und Rechtsordnung hat kaum ein anderer Begriff eine vergleichbar weitreichende Bedeutung erlangt wie der Begriff des Geldes. Kein Buch des Burgerlichen Gesetzbuches und kein Teil des gesamten Privatrechts kommt ohne ihn aus. Geld gelangt als paradigmatischer Schuldinhalt zum Einsatz. Dennoch lasst sich bereits hinter den jahrtausendealten Diskussionen zum Wesen wie zu den Aufgaben des Geldes kein konsentierter Schlusspunkt erkennen. Gegenstande des Geldprivatrechts sind daruber hinaus seine wahrungsrechtliche Einbettung aus dominant supranationaler Perspektive, das Recht der Geldsachen und der Geldschulden sowie das Verhaltnis von Geldwert und Geldschuld. Samtliche Teilgebiete des Geldprivatrechts sind dabei durchwoben von der generellen Zielsetzung der Arbeit, den Leitmotiven der Entwicklungsgeschichte des Geldes - Entmaterialisierung, Europaisierung, Entwertung - rechtsdogmatischen Widerhall zu verschaffen.

International arbitration of business disputes continues to rise dramatically. New people entering the international arbitration community on all continents require a systematic guide to avoid a mere trial-and-error approach. This book, first of its kind, with numerous practical examples of the drafting of documents for each step of an international arbitration proceeding, under different arbitration rules and in different countries, allows actual ready-to-adapt forms to be located quickly for any issue likely to arise and clearly illustrates the different drafting styles used in practice. In one volume, in a single place, scores of documents are provided, all originating from real cases. A brief sample includes inter aliathe following: • request for arbitration; • answer/counterclaim; • claimant’s reply to counterclaim; • terms of reference; • rules of procedure; • timetable for submissions; • procedural orders; • written pleadings/statement of claim/defence; • witness

statements/depositions/affidavits; • requests/orders for the production of documents/discovery; • requests/orders on interim measures/security for costs; • hearings; • opening statement/closing statement; • submissions on costs; • awards/interim/partial/final/by consent; and • requests/decisions on correction and interpretation of awards. Explanatory comments on more complex forms help to raise the readers' awareness on a specific issue or discussion. Emphasis throughout is on procedural aspects. No other book makes it so easy to find all the information necessary to prepare a case or take a decision in the context of international commercial arbitration. These forms will be of immeasurable value to corporate counsel, management in instructing outside counsel, practitioners dealing with international arbitration, lawyers, arbitrators, members' organizations in industry and commerce, arbitration centres (especially newer ones in emerging markets), academic libraries and bar associations.

An emphasis on our capacity to reason, rather than merely to represent, has been growing in philosophy over the years. This book gives an overview of the author's understanding of the role of reason as the structure at once of our minds and our meanings - what constitutes us as free, responsible agents.

The Public's Law is a theory and history of democracy in the American administrative state. The book describes how American Progressive thinkers - such as John Dewey, W.E.B. Du Bois, and Woodrow Wilson - developed a democratic understanding of the state from their study of Hegelian political thought. G.W.F. Hegel understood the state as an institution that regulated society in the interest of freedom. This normative account of the state distinguished his view from later German theorists, such as Max Weber, who adopted a technocratic conception of bureaucracy, and others, such as Carl Schmitt, who prioritized the will of the chief executive. The Progressives embraced Hegel's view of the connection between bureaucracy and freedom, but sought to democratize his concept of the state. They agreed that welfare services, economic regulation, and official discretion were needed to guarantee conditions for self-determination. But they stressed that the people should participate deeply in administrative policymaking. This Progressive ideal influenced administrative programs during the New Deal. It also sheds light on interventions in the War on Poverty and the Second Reconstruction, as well as on the Administrative Procedure Act of 1946. The book develops a normative theory of the state on the basis of this intellectual and institutional history, with implications for deliberative democratic theory, constitutional theory, and administrative law. On this view, the administrative state should provide regulation and social services through deliberative procedures, rather than hinge its legitimacy on presidential authority or economistic reasoning.

Traditionell gilt das Vertragsrecht als Reich der Freiheit, als seine Gerechtigkeitsform die iustitia commutativa (Austauschgerechtigkeit). Die iustitia distributiva (Verteilungsgerechtigkeit) wird dagegen als Gerechtigkeitsform des öffentlichen Rechts betrachtet. Daraus folgt ein vertragstheoretisches Paradigma, dem zufolge die iustitia distributiva im Vertragsrecht nahezu ohne Bedeutung ist. Stefan Arnold greift dieses Paradigma an und zeigt, dass die iustitia distributiva das Vertragsrecht ebenso durchdringt und prägt wie die iustitia commutativa . Dazu erarbeitet er eine Theorie der iustitia distributiva als Gerechtigkeitsperspektive, die über das konkrete Austauschverhältnis hinausblickt und die soziale und ökonomische Einbettung des Rechts berücksichtigt. Zugleich analysiert und bewertet er das Vertragsrecht in seiner regulativen Kapazität. Das Vertragsrecht kann demnach externe Ziele verwirklichen helfen und etwa zur Verhaltenssteuerung, zum Schwächerenschutz oder zur Verwirklichung bestimmter Allgemeinwohlbelange beitragen. Die iustitia distributiva wird vom Postulat der Vertragsfreiheit flankiert: Das Vertragsrecht muss uns Autonomie und Eigenverantwortung zuschreiben, damit wir unsere individuellen Ziele in Kooperation mit anderen durch Verträge umsetzen können. Der Autor illustriert die Bedeutung der iustitia distributiva und ihr Verhältnis zur Vertragsfreiheitauch anhand des geltenden Vertragsrechts. Eingehend analysiert er unter anderem das soziale Mietrecht, das Verbrauchervertragsrecht, das Diskriminierungsrecht und Kontrahierungszwänge.--

W. van Orman Quine is one of the leading philosophers in America today. His thinking, however, has received little attention from philosophers in continental Europe. This book is a systematic and critical account of Quine's philosophy which aims at isolating what is of lasting value in his work. Each of his major theses is submitted to a thorough examination both from within and from without his general standpoint. Quine's positions have changed a great deal over the years in response to external criticism and to internal stresses and strains. These changes are described and assessed. Quine's rejection of the analytic-synthetic dichotomy is considered in the light of non-monotonic logic. The multi-farious versions of his holism are brought together and evaluated. Dummett's objection to the effect that holism is inconsistent with empiricism is refuted. It is argued, however, that the controversial thesis of the indeterminacy of translation becomes implausible as soon as learnability constraints are brought to bear on the matter. Quine's new definition of logical truth in terms of grammatical structure is vindicated. It is shown how the apparent conflict between his earlier and his later views on ontology can be superseded. Can Quine hold a relativist view of ontology and at the same time maintain a non-relativist theory of truth? Can he hold that truth is internal to theories and claim that scientific theories are underdetermined by observational data without lending support to relativism? An affirmative answer to the first question is defended. It is argued, however, that Quine could not meet the second challenge. Quine's penetrating criticism of modal logic has prompted several research programs. Paul Gochet exhibits the interrelations between these programs and argues that Quine's objections against modal logic can be met without any commitment to doctrines such as essentialism. Of interest to: Philosophers, logicians, linguists

Mounting a lawsuit against someone who has wronged you is a prospect no less fearful than being on the receiving end of such a lawsuit. Litigation in the courts has a reputation for being a byzantine process far removed from ordinary life, often failing to address people's real grievances while adding to their pain. Yes, there is money to be had if you win. But beyond that, what is it all in aid of? In this book John Gardner argues that, in spite of their legal intricacy, many of the questions that perennially occupy the courts in civil cases are actually timeless puzzles about the human condition. The architecture of the law of torts and the law of contract turns out to track the contours of personal life much more closely than you might expect. Using a wide range of examples from literature and life as well as law, Gardner explores big questions about our relationships to our own pasts and our own futures as well as to other people. What are friends for? Why does it matter how your actions turn out? What is the good of saying sorry? Why regret your mistakes? How can anyone be compensated for an irreversible loss? Why would you want to hold onto the life you already have? And what does any of this have to do with all those protracted legal disputes about damaged cars, ruined holidays, and leaky roofs?

Public law has been conceived in many different ways, sometimes overlapping, often conflicting. However in recent years a common theme running through the discussions of public law is one of loss. What function and future can public law have in this rapidly transforming landscape, where globalized states and supranational institutions have ever-increasing importance? The contributions to this volume take stock of the idea, concepts, and values of public law as it has developed alongside the growth of the modern state, and assess its continued usefulness as a distinct area of legal inquiry and normativity in light of various historical trends and contemporary pressures affecting the global configuration of law in general. Divided into three parts, the first provides a conceptual, philosophical, and historical understanding of the nature of public law, the nature of private law and the relationship between the public, the private, and the concept of law. The second part focuses on the domains, values, and functions of public law in contemporary (state) legal practice, as seen, in part, through its relationship with private domains, values, and functions. The final part engages with the new legal scholarship on global transformation, analysing the changes in public law at the national level, including the new forms of interpenetration of public and private in the market state, as well as exploring the ubiquitous use of public law values and concepts beyond the state.

On what basis does tort law hold us responsible to those who suffer as a result of our carelessness? Why, when we breach our contracts, should we make good the losses of those with whom we contracted? In what sense are our torts and our breaches of contract 'wrongs'?

These two branches of private law have for centuries provided philosophers and jurists with grounds for puzzlement. This book provides an outline of, and intervention in, contemporary jurisprudential debates about the natureand foundation of liability in private law. After outlining the realm of the philosophy of private law, the book divides into two. Part I examines the various components of liability responsibility in private law, including the notions of basic responsibility, conduct, causation and wrongfulness. Part II considers arguments purporting to show that private law does and should embody a conception of either distributive or corrective justice or some combination of the two. Throughout the booka number of distinctions - between conceptual and normative argument, between jurisprudential 'theory' and private law 'practice', between legal obligation and moral obligation - are analyzed, the aim being to give students an informed grasp of both the limits and possibilities of the philosophy of private law.

Exploring the rules that apply when a person dies without leaving a valid will, 'Intestate Succession' delivers a comparative and historical review of the relevant law in Europe and beyond, including an analysis of legal development, justifications, and reform.

This third volume in a series on Comparative Succession Law concerns the entitlement of family members to override the provisions of a deceased person's will to obtain money or assets (or more money or assets) from the person's estate. Some countries, notably those in the civil law tradition (such as France or Germany), confer a pre-ordained share of the deceased's estate or of its value on certain members of the deceased's family, and especially on the deceased's children and spouse. Other countries, notably those in the common law tradition (such as England, Canada, or Australia), leave the matter to the discretion of the court, the amount awarded depending primarily on financial need. Whichever form it takes, mandatory family provision is both a protection against disinheritance and also, therefore, a restriction on testamentary freedom. The volume focuses on Europe and on countries influenced by the European experience. In addition to detailed treatment of the law in Austria, England and Wales, France, Germany, Hungary, Italy, the Netherlands, Norway, Poland, Scotland, and Spain, the book also has chapters on Australia and New Zealand, South Africa, the United States, Canada, the countries of Latin America, and the People's Republic of China. Some other countries are covered more briefly, and there is a separate chapter on Islamic law. The book opens with accounts of Roman law and of the law in medieval and early-modern Europe, and it concludes with a comparative assessment of the law as it is today in the countries and legal traditions surveyed in this volume.

This book explores the relationships between property and the concept of sovereignty from a number of different perspectives. It distinguishes between the dual meaning of 'sovereignty' in property discourse - political sovereignty and owner sovereignty. The contributors discuss the nature of sovereignty in both senses, applying it to a wide range of topics such as the evolution of property rights in fragile and conflict-affected nation states, and notions of sovereign property in new worlds. A section on the Arts illuminates the relationships between property, sovereignty, and culture, and a further section investigates regulatory property and governmental control over resources. The book concludes with an exploration of sovereign shaping of private property entitlements to achieve instrumental ends. This interesting collection will be valuable to those in the fields of legal philosophy, property theory, international and comparative law, and political sociology. This book explores the relationships between property and the concept of sovereignty from a number of different perspectives. It distinguishes between the dual meaning of ‘sovereignty’ in property discourse - political sovereignty and owner sovereignty. The contributors discuss the nature of sovereignty in both senses, applying it to a wide range of topics such as the evolution of property rights in fragile and conflict-affected nation states and notions of sovereign property in new worlds. A section on The Arts illuminates the relationships between property, sovereignty and culture and a further section investigates regulatory property and governmental control over resources. The book concludes with an exploration of sovereign shaping of private property entitlements to achieve instrumental ends. This interesting collection will be valuable to those in the fields of legal philosophy, property theory, international and comparative law, and political sociology.

In this volume, the Project Group "Restatement of European Insurance Contract Law" presents its Principles of European Insurance Contract Law (PEICL). These principles were submitted to the European Commission as a Draft Common Frame of Reference of European Insurance Contract Law (DCFR Insurance). The volume comprises the PEICL/DCFR Insurance, as well as translations into Czech, Dutch, French, German, Greek, Hungarian, Italian, Polish, Portuguese, and Spanish. It sets out the approach used by the Project Group, how the PEICL/DCFR Insurance relates to the overall DCFR, the participation of the Project Group in the CoPECL (Common Principles of European Contract Law) Network, as well as the general structure and characteristics of the PEICL/DCFR Insurance. The Project Group has also drafted the PEICL/DCFR Insurance as a model for an Optional Instrument of European Insurance Contract Law.

Der Gesetzgeber hat in zahlreichen Branchen eine Wende zum Privatrecht vollzogen: Materien wie die Energiepreiskontrolle sind vom offentlichen Recht in das Privatrecht gewandert. Damit kommt den Zivilgerichten in der Wirtschaft als einer der letzten hoheitlichen Instanzen eine Schlusselposition zu - Wirtschaftsordnung durch Zivilgerichte. Wie gehen sie damit um? Was kennzeichnet ihre Entscheidungsprozesse? Welche Schwierigkeiten stellen sich bei der Losung neuartiger Konflikte im materiellen Recht und im Verfahrensrecht? Was macht `gute Rechtsprechung` aus?Mit einem von der Evolutionsokonomik inspirierten Ansatz analysiert und bewertet Rupprecht Podszun die Rechtsprechung des Bundesgerichtshofs nach Deregulierungsmassnahmen. Ohne Reformen wird die Starkung der privaten Rechtsdurchsetzung die hoheitliche Regulierung nicht ersetzen konnen.

The Making of Modern Law: Foreign, Comparative and International Law, 1600-1926, brings together foreign, comparative, and international titles in a single resource. Its International Law component features works of some of the great legal theorists, including Gentili, Grotius, Selden, Zouche, Pufendorf, Bijnkershoek, Wolff, Vattel, Martens, Mackintosh, Wheaton, among others. The materials in this archive are drawn from three world-class American law libraries: the Yale Law Library, the George Washington University Law Library, and the Columbia Law Library.Now for the first time, these high-quality digital scans of original works are available via print-on-demand, making them readily accessible to libraries, students, independent scholars, and readers of all ages.++++++++++++++++The below data was compiled from various identification fields in the bibliographic record of this title. This data is provided as an additional tool in helping to insure edition identification: ++++++++++++++++Yale Law LibraryLP3Y100990019250101The Making of Modern Law: Foreign, Comparative, and International Law, 1600-1926Berlin: Julius Springer, 1925xvi, 433, [1] p. 25 cmGermany

Intellectual property rights such as patents can reduce access to knowledge in genetics, health, agriculture, education and information technology, particularly for people in developing countries. Global Intellectual Property Rights shows how the new global rules of intellectual property have been the product of the strategic behaviour of multinationals, rather than democratic dialogue. The final section of the book suggests strategies aimed at developing more flexible standard for poor countries, and for keeping knowledge in the intellectual commons.

The World Trade Organization (WTO) recently celebrated twenty years of existence. The general wisdom is that its dispute settlement institutions work well and its negotiation machinery goes through a phase of prolonged crises. Assessing the World Trade Organization overcomes this myopic view and takes stock of the WTO's achievements whilst going beyond existing disciplinary narratives. With chapters written by scholars who have closely observed the development of the WTO in recent years, this book presents the state of the art in thinking about WTO performance. It also considers important issues such as the origins of the multilateral system, the accession process and the WTO's interaction with other international organisations. The contributions shed new light on untold stories, critically review and present existing scholarship, and sketch new research avenues for a future generation of trade scholars. This book will appeal to a wide audience that aims to better understand the drivers and obstacles of WTO performance.

10 The right to life

This monograph explores the connections between the European Union and international dispute settlement. It highlights the legal challenges

faced by the principal players in the field: namely the EU as a political actor and the Court of Justice of the EU as an international and domestic judiciary. In addition, it places the subject in its broader context of international dispute settlement, and the participation of the EU and its Member States in international disputes. It focuses on horizontal and cross-cutting themes, bringing together insights from the different sectors of trade, investment and human rights, and offering a variety of perspectives from academics, policymakers and practitioners.

Hauptbeschreibung Heute herrscht im Grundsatz Einigkeit darüber, dass die Rechtsfortbildung zu den legitimen Aufgaben der Zivilrechtsprechung zählt. Der Paradigmenwechsel in der Theorie der Rechtsfindung hat indes keine Entsprechung in der Begründungspraxis. Zwar bilden die Zivilgerichte auf breiter Front das Gesetzesrecht fort. Hierzu bedienen sie sich aber regelmäßig überkommener Begründungsfiguren, welche den Eindruck vermitteln, die Gesetze würden lediglich ausgelegt und angewendet. Diese Topoi verdeckter Rechtsfortbildungen werden von Christian Fischer in einer Gesamtschau aus.

Dieter Grimm's accessible introduction to the concept of sovereignty ties the evolution of the idea to historical events, from the religious conflicts of sixteenth-century Europe to today's trends in globalization and transnational institutions. Grimm wonders whether recent political changes have undermined notions of national sovereignty, comparing manifestations of the concept in different parts of the world. Geared for classroom use, the study maps various notions of sovereignty in relation to the people, the nation, the state, and the federation, distinguishing between internal and external types of sovereignty. Grimm's book will appeal to political theorists and cultural-studies scholars and to readers interested in the role of charisma, power, originality, and individuality in political rule.