
Table of Contents

Preface	V
Preface by Prof. Dr. Christiane Wendehorst, LL.M (Cantab.)	VII
Preface by David Albert Best	IX
How to use the glossaries	XI
List of authors	XXXVII
I.A Contract Law in the United States (Alexander Quest/Richard Kaye)	1
1. Mutual Assent	1
Offer and Acceptance	1
2. Doctrine of Consideration	2
3. Invalid Contracts	2
3.1 Lack of Capacity	2
3.2 Fraud and Duress	3
3.3 Unconscionability	3
3.4 Violation of Public Policy	3
4. Writing Requirement under the Statute of Frauds	4
5. Failure of Basic Assumptions	4
Mistake, Impracticability and Frustration	4
6. Performance and Satisfaction	5
6.1 Nonperformance	5
6.2 Conditions	5
6.3 Suspension and Termination	5
6.4 Anticipatory Repudiation	6
7. Interpretation of Contracts	6
7.1 Law of the Contract and Parol Evidence	6
7.2 Interpretation and Construction	6
8. Third Party Rights	7
8.1 Intended and Incidental Beneficiaries	7
8.2 Assignment	7
8.3 Delegation	7
9. Remedies for Breach	8
9.1 Specific Performance and Injunction	8
9.2 Damages	8
9.3 Restitution	8
I.B Contract Law in the United Kingdom (Michael H. Whincup)	10
1. Contracts	10
1.1 Intention	10
1.2 Clarity	10
1.3 Offer and acceptance	11
1.4 Valuable consideration	11
1.5 Writing	11
1.6 Terms	11
1.7 Standard terms	12
1.8 Choice of law clauses	12

Table of Contents

2.	Avoiding Liability	12
2.1	Mistake	12
2.2	Misrepresentation	13
2.3	Frustration	13
2.4	Duress; undue influence	13
3.	Arbitration and ADR	13
4.	Breach of Contract	14
5.	Damages	14
6.	Mitigation	14
7.	Liquidated Damages; Penalties	15
8.	Other Remedies	15
9.	Time Limits	15
I.C	Contract Law in Germany (<i>Peter Poleacov</i>)	16
1.	Sources of Law	16
2.	Contracts	16
2.1	Conclusion of contracts	16
2.2	Form of the contract	18
2.3	Contents of a contract	18
2.4	Interpretation	19
2.5	Severability clause	20
2.6	GTC law	20
2.7	Termination of contracts	22
2.8	Legal consequences of termination of contract	22
2.9	Defective employment contracts, articles of association and partnership agreements	22
3.	Special features of commercial transactions	23
3.1	Commercial letter of confirmation	23
3.2	Obligation to inspect goods and give notice of defects	23
3.3	Assignment of a monetary claim	23
3.4	Right of retention	23
4.	Claims Arising out of Contract Negotiations; <i>c.i.c. (culpa in contrahendo)</i>	24
5.	The Principle of Abstraction and Separation	24
6.	Types of Contracts	24
7.	The Law of Default Management and Warranty for Defects	25
8.	Statute of Limitation	28
9.	Bearing of Risk	28
I.D	Contract Law in Austria (<i>Gabriele Koziol</i>)	29
1.	Introduction	29
2.	Formation of Contract	30
2.1	Offer	30
2.2	Acceptance	30
2.3	Form	30
2.4	Interpretation of contract	31
2.5	Special provisions on consumer contracts	31

3.	Standard Contract Terms	32
4.	Contractual Capacity	32
5.	Agency	33
6.	Nullity of Contract	34
7.	Mistake, Fraud and Duress	34
7.1	Mistake	34
7.2	Fraud and duress	35
7.3	Laesio enormis	35
8.	Non-performance	35
9.	Assignment	36
I.E	Contract Law Cut & Paste (<i>Franz Heidinger/Andrea Hubalek</i>)	37
1.	Opening Phrases	37
2.	Preamble/Recitals/Preliminary Statements/Whereas Clauses	37
3.	Consideration Clause	39
4.	Definitions & Interpretation	39
4.1	Definitions – General / Headings	39
4.2	Sample Rules on Interpretation	40
5.	Conditions	41
6.	Representations and Warranties	41
7.	Covenants	42
8.	Events of Default	45
9.	Remedies	45
10.	Indemnification	45
11.	Limitation of Liability	46
12.	Confidentiality	47
13.	Force Majeure	47
14.	Assignment and Succession; Subcontracting	48
15.	Independent Contractor	49
16.	Term and Duration	50
17.	Termination	50
18.	Waivers	52
19.	Notices	52
20.	Entire Agreement; Merger Clause	54
21.	Amendments	54
22.	Severability/Partial Invalidity	54
23.	Counterparts	55
24.	Governing Law	55
25.	Jurisdiction/Forum	56
26.	Arbitration	57
27.	Languages	59
28.	Closing Phrases	59
	Contract Law Glossary	61
	Glossar Vertragsrecht	77

Table of Contents

II.A	United States Business Entities Overview (<i>Gil B. Selinger</i>)	91
1.	Sole Proprietorship	91
2.	Partnership	91
2.1	General Partnership	92
2.2	Limited Partnership	92
2.3	Other Partnership Variations	93
3.	Corporation	94
4.	Limited Liability Company	96
II.B	Company Law in the United Kingdom (<i>Michael H. Whincup</i>)	98
1.	Sole Traders and Partnerships	98
2.	Companies	98
2.1	Company formation	99
2.2	Memorandum	99
2.3	Articles	100
2.4	Registration	100
2.5	Management	100
2.6	Company Capital	101
2.7	Insolvency	101
II.C	The Law of Business Organisations in Germany (<i>Peter Poleacov</i>)	103
1.	Introduction	103
2.	Sources of Law	103
3.	Types of Business Organisations	103
3.1	<i>Personengesellschaften</i> (partnerships)	105
3.1.1	<i>Gesellschaft bürgerlichen Rechts</i> (civil law partnership)	105
3.1.2	<i>Offene Handelsgesellschaft (OHG)</i> (general commercial partnership)	106
3.1.3	<i>Kommanditgesellschaft (KG)</i> (limited partnership)	106
3.1.4	GmbH & Co KG	107
3.1.5	<i>Partnerschaftsgesellschaft (PartG)</i> (professional partnership)	107
3.2	Companies	108
3.2.1	<i>Aktiengesellschaft (AG)</i> (joint-stock company or stock corporation)	108
3.2.2	" <i>Kleine AG</i> " (small joint-stock company)	109
3.2.3	<i>Gesellschaft mit beschränkter Haftung (GmbH)</i> (limited liability company)	109
3.2.4	<i>Unternehmergesellschaft (UG)</i> (<i>haftungsbeschränkt</i>) (entrepreneurial company (limited))	111
4.	Groups of Companies	111
5.	Branches	111
6.	Transfer of Shares	112
6.1	Partnerships	112
6.2	Companies	112
7.	Transformation	112
8.	Preparation and Publication of Annual Financial Statements	113

9. The German Corporate Governance Code	113
10. Termination of a Company or Partnership	113
11. Duty to Petition for the Commencement of Insolvency Proceedings	113
12. Public Nature of the Commercial Register (Section 15 <i>HGB</i>)	114
II.D The Law of Business Organisations in Austria (<i>Matthias Potyka</i>)	115
1. <i>Personengesellschaften</i> (Partnerships)	115
1.1 <i>Gesellschaft bürgerlichen Rechts</i> (Civil law partnership)	115
1.2 <i>Offene Gesellschaft</i> (General partnership)	116
1.3 <i>Kommanditgesellschaft</i> (Limited partnership)	117
2. <i>Kapitalgesellschaften</i> (Companies)	117
2.1 <i>Gesellschaft mit beschränkter Haftung</i> (limited liability company)	117
2.2 <i>Aktiengesellschaft</i> (Stock corporation)	120
2.3 European company (<i>Societas Europea/SE</i>)	121
3. Other types of business organisation	121
3.1 <i>Eingetragener Einzelunternehmer</i> (e.U.) (registered sole trader)	121
3.2 <i>Privatstiftung</i> (private foundation)	122
3.3 <i>Genossenschaft</i> (co-operative society or co-operative)	122
4. Transformations	122
5. Private international law for business organisations	123
II.E English Trusts (<i>Owen McIntyre</i>)	124
1. Introduction	124
2. Formalities	125
3. Certainties	126
4. Trustees	127
5. Fiduciary Nature of Trusteeship	128
Business Organisations Glossary	131
Glossar Gesellschaftsrecht	145
III.A Commercial Contract Law in the United States (<i>Keith Calhoun-Senghor</i>)	159
1. Overview	159
2. UCC Article 2 (Sale of Goods)	160
2.1 Merchants	160
2.2 UN Convention on Contracts for the International Sale of Goods	161
2.3 UCC Requirement of a Written Contract	161
2.4 Conduct of the Parties	162
2.5 Acceptance of Offers	163
2.6 Express Warranties	164
2.7 Implied Warranty of Merchantability	165
2.8 Implied Warranty of Fitness for Particular Purpose	165
2.9 Warranty Disclaimers and Limitation of Remedies	166
2.10 UCC – Remedies	167
3. UCC Article 9 (Secured Transactions)	167
3.1 Security Interests in Personal Property	167
3.2 Enforcing Security Interests	169

Table of Contents

3.3	Disputes Over Collateral	170
3.4	Disputes Between Creditors and Purchasers from the Debtor	170
III.B	Commercial Law in the United Kingdom (Michael H. Whincup)	172
1.	Introduction	172
2.	The Sale of Goods Act	172
2.1	Quality and fitness of goods	172
2.2	Ownership	174
2.3	Retention of title	175
2.4	Risk	175
2.5	The right to sell	176
2.6	Performance of the contract	176
2.7	Remedies for breach of contract	177
3.	The Unfair Contract Terms Act	178
	The Unfair Terms in Consumer Contracts Regulations	179
4.	The Consumer Rights Act 2015	179
III.C	Commercial Law in Germany (Natalie J. Keller/Dirk Langner)	181
1.	Legal Sources	181
2.	The Commercial Register	181
2.1	Principles	182
2.2	The Principle of public disclosure	182
3.	Merchant	182
4.	The Law on Business Names	183
5.	Representation under Commercial Law	184
5.1.	Power of <i>Prokura</i>	184
5.2.	Commercial Power	184
5.3	Shop power	185
6.	Distribution Law	185
7.	Business-Related Transactions	186
7.1	Commercial Sales	186
7.2	Commission Agency Business	188
7.3	Freight Business	188
8.	Conclusion	189
III.D	Business Law in Austria (Dietmar Dokalik)	190
1.	Legal Sources	190
2.	The Business	190
2.1	Definition	190
2.2	Business Name and Business Register	191
2.3	Transfers of Businesses	192
2.4	Entrepreneurial Representation	192
3.	Business-Related Transactions	193
3.1	General	193
3.2	Special Contract Law	195
3.2.1	Sale of Goods	195
3.2.2	Commission agency business and other sales intermediaries	195

3.2.3 Forwarding and warehousing	196
3.2.4 Freight business	197
3.2.5 New types of contracts (a selection)	197
3.2.5.1 Leasing	197
3.2.5.2 Factoring	198
Commercial Law Glossary	201
Glossar Handelsrecht	209
IV.A Tort Law in the United States (<i>Michael R. McCurdy/Jason B. Robinson/Christina Baugh</i>)	219
1. Introduction	219
2. Types of Torts	219
2.1 Intentional	220
2.2 Negligence	221
2.3 Product Liability	221
2.4 Vicarious Liability	224
2.5 Other Types of Torts	224
3. Proving Liability	224
3.1 Burden of Proof	224
3.2 Duty	225
3.3 Proximate Cause	225
4. Damages	225
5. Governmental Considerations	226
6. Conclusion	226
IV.B Tort Law in the United Kingdom (<i>Michael H. Whincup</i>)	227
1. Introduction	227
2. Negligence	227
2.1 Time limits	228
3. Vicarious Liability	229
3.1 Employment relationship	229
3.2 Course of employment	229
4. Nuisance	230
4.1 Private nuisance	230
4.2 Public nuisance	231
4.3 Rylands v Fletcher	232
5. Defamation	232
5.1 Defences	233
5.2 Privilege	233
5.3 Justification	233
5.4 Fair or honest comment	234
5.5 Apology	234
6. Miscellaneous	234
6.1 Malicious prosecution; false imprisonment	234
6.2 Deceit; misrepresentation	235
6.3 Inducing breach of contract	235

Table of Contents

IV.C	Tort Law in Germany (<i>Carsten Heuel</i>)	236
1.	Introduction	236
2.	Liability for culpably committed wrong	237
2.1	Infringement of a right or an object enjoying legal protection (Section 823 (1) <i>BGB</i>)	237
2.1.1	Infringement of an object enjoying legal protection or of a right	237
2.1.2	Act or omission	238
2.1.3	Causality establishing liability	239
2.1.4	Unlawfulness	239
2.1.5	Fault	239
2.1.6	Damage	239
2.2	Breach of a protective law (Section 823 (2) <i>BGB</i>)	239
2.3	Impairment of credit standing (Section 824 (1) <i>BGB</i>)	240
2.4	Intentional immoral damage (Section 826 <i>BGB</i>)	240
3.	Liability for one's own presumed fault	241
3.1	Liability for agents (<i>Verrichtungsgehilfen</i>)	241
3.2	Liability for keepers of animals (Section 833 <i>BGB</i>)	241
3.3	Other liability for presumed fault	241
4.	Strict liability (<i>Gefährdungshaftung</i>)	242
5.	Extent and amount of claims for damages	242
5.1	The general regulations of Section 249 <i>et seq. BGB</i>	242
5.2	Special regulations in Section 842 <i>et seq. BGB</i>	243
6.	Statutory limitation of tort claims	244
IV.D	The Law of Damages in Austria (<i>Gabriele Koziol</i>)	245
1.	Introduction	245
2.	Fault-Based Liability	246
2.1	Protected Rights and Interests	246
2.2	Causation	246
2.3	Wrongfulness (<i>Rechtswidrigkeit</i>)	247
2.4	Fault (<i>Verschulden</i>)	247
2.4.1	Subjective Standard	247
2.4.2	Minors	248
2.4.3	Contributory Negligence	248
2.5	Factors in Restricting Liability	249
2.5.1	Adequacy (<i>Adäquanz</i>)	249
2.5.2	Protective Purpose of the Rule (<i>Schutzzweck der Norm</i>)	249
3.	Non-Fault Based Liability	249
3.1	ABGB	249
3.2	Special Provisions	250
3.3	Product Liability	250
4.	Vicarious Liability	250

5.	Compensation	251
5.1	Compensation in Kind and in Money	251
5.2	Extent of Compensation	251
5.3	Calculation	252
6.	Prescription	252
	Tort Law Glossary	253
	Glossar Deliktsrecht/deliktsches Schadenersatzrecht	261
V.A	A Typical Real Estate Purchase Transaction in the United States	
	<i>(J. Christopher Kinsman/Maria Oxman)</i>	271
1.	The Real Estate Contract	271
2.	Diligence and Entitlements	272
2.1	Title Review	272
2.2	Survey Review	273
2.3	Environmental Review	274
2.4	Entitlements	275
3.	Financing the Purchase	277
4.	Types of Mortgage Lenders	278
4.1	Mortgage Bankers	278
4.2	Mortgage Brokers	278
4.3	Wholesale Lenders	278
5.	Closing	279
5.1	Types of Tenancies	279
5.1.1	Tenancy in Common	279
5.1.2	Joint Tenancy	279
5.1.3	Tenancy by the Entirety	279
5.2	Types of Deeds	280
5.2.1	General Warranty Deed	280
5.2.2	Special Warranty Deed	280
5.2.3	Quitclaim Deed	280
5.2.4	Bargain and Sale Deed	280
5.3	Recording the Deed and the Mortgage	281
V.B	Real Property Law in England and Wales <i>(Catherine E. Whincup/</i>	
	<i>Maeve Rees-Jones)</i>	282
1.	Ownership of land and estates in land	282
1.1	Freehold estate	282
1.2	Leasehold estate	282
2.	Interests in land	283
2.1	Legal interests in land	283
2.2	Equitable interests in land	284
2.3	Infringement of interests in land	284
2.4	Enforcement of interests in land	284

Table of Contents

3.	Registered and unregistered land	285
3.1	Unregistered land	285
3.2	Contents of the register	285
3.2.1	The property register	285
3.2.2	The proprietorship register	286
3.2.3	The charges register	286
3.3	Different classes of title to land	286
3.3.1	Classes applicable to both freehold and leasehold land	286
3.3.2	Additional class applicable to leasehold land only	287
4.	Proprietary interests	287
4.1	Registering an interest	287
4.1.1	Notices	287
4.1.2	Restrictions	287
4.2	Rights and land charges	287
5.	Leases	288
5.1	What constitutes a lease?	288
5.1.1	Fixed term tenancy	288
5.1.2	Periodic tenancy	289
5.2	Termination of leases	289
5.2.1	Expiry	289
5.2.2	Notice to quit	289
5.2.3	Surrender	289
5.2.4	Merger	289
5.2.5	Repudiatory breach	289
5.2.6	Forfeiture	289
5.3	Leasehold covenants	290
5.4	Remedies for breach of covenant	290
5.4.1	Breaches by the lessee	290
5.4.2	Breaches by the lessor	291
6.	Co-ownership of property	291
6.1	Severing a joint tenancy	291
6.2	Applications for sale by co-owners in dispute	291
6.3	Bankruptcy of a co-owner	292
7.	Licences	292
V.C	Real Estate Law in Germany (<i>Burkhard Klüver</i>)	293
1.	Introduction	293
2.	Plots of land	293
3.	Principles of property law (<i>Sachenrecht</i>)	294
3.1	The principle of abstraction or separation	294
3.2	Principle of absoluteness	294
3.3	Principle of publicity	294
3.4	Principle of priority	294

4.	Rights in rem to plots of land	294
4.1	Ownership	295
4.2	Servitudes	295
4.2.1	Easement (<i>Grunddienstbarkeit</i>)	295
4.2.2	Usufruct (<i>Nießbrauch</i>)	295
4.2.3	Limited personal servitude (<i>beschränkte persönliche Dienstbarkeit</i>)	295
4.2.4	Right of first refusal (<i>Vorkaufsrecht</i>)	295
4.3	Charges on land (<i>Reallasten</i>)	296
4.4	Liens on real property (<i>Grundpfandrechte</i>)	296
5.	Changes to rights to real property	296
6.	Priority notices	297
7.	Commonhold property	297
8.	Heritable building right	298
9.	Tenancy and lease relationships	298
10.	The law regulating the rights of neighbours	298
11.	Public-law influences on land law	299
11.1	Right of first refusal	299
11.2	Construction law	299
11.3	Public easements	299
12.	A typical land purchase transaction in Germany	299
12.1	The transaction	299
12.2	The costs	301
13.	Tax aspects	301
13.1	Land tax (<i>Grundsteuer</i>)	301
13.2	Land acquisition tax (<i>Grunderwerbsteuer</i>)	302
13.3	Taxation of profits on disposal (capital gains) (<i>Besteuerung des Veräußerungsgewinns</i>)	302
V.D	Real Estate Law in Austria (<i>Christian Auinger</i>)	303
1.	Introduction	303
2.	Property law principles	303
3.	Rights in rem	303
3.1	Freehold/Fee Simple	303
3.2	Condominium ownership (<i>Wohnungseigentum</i>)	304
3.3	Building right	304
3.4	<i>Superädifikat</i> (Structure erected on third party land (superstructure))	304
3.5	Lien	304
3.6	Easements	305
3.7	Land charges	305
3.8	Repurchase right and right of first refusal/pre-emption	305
3.9	Tenancy right	306
3.10	Prohibition to encumber or sell property	306
4.	Acquisition of rights in rem	306
5.	Land Register	307

Table of Contents

6. Cadastre	307
7. Structure and public access to the Land Register	308
7.1 General	308
7.2 Inspection of and access to the Land Register	308
7.3 Structure of the Land Register	308
7.3.1 Main Register	308
7.3.2 List of cancelled entries	310
7.3.3 Collection of documents	310
7.3.4 Auxiliary registers/lists	310
8. Land Register entries	311
8.1 General	311
8.2 <i>Einverleibung</i> (Registration)	311
8.3 <i>Vormerkung</i> (Priority notice)	312
8.4 <i>Anmerkung</i> (Annotation)	312
9. Partitioning and combining real properties	312
9.1 Removing and adding (entire) plots of land	312
9.2 Partitioning plots of land	313
9.3 Combining plots of land	313
10. Public-law restrictions on title	313
10.1 General	313
10.2 Land transfer	313
10.3 Zoning laws and building codes	313
Real Estate Glossary	315
Glossar Liegenschaftsrecht	325
VI.A Employment Law in the United States (Colin A. Walker)	335
1. Introduction	335
2. At-Will Employment	335
3. Employment Contracts	335
4. Restrictive Covenants	336
5. Trade Secret Protection	337
6. Duty of Loyalty	338
7. Discrimination, Harassment, Retaliation	338
8. Wrongful Termination in Violation of Public Policy and Whistle-Blower Claims	339
9. Wage Claims	340
10. Workers Compensation	340
11. Unemployment Insurance Compensation Benefits	340
12. Family and Medical Leave	340
13. Wage/Hour Issues	341
14. Independent Contractors	341
15. Immigration/Employment Eligibility Verification	342
16. The Worker Readjustment and Retraining Notification Act (“WARN”)	342
17. The Occupational Safety and Health Act (“OSHA”)	342
18. Employee Retirement Income Security Act (“ERISA”)	342

19. COBRA	343
20. Employee Polygraph Protection Act	343
21. National Labor Relations Act (“NLRA”)	343
22. Reemployment of Veterans	343
23. Employee Background Checks	343
24. Bankruptcy	344
25. Posters	344
VI.B Employment Law in the United Kingdom (Michael H. Whincup)	345
1. Introduction	345
2. The Parties	345
3. The Form of the Contract	345
4. The Terms of the Contract	346
4.1 Collective agreements	346
5. Implied Terms and Legal Duties	346
5.1 Employers’ duties	346
5.1.1 Safety	346
5.1.2 Discrimination	347
5.1.3 Union membership; recognition; consultation	348
5.1.4 Hours and holidays	348
5.1.5 Pay	348
5.1.6 Sick pay	349
5.1.7 Maternity and paternity rights	349
5.1.8 Notice of termination	350
5.1.9 Good faith	350
5.1.10 Restraint of trade	350
6. Employees’ Legal Duties	350
7. Termination of the Contract	351
7.1 Dismissal	351
7.2 Wrongful dismissal	351
7.3 Unfair dismissal	351
7.4 Meaning of dismissal	352
7.4.1 Procedure	352
7.5 Grounds for dismissal	353
8. The Right To Strike	354
8.1 Union rights	354
8.2 Strikers’ rights	355
8.3 Conclusion	355
VI.C Labour Law in Germany (Christian Darge)	356
1. Introduction	356
2. The parties	356
2.1 Employee	356
2.2 Employer	357
2.3 Works councils and staff committees	357
2.4 Collective bargaining parties	357

Table of Contents

3. Sources of labour law	358
3.1 Constitution	358
3.2 Laws and regulations	358
3.3 Collective bargaining agreements (<i>Tarifverträge</i>)	359
3.4 Plant agreements (<i>Betriebsvereinbarungen</i>) and public service agreements (<i>Dienstvereinbarungen</i>)	359
3.5 Individual employment contracts	359
3.6 Business practice	359
3.7 Judge-made law	359
4. Establishing an employment relationship	359
5. Legal protection of personality in employment relationships	360
5.1 Principle of equal treatment	360
5.2 Protection of employee data	361
6. Atypical employment relationships	361
6.1 Part-time employment	361
6.2 Fixed-term employment	362
6.3 Temporary agency work	363
7. Termination of an employment relationship	363
7.1 Avoidance (<i>Anfechtung</i>)	363
7.2 Termination agreement (<i>Aufhebungsvertrag</i>)	364
7.3 Termination by notice (<i>ordentliche Kündigung</i>)	364
7.4 Termination without notice (<i>außerordentliche Kündigung</i>)	365
7.5 Termination including an option to change the terms of employment (<i>Änderungskündigung</i>)	366
8. Transfer of businesses	366
9. Collective bargaining law and industrial action	367
10. Co-determination (<i>Mitbestimmung</i>)	367
11. Labour law disputes	369
VI.D Labor Law in Austria (<i>Martin Gruber-Risak</i>)	371
1. Contracts of Employment	371
1.1 Applicable law	371
1.2 Employment contract or contract for services?	371
1.3 Form and alteration	372
2. Rights and Obligations of Employers and Employees	373
2.1 Remuneration	373
2.1.1 Wages/Salaries	373
2.1.2 Special payments (vacation benefit and Christmas pay)	373
2.2 Annual leave	373
2.2.1 Leave entitlement	373
2.2.2 Timing of annual leave	373
2.2.3 Annual leave allowance and indemnity payment	374
2.3 Sick leave	374
2.4 Other cases of (paid) special leave	375

3.	Working time	375
3.1	The Austrian working time legislation	375
3.2	Maximum working time	375
3.3	Overtime and excess work	376
3.4	Rest periods	376
4.	Termination of Employment	377
4.1	Forms of termination	377
4.1.1	Termination by agreement	377
4.1.2	Expiry of a fixed term contract	377
4.1.3	Notice of termination	377
4.1.4	Termination without notice	378
4.2	Remedies in case of dismissal	379
4.2.1	Contesting termination	379
4.2.2	Compensation	379
4.3	Employees enjoying special protection against dismissal	379
4.4	Severance pay (<i>Abfertigung</i>)	380
4.4.1	The old system	380
4.4.2	The new system	381
5.	Industrial Relations in Austria	381
5.1	Social partnership	381
5.2	Works councils	382
	Employment Law Glossary	385
	Glossar Arbeitsrecht	393
VII.A	Family Law in the United States (<i>Scott T. Rodgers/Andrew Radding/ Megan Easter</i>)	401
1.	Marriage	401
1.1	The Marital Relationship	401
1.2	Pre-Marital Agreements	403
1.3	Invalidity of Marriage	404
2.	Parental Rights	404
2.1	Relinquishment of Parental Rights	404
2.2	Surrogacy	405
2.3	Adoption of a Child	405
2.4	Parental Responsibilities	406
3.	Dissolution of Marriage (Divorce)	406
3.1	Dissolution of the Marital Relationship	406
3.2	Division of the Marital Estate	407
3.3	Maintenance (Alimony)	409
3.4	Child Custody and Support	409
3.5	The Impact of Bankruptcy of one of the Parties	409
3.6	Criminal Allegations in Dissolution Proceedings	410
4.	Non-Married Parties' Rights	410
5.	Disinheriting a Spouse	410

Table of Contents

VII.B	Family Law in England and Wales (<i>John Darnton</i>)	411
1.	Definitions	411
2.	Recitals	411
3.	Family relationships	411
4.	Invalidity of marriage and civil partnerships	412
5.	Divorce and dissolution (including judicial separation)	412
6.	Children	413
7.	Financial provision on divorce	414
8.	Marital Agreements	417
9.	Child support	418
10.	Financial claims after an overseas divorce	419
11.	Cohabitee claims	419
12.	Succession issues	420
VII.C	Family Law in Germany (<i>Martin Franke/Sara Manzke</i>)	421
1.	Introduction	421
2.	Marriage law	421
2.1	Engagement (Sections 1297–1302)	421
2.2	Entering into a marriage (Sections 1303–1312)	422
2.3	Conjugal community (Section 1353 <i>et seq.</i>)	422
2.4	The matrimonial property regime (Sections 1363–1563)	423
2.4.1	Separation of property (<i>Gütertrennung</i>) (Section 1414)	423
2.4.2	Community of property (<i>Gütergemeinschaft</i>) (Sections 1415–1518)	423
2.4.3	Community of accrued gains (<i>Zugewinnngemeinschaft</i>) (Sections 1363–1390)	424
2.5	Divorce and separation	424
2.5.1	Separation	424
2.5.2	Maintenance during separation	425
2.5.3	Divorce (Sections 1564–1587)	426
2.5.4	Statutory equalisation of pension benefit rights	426
2.5.5	Maintenance of the divorced spouse	427
2.5.6	Compensation for accrued gains	428
2.5.7	Household items	428
2.5.8	Matrimonial home	429
3.	Parent and child law	429
3.1	Consanguinity and descent	429
3.2	General effects of a parent-child relationship	430
3.3	Parental care	430
3.4	Child maintenance	431
3.5	Adoption of a child	432
4.	Cohabitation	432
5.	Civil unions	432
6.	Guardianship, care, wardship (Section 1773 <i>et seq.</i>)	432
7.	Anti-Violence Act	433

VII.D Family Law in Austria (<i>Michael Stich</i>)	434
1. Introduction	434
2. The Law of Marriage	434
2.1 Entering into a marriage	434
2.2 Nullity of marriage	434
2.3 Nullification of marriage	435
2.4 Effects of marriage	435
2.5 Divorce	436
2.5.1 Divorce for fault (marital offences, Section 49 <i>EheG</i>)	436
2.5.2 Divorce on other grounds (i.e. with no fault on the part of the respondent)	437
2.5.3 Divorce by consent (Section 55a <i>EheG</i>)	438
2.6 Consequences of divorce	438
2.6.1 Division of matrimonial utility assets and matrimonial savings	440
3. Cohabitation	441
4. Registered partnership	442
5. About rights between parents and children	442
5.1 General provisions	442
5.2 Parentage	442
5.3 Name	443
5.4 Custody	443
5.5 Parental custody	444
5.6 Other rights and duties	445
5.7 Adoption	446
5.8 Foster parentage	446
5.9 Child maintenance	446
6. Guardianship and trusteeship	447
6.1 Guardianship of adults	447
6.2 Trusteeship	448
7. Interim injunctions for protection against violence	448
7.1 Protection against domestic violence (“go order”)	448
7.2 General protection against violence	448
7.3 Protection against stalking	449
Family Law Glossary	451
Glossar Familienrecht	461
VIII.A The Law of Succession in the United States (<i>Johannes Mittermaier</i>)	471
1. Introduction	471
2. Sources of Law	471
3. Conflict of Law and Choice of Law	471
3.1 Domicile vs. Situs	472
3.2 Forum	472
3.3 Designation by Testator	472
4. The Term “Estate”	472

Table of Contents

5. Matrimonial Property Regimes	473
6. Intestate Succession	474
6.1 Distribution by Statutory Rules	474
6.2 Major Issues of Intestate Succession	474
7. Testate Succession	475
7.1 Formalities of Will Execution	475
7.2 Limitation on Testamentary Powers	475
7.3 Contesting Wills	476
7.4 Revocation of Wills	477
7.5 Joint Wills and Mutual Wills	477
7.6 Will Contracts	478
8. Estate Administration	478
9. Trusts	478
9.1 Introduction	478
9.2 Types of Private Express Trusts	479
9.3 Purposes of Trusts	479
9.4 Creation of a Trust	480
9.5 Trust Administration	481
9.6 Trust Operation	481
9.7 Modification and Termination of Trusts	482
10. Powers of Appointment	483
11. Future Interests	484
11.1 Vesting	484
11.2 Future Interests Retained by the Transferor	485
11.3 Future Interests Conveyed with the Present Interest	486
11.4 Executory Interests	487
12. Rule Against Perpetuities	487
VIII.B English Law of Succession and Inheritance Tax (<i>Alastair Collett/</i>	
<i>Danjuma Mshelia</i>)	489
1. Introduction	489
2. Administration of Estates	489
2.1 Introduction	489
2.2 Grant of Representation	489
2.3 Process of administration	491
3. Succession Law of England	491
3.1 Domicile	491
3.2 Succession regimes	492
3.3 Intestate succession	492
3.4 Testate succession	493
3.5 Moveable and Immovable property	493
3.6 Challenging the will	494
4. Taxes on death	495
4.1 Introduction	495
4.2 Tax rates	495
4.3 Exempt lifetime transfers	496

4.4	Potentially exempt transfers (PETs)	497
4.5	Chargeable lifetime transfers	497
4.6	Reliefs from tax for business and agricultural property	497
4.7	Payment of tax	498
VIII.C	The Law of Succession in Germany (<i>Eberhard Rott/Elena Weber</i>)	499
1.	Introduction	499
1.1	Fundamental principles of the German law of succession	499
1.2	Reforms and trends	500
2.	Intestate succession	500
2.1	Succession by degree	500
2.2	Adoption	501
2.3	Spouses	501
2.4	Registered civil partners	501
2.5	The government as the intestate heir	502
3.	Testamentary succession	502
3.1	Holographic wills	502
3.1.1	Single person wills	502
3.1.2	Joint wills	502
3.2	Notarial wills	503
3.3	Contracts of inheritance	503
3.4	Impediments to effectiveness	504
3.5	Safekeeping of last wills and testaments	505
3.6	Design of the law of succession	505
3.6.1	Inheritance and legacy	505
3.6.2	Provisional and reversionary succession	506
3.6.3	Requirements	506
3.6.4	Partitioning direction	506
3.6.5	Executry	506
4.	Compulsory share rules	507
5.	Community of heirs	508
6.	Procedural law	508
6.1	Dualism between probate and contentious proceedings	508
6.2	Probate proceedings	509
7.	Instruments for protecting the estate	510
7.1	Curatorship of the estate	510
7.2	Administration of an estate	510
8.	Taxation of the devolution of an inheritance	510
9.	Conclusion	511
VIII.D	The Law of Succession in Austria (<i>Martin Gratzl/Alice Galler/Andrea Hubalek/ Natalie J. Keller</i>)	512
1.	Historical Development of Succession Laws	512
2.	General Facts	512
3.	Regulation (EU) No 650/2012	512
4.	Which national law is applicable?	513

Table of Contents

5.	The Right to Inherit	514
5.1	Capacity and Eligibility to Inherit	514
5.2	Renunciation of a Future Inheritance	514
6.	Intestate Succession	514
6.1	Overview	514
6.2	Parentela System of Succession / System of Succession <i>per stirpes</i>	515
6.3	Spouses and Registered Partners	515
6.4	Cohabiting Partners	516
6.5	The State's Right to Succeed to Heirless Property	516
6.6	Adoption	516
7.	Testate Succession	516
7.1	Testamentary Freedom	516
7.2	Requirements of a Will	517
7.3	Types of Wills	517
7.4	Joint Will	518
7.5	Revocation of a will	518
7.6	Bequests	518
7.7	Testamentary Conditions and Requirements	519
7.8	Contracts of Inheritance	519
7.9	Joint Condominium Ownership	520
8.	Compulsory Share	520
8.1	Overview	520
8.2	The Amount of the Compulsory Share	520
8.3	Reduction in and Renunciation of the Compulsory Share	521
8.4	Disinheritance	521
9.	Probate Proceedings	521
9.1	Overview	521
9.2	Declaration of Acceptance	522
	Law of Succession Glossary	523
	Glossar Erbrecht	529
IX.A	Civil Litigation in the United States (<i>Keith Calhoun-Senghor</i>)	533
1.	Overview of the Anglo-American Legal System	533
2.	The U.S. Court System	534
2.1	Federal Court Jurisdiction	534
2.2	Subject Matter Jurisdiction	534
2.3	Personal Jurisdiction	535
2.4	Federal Long-Arm Statutes	536
3.	Pleadings	536
3.1	The Complaint	537
3.2	The Answer	537
4.	Discovery	538
4.1	Scope of Discovery	538
4.2	Discovery Methods	539
4.2.1	Depositions	539
4.2.2	Interrogatories	540

4.2.3	Request for Documents	540
4.2.4	Requests for Admissions	540
4.2.5	Physical and Mental Examinations	541
4.3	Judgments Without a Trial	541
5.	The Trial	541
5.1	The Trial Sequence	541
5.2	Objections at Trial	542
5.3	Damages	543
IX.B	Civil Litigation in England and Wales (<i>Catherine E. Whincup/Maeve Rees-Jones</i>)	544
1.	Definition	544
2.	A new era for civil litigation	544
3.	Applicability of the new rules	545
4.	Active management of cases	545
5.	Stages of civil litigation	546
5.1	Before proceedings begin	547
5.2	Launching civil proceedings	547
5.3	Before the trial takes place	548
5.4	During the trial	549
5.5	After the trial	550
IX.C	Civil Procedure Law in Germany (<i>Patrick Weis</i>)	552
1.	Introduction	552
2.	Prerequisites to be fulfilled for an action for specific performance (<i>Leistungsklage</i>)	552
2.1	Jurisdiction of the courts	553
2.2	Parties to a legal dispute	554
2.3	Out-of-court conciliation proceedings	554
2.4	Pleas	554
2.5	Proper filing of suit	554
2.6	Other types of actions and prerequisites for their admissibility	555
2.6.1	Action for a declaratory judgment	555
2.6.2	Action for change of a legal right or status	556
3.	Stages of proceedings after suit has been filed	556
3.1	Preliminary proceedings	556
3.2	Main phase	557
3.3	Court decision	558
3.4	Appeals	559
3.4.1	(First) Appeal (<i>Berufung</i>)	559
3.4.2	Second appeal (<i>Revision</i>)	560
3.5	Termination of proceedings without a court decision	560
4.	Special types of proceedings	561
4.1	Order for payment procedure	561
4.2	Summary proceedings exclusively based on documentary evidence (<i>Urkundenprozess</i>)	562

Table of Contents

4.3	Independent taking of evidence procedure (<i>selbstständiges Beweisverfahren</i>)	563
4.4	Provisional measures/interim relief (<i>einstweiliger Rechtsschutz</i>)	563
5.	The law of evidence	564
5.1	The burden of proof	564
5.2	Need for proof	565
5.3	Means of evidence	565
5.3.1	Expert witness evidence	565
5.3.2	Documents	565
5.3.3	Inspection	565
5.3.4	Witnesses	565
5.3.5	Party examination	566
5.4	Evaluation of evidence	566
6.	Conclusion	566
IX.D	Civil Procedure Law in Austria (<i>Georg Kodek</i>)	567
1.	The Organisation of the Austrian Courts	567
1.1	The Courts	567
1.2	Stages of Appeal	568
2.	The Civil Procedure	568
2.1	Commencement of Proceedings	568
2.2	Order for Payment Procedure (<i>Mahnverfahren</i>)	569
2.3	Regular Proceedings	569
2.4	Oral Hearing	570
2.5	Rulings – Closing the Case	571
2.5.1	Beschluss	571
2.5.2	Judgment (<i>Urteil</i>)	571
2.5.3	Settlement (<i>Vergleich</i>)	572
2.5.4	Suspension of proceedings (<i>Ruhen des Verfahrens</i>)	572
2.6	Legal Costs	572
2.7	Appeals	572
2.7.1	<i>Berufung</i> (first appeal)	573
2.7.2	<i>Revision</i> (second appeal)	573
2.7.3	<i>Rekurs</i> (appeal against a <i>Beschluss</i>)	574
2.7.4	<i>Revisionsrekurs</i> (second appeal against a <i>Beschluss</i>)	574
2.7.5	Nullity action (<i>Nichtigkeitklage</i>) and action for resumption (<i>Wiederaufnahmsklage</i>)	575
2.8	Interim Injunctions (<i>einstweilige Verfügungen</i>)	575
2.9	Legal Professions	575
3.	Non-Contentious Proceedings (<i>Außerstreitverfahren</i>)	576
4.	Enforcement Proceedings (<i>Exekutionsverfahren</i>)	576
4.1	General Remarks	576
4.2	Approval Procedure	577
4.3	Enforcement	577
4.3.1	Enforcement of pecuniary claims	577
4.3.2	Execution because of other claims	578

Civil Procedure Glossary	579
Glossar Zivilprozessrecht	589
X.A Introduction to Arbitration under the US System with an Introduction to AAA	
Arbitration (<i>Eric Leikin/Barbara Łyszczarz</i>)	603
1. Federal Arbitration Act as Legal Framework	603
2. Arbitration Agreement	604
2.1 Arbitration Agreement - Nature and Formal Requirements	604
2.2 Scope of an Arbitration Agreement	605
2.3 Jurisdiction of Arbitrators to Rule on their Own Jurisdiction	606
3. Assistance of the Courts	607
3.1 Compelling Arbitration, Enjoining Litigation and Arbitration	607
3.2 Other Assistance by Courts	608
4. Proceedings	609
5. Confirmation and Review of Arbitral Awards	609
6. Enforcement of Arbitral Awards under Chapter 2 of the FAA and under the New York Convention	611
7. Institutional Arbitration and AAA	612
X.B An Introduction to Arbitration in England and Wales (<i>Amanda Neil</i>)	614
1. General	614
2. The Arbitration Act 1996	614
3. Arbitrable Disputes	615
4. Arbitration Agreement	615
4.1 Nature and Formal Requirements	615
4.2 Scope	616
4.3 The Principle of Competence-competence	616
4.4 The Doctrine of Separability	617
5. The Role of the Courts	617
5.1 Compelling Arbitration, Enjoining Litigation and Arbitration	617
5.2 Other Assistance by the Courts	618
6. The Proceedings	619
7. Interim Measures	620
8. The Award	620
8.1 Formal Requirements	620
8.2 Challenges and Appeals	621
8.3 Recognition and Enforcement	622
9. Institutional Arbitration and the LCIA Rules	623
X.C Arbitration in Germany (<i>Stephan Wilske/Claudia Krapfl</i>)	625
1. General	625
2. Basic Structure of German Arbitration Law	625
3. Arbitrable Disputes	626
4. The Arbitration Agreement	626
5. Constitution of the Arbitral Tribunal	627
6. Conduct of the Arbitration	628
7. Evidence in Arbitration	628

Table of Contents

8. Courts and Arbitration	628
9. Interim Relief	629
10. Termination of Arbitral Proceedings	630
11. Enforcement and Setting Aside of Awards	631
12. Costs in Arbitration	632
13. German Arbitration Institute (DIS)	632
X.D Arbitration in Austria (Gerold Zeiler)	634
1. General	634
2. The UNCITRAL Model Law	634
3. The Basic Structure of Austrian Arbitration Law	635
4. Arbitrable Disputes	636
5. The Arbitration Agreement	636
6. The Principle of <i>Kompetenz-Kompetenz</i>	638
7. The Doctrine of Separability of the Arbitration Clause	638
8. The Role of the Courts	638
9. Conduct of the Arbitration Proceedings	639
10. The Arbitral Award	640
11. Interim Measures of Protection	641
12. Setting-aside Proceedings	641
13. Enforcement Procedure for Foreign and Domestic Awards	642
14. Institutional Arbitration in Austria – the VIAC	642
15. The Vienna Rules	643
Arbitration Glossary	645
Glossar Schiedsgerichtsbarkeit	655
Index	663