

# GERMAN LEGAL SYSTEM AND LAWS

*Fourth Edition*

**NIGEL FOSTER**

*Professor of European Law, Buckingham Law School*

*jean Monnet Professor of European Law*

*Deputy Vice-Chancellor, University of Buckingham*

*Visiting Professor of European Law, Europa Institut, Universitat des Saarlandes,  
Saarbrücken, Germany*

**Dr. iur. SATISH SULE, LL.M. EUR**

*European Commission Directorate General for Competition, Brussels*

**OXFORD**  
UNIVERSITY PRESS

# Outline Contents

<b>PART I Introduction to the German legal system</b>	<b>1</b>
1 German legal history and legal development	9
2 Sources of German law	49
3 Legal institutions	80
4 Legal education and legal personnel	94
5 The operation of justice	125
<b>PART II Substantive German law</b>	<b>153</b>
6 Public law I: Constitutional law—principles and institutions	159
7 Public law II: Basic rights and the Federal Constitutional Court	221
8 Public law III: Administrative law	283
9 Public law IV: Criminal law	334
10 Private law I: The German Civil Code	407
11 Private law II: Business and labour law	535
<i>Appendix</i>	605
<i>Glossary</i>	623
<i>Index</i>	633

# Detailed Contents

<i>Foreword to the Third Edition</i>	xxi
<i>Foreword to the Second Edition</i>	xxv
<i>Foreword to the First Edition</i>	xxvii
<i>Preface to the Fourth Edition</i>	xxix
<i>Table of Legislation</i>	xxxiii
<i>Table of Cases</i>	lix
<i>Abbreviations</i>	lxxv

## PART I Introduction to the German legal system

- 1 Introduction 3
  - 2 Historical influences 3
  - 3 The classification as a civil law country 3
  - 4 The division of public and civil (private) law 3
  - 5 Code- and statute-based law 5
  - 6 Sources of law 5
    - 6.1 Statute (*Gesetz*) 5
    - 6.2 Customary law (*Gewohnheitsrecht*) 6
    - 6.3 The role of the courts, judiciary, and precedence 6
- Further reading 7

### 1 German legal history and legal development

- 1 Introduction 9
  - 2 Early developments 10
  - 3 The *Frankisch-deutsche Reich* 10
  - 4 Charlemagne 12
  - 5 The mid to late middle ages 14
    - 5.1 Decline of central power 14
    - 5.2 Development of medieval towns 15
    - 5.3 Rediscovery of Roman law and local customary laws 16
  - 6 Early modern times: Renaissance and Reformation 18
    - 6.1 The reception of Roman law into Germany 18
  - 7 Later modern times: Age of Enlightenment to the nineteenth century 23
    - 7.1 School of natural law 24
    - 7.2 Historical school of law 27
    - 7.3 Commerce and unification 29
    - 7.4 The Civil Code (*Bürgerliches Gesetzbuch—BGB*) 32
  - 8 Legal developments in the twentieth century 34
    - 8.1 The empire until the end of the First World War 34
    - 8.2 The Weimar Republic 36
    - 8.3 Nazi Germany 40
    - 8.4 Post-war Germany 44
- Further reading 47

2	Sources of German law	49
1	Introduction	49
2	Sources of law	50
2.1	The constitution: The 'Basic Law' ( <i>Grundgesetz</i> )	50
2.2	Statute ( <i>Gesetz</i> )	50
2.3	Customary law ( <i>Gewohnheitsrecht</i> )	51
2.4	Judicial lawmaking ( <i>Richterrecht</i> )	52
2.5	European Community law	55
2.6	International law	69
2.7	Natural law as source of law?	70
2.8	Summary	71
3	Legal method	72
3.1	Hierarchy of legal provisions	72
3.2	<i>Substitution</i>	72
3.3	Gaps of legislation and analogies	73
3.4	Statutory interpretation ( <i>Auslegung von Gesetz</i> )	75
	Further reading	78
3	Legal institutions	80
1	The court structure and courts: Introduction	80
2	Decentralization	80
2.1	The Federal Courts ( <i>Bundesgerichte</i> )	81
2.2	Courts of the <i>Länder</i> ( <i>Gerichte der Länder</i> )	81
3	Specialization	81
3.1	Courts of ordinary jurisdiction	83
3.2	Administrative Courts ( <i>Verwaltungsgerichte</i> )	86
3.3	Labour Courts ( <i>Arbeitsgerichte</i> )	88
3.4	Social Courts ( <i>Sozialgerichte</i> )	88
3.5	Tax or Revenue Courts ( <i>Finanzgerichte</i> )	89
3.6	Conclusion	89
4	The changes in the new federal regions ( <i>Bundesländer</i> )	89
5	The Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> —BVerfG)	90
6	The <i>Länder</i> constitutional courts	91
7	The justice ministries	92
7.1	The Federal Ministry of Justice ( <i>Bundesministerium der Justiz</i> —BMJ)	92
7.2	The justice ministries of the <i>Länder</i> ( <i>Landesjustizministerien</i> )	92
	Further reading	93
4	Legal education and legal personnel	94
1	Legal education	94
1.1	Introduction	94
1.2	University entrance	94
1.3	Legal education	97
2	The judiciary and legal professions	103
2.1	Introduction	103
2.2	The judiciary	104
2.3	Lawyers	107
2.4	Additional legal occupations	115
2.5	Rights allowed non-German attorneys	119
2.6	The position of EC and EEA attorneys	120
3	Lay participation in the legal system	120
	Further reading	122

5	The operation of justice	125
1	Legal advice and legal aid 125	
1.1	Legal representation 125	
2	Litigation costs 126	
2.1	Court costs 126	
2.2	Fees for legal representation 127	
3	Legal aid 128	
3.1	The Legal Advice Act ( <i>Beratungshilfegesetz—RerHG</i> ) 128	
3.2	Legal aid for representation in court ( <i>Prozesskostenhilfe</i> ) 130	
4	Legal publication, reporting, and citation 131	
4.1	Official publications 132	
4.2	Private reporting and publication 134	
5	Academic legal opinion 137	
6	Aspects of civil procedure 137	
6.1	Introduction 137	
6.2	General principles of civil procedure 139	
6.3	General considerations of procedure 141	
6.4	The civil law action 143	
6.5	Special procedures 148	
6.6	Appeals ( <i>Rechtsmittel</i> ) 149	
6.7	Enforcement of judgments ( <i>Zwangsvollstreckung/Vollstreckungsverfahrens</i> ) 150	
	Further reading 151	

## PART II Substantive German law 153

1	An outline of subject areas 155	
2	Public and civil (private) law 155	
3	Public law 155	
3.1	<i>Staatsrecht</i> 155	
3.2	Administrative law 156	
3.3	Judicature and procedural law 156	
3.4	Criminal law 157	
3.5	Tax law 157	
3.6	Social law 157	
3.7	The law of economic administration and labour law 157	
4	Civil law 158	
4.1	The Civil Code ( <i>Bürgerliches Gesetzbuch—BGB</i> ) 158	
4.2	Commercial law 158	
6	Public law I: Constitutional law—principles and institutions <span style="float: right;">159</span>	
1	Historical development 159	
1.1	Constitutional developments until unification 159	
1.2	Changes made to the <i>Grundgesetz</i> following unification 161	
1.3	Content 163	
1.4	Constitutions of the <i>Länder</i> 163	
2	The supreme position of constitutional law 164	
2.1	The priority of constitutional provisions 164	
2.2	Interpretation of the constitution 164	
2.3	Distinction: interpretation in the light of constitutional law 166	
2.4	Position of international law 166	
3	The basic principles of state 167	
3.1	Republicanism 168	
3.2	Democracy 169	

## DETAILED CONTENTS

- 3.3 *Rechtstaat* 178
- 3.4 Principle of the social state (*Sozialstaatsprinzip*) 187
- 3.5 Principle of the federal state (*Bundesstaatsprinzip*) 188
- 3.6 Environmental protection (Art 20a GG)—a new principle? 195
- 4 Organization of the state 196
  - 4.1 *Bundestag* (Federal Parliamentary Assembly, Arts 38-49 GG) 196
  - 4.2 Federal government (*Bundesregierung*, Arts 62-9 GG) 201
  - 4.3 The Federal President (*Bundespräsident*, Arts 54-61 GG) 204
  - 4.4 The Federal Council (*Bundesrat*, Arts 50-3 GG) 207
  - 4.5 Functions of the state 210
- 5 Protection of the constitution 214
  - 5.1 Amendments to the constitution 214
  - 5.2 Defending the free democratic basic order 215
- Further reading 220
  
- 7 Public law II: Basic rights and the Federal Constitutional Court 221
  - 1 Basic rights (*Grundrechte*) 221
    - 1.1 General principles 222
  - 2 The individual rights 234
    - 2.1 Article 1: The protection of human dignity (*Schutz der Menschenwürde*) 235
    - 2.2 Article 2: Right to personal freedom (*Allgemeines Persönlichkeitsrecht*, Art 2 I GG), right to life (*Recht auf Leben*), and physical integrity (*körperliche Unversehrtheit*, Art 2 II GG) 240
    - 2.3 Article 3: Equality before the law (*Gleichheit vor dem Gesetz*) 245
    - 2.4 Article 4: The freedom of faith, conscience and creed (*Glaubens-, Gewissens- und Bekenntnisfreiheit*) 249
    - 2.5 Article 5 I GG: Freedom of communication: freedom of expression, information, press, broadcasting and film (*Kommunikationsgrundrechte*) 253
    - 2.6 Article 5 III GG: Freedom of artistic expression and science (*Freiheit von Kunst und Wissenschaft*) 256
    - 2.7 Article 6: Marriage and family, children born outside marriage (*Ehe, Familie, Nichteheleiche Kinder*) 257
    - 2.8 Article 7: School education (*Schulwesen*) 258
    - 2.9 Article 8: Freedom of assembly (*Versammlungsfreiheit*) 258
    - 2.10 Article 9: Freedom of association (*Vereinigungsfreiheit*) 259
    - 2.11 Article 10: Privacy of correspondence, posts and telecommunications (*Brief-, Post- und Fernmeldegeheimnis*) 259
    - 2.12 Article 11: Freedom of movement (*Freizügigkeit*) 260
    - 2.13 Article 12: Free choice of occupation or profession, prohibition of forced labour (*Berufsfreiheit*) 261
    - 2.14 Article 13: Privacy of the home (*Unverletzlichkeit der Wohnung*) 264
    - 2.15 Article 14: Property, inheritance, expropriation (*Eigentum, Erbrecht, Enteignung*) 265
    - 2.16 Article 15: Public ownership (*Sozialisierung*) 266
    - 2.17 Article 16: Citizenship, extradition (*Ausbürgerung, Auslieferung*) 267
    - 2.18 Article 16a: Asylum (*Asylrecht*) 268
    - 2.19 Article 17: Right of petition (*Petitionsrecht*) 269
    - 2.20 Article 17a: The restriction of the basic rights for members of the armed forces and the alternative service in the civil sector 269
    - 2.21 Articles 18 and 19 I—III 269
    - 2.22 Articles 19 IV and 101-3: Procedural basic rights (*Prozessgrundrechte*) 269
  - 3 The Federal Constitutional Court and constitutional procedural law 272
    - 3.1 The Federal Constitutional Court (*Bundesverfassungsgericht*— BVerfG) 272
  - 4 Constitutional procedural law (*Verfassungsprozessrecht*) 274
    - 4.1 Abstract review of statutes (*Abstrakte Normenkontrolle*, Art 93 I No 2, §§ 13 No 6, 76 et seq BVerfGG) 274
    - 4.2 The submission procedure (*Vorlageverfahren, Konkrete Normenkontrolle*, Art 100 I GG, §§ 13 No 11, 80-2 BVerfGG) 275

4.3	Constitutional complaint ( <i>Verfassungsbeschwerde</i> )	276
4.4	Constitutional courts of the Lander	279
	Further reading	279
<b>8</b>	<b>Public Law III: Administrative law</b>	<b>283</b>
<b>A</b>	<b>General administrative law</b>	<b>283</b>
1	Introduction	283
1.1	Different types of administration	283
1.2	Administrative law as part of public law	284
1.3	Influence of European law	286
1.4	General and specific administrative law	287
2	Sources of administrative law	287
2.1	The <i>Grundgesetz</i>	287
2.2	Federal and <i>Lander</i> Statutes ( <i>Bundes- und Landesgesetze</i> )	287
2.3	Delegated legislation ( <i>Rechtsverordnungen</i> )	288
2.4	By-laws ( <i>Satzungen</i> )	288
2.5	Administrative guidelines ( <i>Verwaltungsvorschriften</i> )	288
2.6	EC Law	289
3	Administrative bodies	289
4	Basic principles of administrative law	290
4.1	Impact of constitutional law	291
4.2	Discretion ( <i>Ermesseri</i> )	291
4.3	Margin of appreciation ( <i>Beurteilungsspielraum</i> )	293
AA	Subjective public right ( <i>Subjektives Öffentliches Recht</i> )	294
5	Measures of administrative action	294
5.1	The <i>Verwaltungsakt</i> (administrative act)	295
5.2	Public law contract ( <i>öffentlich-rechtlicher Vertrag</i> , § 54 VwVfG)	300
5.3	Plan and planning	301
5.4	Other instruments	301
5.5	Use of private law ( <i>Verwaltungsprivatrecht</i> )	301
6	Enforcement by the authority	302
7	Judicial review	302
7.1	Informal remedies ( <i>formlose Rechtsbehelfe</i> )	302
7.2	Formal remedies: <i>Widerspruchsverfahren</i> (§§ 68-73 VwVfG)	303
7.3	Formal remedies: Types of action	303
8	Claims for damages	308
	Further reading	308
<b>B</b>	<b>Particular administrative law (Besonderes Verwaltungsrecht)</b>	<b>309</b>
	Further reading	310
<b>C</b>	<b>Social law</b>	<b>310</b>
1	Introduction	310
2	Sources of social law	310
3	The aims and basic principles of social law	312
4	The administration and distribution of social aid	312
5	Social welfare provision	313
6	Breaches of duty by social bodies	315
7	Persons eligible for social assistance	315
	Further reading	315

<b>D</b>	<b>The law of economic administration (<i>Wirtschaftsverwaltungsrecht</i>)</b>	<b>316</b>
1	Introduction 316	
2	The scope of the law of economic administration 316	
3	The economic system 317	
4	State promotion of the economy ( <i>Wirtschaftsförderung</i> ) 318	
5	The general regulation of business 319	
5.1	The Trade Act ( <i>Gewerbeordnung—GewO</i> ) 319	
5.2	Particular trade law ( <i>Besonderes Gewerberecht</i> ) 319	
6	Consumer protection law ( <i>Verbraucherschutzrecht</i> ) 319	
6.1	Safety legislation 320	
6.2	Identification and labelling 321	
6.3	Advertising legislation 321	
6.4	Sale of goods laws 321	
6.5	Warranty and liability legislation 322	
6.6	Other areas of consumer law 323	
6.7	Enforcement 323	
	Further reading 323	
<b>E</b>	<b>Environmental law (<i>Umweltrecht</i>)</b>	<b>324</b>
1	Sources 324	
2	General principles 326	
2.1	The preventative or precautionary principle ( <i>Vorsorgeprinzip</i> ) 326	
2.2	The principle that the polluter pays ( <i>Verursacherprinzip</i> ) 326	
2.3	The cooperation principle ( <i>Kooperationsprinzip</i> ) 326	
2.4	The protection of the existing position principle ( <i>Bestandsschutzprinzip</i> ) 327	
3	Principal legislative enactments 327	
3.1	The Water Resources Act ( <i>Wasserhaushaltsgesetz—WHG</i> ) 327	
3.2	The Federal Emissions Control Act ( <i>Bundesimmissionsschutzgesetz—BImSchG</i> ) 328	
3.3	The Waste Act ( <i>Abfallgesetz—AbtG</i> ) 328	
3.4	The Federal Nature Conservation Act ( <i>Bundesnaturschutzgesetz—BNatSchG</i> ) 329	
3.5	The Environmental Information Act ( <i>Umweltinformationsgesetz—UIG</i> ) 329	
3.6	The Ozone Act ( <i>Ozongesetz—OG</i> ) 329	
3.7	The Federal Building Code ( <i>Baugesetzbuch—BauGB</i> ) 329	
3.8	The Packaging Act ( <i>Verpackungsverordnung—VerpackV</i> ) 330	
4	Liability and enforcement following environmental damage 330	
4.1	Civil law 330	
4.2	Criminal sanction 331	
4.3	Public law 331	
5	Public enforcement of environmental law 332	
	Further reading 332	
<b>9</b>	<b>Public law IV: Criminal law</b>	<b>334</b>
<b>A</b>	<b>Criminal law</b>	<b>334</b>
1	Introduction 334	
2	History of criminal law 335	
3	Structure of the Criminal Code 337	
4	Applicability of German criminal law (§§ 3-9 StGB) 337	



- 5 Leading principles of German criminal law. 339
  - 5.1 The principle of legality (*Gesetzlichkeitsprinzip*) 339
  - 5.2 The principle of the protection of legal rights (*Rechtsgüterschutzprinzip*) 340
  - 5.3 The principle of guilt (*Schuldprinzip*) 340
- 6 General concepts in criminal law 341
  - 6.1 Forms of criminal offences 341
  - 6.2 Structure of the criminal offence (*Aufbau der Straftat*) 341
  - 6.3 Negligent offences (*Fahrlässigkeitsdelikte*) 360
  - 6.4 Offences of omission (*Unterlassungsdelikte*) 363
  - 6.5 Attempt (*Versuch*) 366
  - 6.6 Different forms of participation: *Täterschaft und Teilnahme* §§ 25-31 371
  - 6.7 Legal consequences: punishment and other measures 377
- 7 The individual or substantive offences 379

## B Criminal procedural law

379

- 1 Introduction 379
  - 2 Historical aspects 380
  - 3 Sources 381
  - 4 Principal stages of procedure 381
    - 4.1 The pretrial procedure 382
    - 4.2 The interim proceedings (*Zwischenverfahren*) 382
    - 4.3 The main proceedings (*Hauptverfahren*) 382
    - 4.4 Appeal 382
  - 5 Leading principles of procedural law 382
    - 5.1 Principles on commencing the procedure 383
    - 5.2 Principles concerning the implementation of the procedure 385
    - 5.3 Principles concerning evidence 386
    - 5.4 Principles concerning the form of proceedings 387
  - 6 The pretrial preliminary investigation (*Vorverfahren*) 388
    - 6.1 The investigation (*Ermittlungsverfahren*) 389
    - 6.2 Powers of state prosecution and police during pretrial investigation 390
  - 7 The role of the defence attorney (*Verteidiger*) during pretrial investigations 394
    - 7.1 Right to a defence attorney 394
    - 7.2 Rights and duties of the defence attorney 395
  - 8 The interim proceedings (*Zwischenverfahren*). 395
    - 8.1 The choice of court 395
    - 8.2 Result of interim proceedings 396
  - 9 Structure of the main proceedings (*Hauptverfahren*) 396
    - 9.1 The role of the judge 397
    - 9.2 The main proceedings: the oral trial (*Hauptverhandlung*) 397
  - 10 The law of evidence 398
    - 10.1 Principles of the law of evidence 398
    - 10.2 Forms of proof (*Beweismittel*) 399
    - 10.3 The prohibition of evidence (*Beweisverwertungsverbot*) 400
  - 11 The conclusion of the trial 402
  - 12 The accelerated procedure (*Beschleunigtes Verfahren*, §§ 417-20 StPO) 402
  - 13 The summary procedure (*Strafbefehlsverfahren*, §§ 407-12 StPO) 402
  - 14 Means of legal redress (*Rechtsmittel*) 403
    - 14.1 Common rules on ordinary means of legal redress 403
    - 14.2 Forms of appeal 403
    - 14.3 The *letitial* (*Wiederaufnahme des Verfahrens*) 405
- Further reading 405

**10 Private law I: The German Civil Code** 407

**A Introduction** 407

- 1 The structure of the BGB 409
- 2 Method of addressing private law problems: finding the claim (*Anspruchsgrundlage*) 410
- 3 Major principles 412
  - 3.1 Freedom of contract (*Vertragsfreiheit*) 412
  - 3.2 The principle of abstraction (*Abstraktionsprinzip*) 414
  - 3.3 Possession and ownership (*Besitz und Eigentum*) 415
  - 3.4 *Verpflichtungs- und Verfügungsgeschäfte*: Two different categories of legal transaction 416

**B Book One: The General Part** 418

- 1 Introduction 418
- 2 *Rechtssubjekte* (holders of subjective rights) 418
  - 2.1 Natural and legal persons (*Natürliche und Juristische Personeri*) 419
  - 2.2 Different forms of legal capacity 419
- 3 The legal transaction (*Das Rechtsgeschäft*) 423
  - 3.1 Declaration of intent (*Willenserklärung*) 424
  - 3.2 The 'real act' (*Realakt*) 427
  - 3.3 The legal transaction (*Das Rechtsgeschäft*) 427
  - 3.4 The contract (*Der Vertrag*) 428
- 4 Interpretation rules for legal transactions (*Auslegung von Rechtsgeschäften*) 433
  - 4.1 Paragraph 133 433
  - 4.2 Paragraph 157 434
  - 4.3 Paragraph 242 435
  - 4.4 The application of § 242 435
- 5 Void legal transactions (*Nichtige Rechtsgeschäfte*) 438
  - 5.1 Breach of formal requirements (§§ 125-9 BGB) 438
  - 5.2 Breach of a law or good morals (§§ 134, 138 BGB) 439
  - 5.3 Defect of declaration of intent (*Willensmängel*) 441
  - 5.4 The concept and consequences of the void legal transaction 446
- 6 Agency (*Stellvertretung*) 446
  - 6.1 Types of agency 447
  - 6.2 Agency authority (*Vollmacht*) 448
  - 6.3 The scope of agency powers 448
  - 6.4 Legal consequences of agency 449
  - 6.5 Lack of authorization 449
  - 6.6 Prohibition of self contracting (*Verbot des Insichgeschäfts*) 449
- 7 Limitation 450
  - Further reading 450

**C Book Two: The Law of Obligations: General Part** 452

- 1 Introduction 452
- 2 The obligational relationship (*Das Schuldverhältnis*)—general principles 452
  - 2.1 Types and the creation of obligational relationships 453
- 3 Content of the obligational relationship 454
  - 3.1 Primary and secondary duties (*Primär- und Sekundärleistungspflichten*) 454
  - 3.2 Main and ancillary duties (*Hauptleistungspflichten und Nebenleistungspflichten*) 454

- 3.3 Performance of individual and generic obligations  
(*Gattungs- und Stiickschuld*, § 243) 455
- 3.4 Time and place of performance (*Leistungsort und -zeit*, §§ 269, 270, 271) 455
- 3.5 Passage of risk in performance 456
- 3.6 Standard form contracts and general conditions of business (*Allgemeine Geschdfitsbedingungen* §§ 305-10 BGB) 456
- 3.7 Third parties to contracts 459
- 3.8 Extinction of an obligational relationship (*Erlbschen des Schuldverhdltnisses*) 460
- 4 Irregularities in performance 461
  - 4.1 Basic provision for liability: The new § 280 BGB 462
  - 4.2 Impossibility (*Unmoghlichkeit der Leistung*) 462
  - 4.3 Delay (*Verzug*) 466
  - 4.4 Positive breach of obligation/contract (*Positive Forderungsverletzung/ Vertragsverletzung*) 468
  - 4.5 Problems in pre-contractual relations (*cic*) 470
  - 4.6 Collapse of foundation of contract, § 313 (*Wegfall/Stb' rung der Geschdfitsgrundlage*) 472
  - 4.7 Rescission, §§ 323-6, 346-9 (*RUcktritt vom Vertrag*) 473
- 5 Assessing damages and compensation 473
  - 5.1 Types of damage 474
  - 5.2 Fault (*Verschulden*) 474

## D Book Two: The Law of Obligations: Special Part

475

- 1 Law on contracts of sale (*Kaufrecht*) 476
    - 1.1 Duties of seller and buyer 477
    - 1.2 Passage of risk 477
    - 1.3 Remedies for delivery of defective goods (*Gewdhrleistungsrechte*) 478
    - 1.4 Limitation periods 480
    - 1.5 Consumer protection 481
  - 2 Unjustified enrichment (*Ungerechtfertigte Bereicherung*) 481
    - 2.1 The enrichment of the obligor 482
    - 2.2 The performance of the creditor 482
    - 2.3 The absence of a legal basis 482
    - 2.4 Enrichment in other ways (§ 812 11 2nd alternative) 483
    - 2.5 Performance by a third party 484
    - 2.6 The scope of the obligation to return possession 484
  - 3 Tort law (*Unerlaubte Handlung*) 485
    - 3.1 The duty to compensate for damage 485
    - 3.2 The infringement of a protective law 487
    - 3.3 Intentional damage (*Sittenwidrige Schddigung*) 488
    - 3.4 Other provisions of delictual liability 488
    - 3.5 Vicarious liability (*Haftung für den Verrichtungsgelhilfen*) 488
    - 3.6 Strict liability (*Gefdhrdungshaftung*) 489
    - 3.7 Product liability 490
    - 3.8 Buildings and occupiers liability 490
    - 3.9 Liability of the state 490
    - 3.10 Compensation 490
    - 3.11 Limitation periods 491
- Further reading 491

## E Book Three: Property Law (*Sachenrecht*)

492

- 1 Introduction to the scope and sources of property law 492
- 2 Definitions and general principles of property law 493
  - 2.1 Real rights (*dingliche Rechte*) 493
  - 2.2 Principles of property law 493

- 3 Possession (*Der Besitz*) 495
    - 3.1 Direct and indirect possession 495
    - 3.2 Exclusive and joint possession 496
    - 3.3 Complete and partial possession 496
    - 3.4 The possessor's agent (*Besitzdiener*) 496
    - 3.5 The acquisition and loss of possession 496
    - 3.6 The protection of possession 497
  - 4 Ownership (*Das Eigentum*) 497
    - 4.1 The acquisition and loss of ownership 499
    - 4.2 The acquisition and loss of real estate 499
    - 4.3 The acquisition and loss of movable property 503
    - 4.4 Good faith acquisition 504
  - 5 Acquisition of ownership by other means 505
    - 5.1 Appropriation (*Aneignung*) 505
    - 5.2 Prescription (*Ersitzung*) 505
    - 5.3 Union or combination (*Verbindung*) 505
    - 5.4 Mixing (*Vermischung*) 506
    - 5.5 Manufacturing or processing (*Verarbeitung*) 506
    - 5.6 Found objects 506
    - 5.7 Separation of objects 506
    - 5.8 Succession (*Gesamtrechtsnachfolge*) 507
  - 6 The protection of ownership 507
    - 6.1 The claim for return (*Herausgabeanspruch*, § 985) 507
    - 6.2 Rights under § 987 et seq (*Eigentümer-Besitzer-Verhältnis*) 508
    - 6.3 Interference with ownership (*Unterlassungsanspruch*) 509
    - 6.4 Other claims under private law 509
    - 6.5 Judicial review under public law 509
  - 7 Other types of property rights 510
  - 8 Property finance and security (*Sicherungsrechte*) 510
    - 8.1 Security interests in land (*Grundpfandrechte*) 510
    - 8.2 Securities over movables 522
- Further reading 515

## F Book Four: Family Law (*Familienrecht*)

516

- 1 Introduction 516
  - 2 The scope of family law 517
  - 3 Matrimonial law (*Eherecht*) 517
    - 3.1 Engagement (*Verlobnis*) 517
    - 3.2 The act of marriage (*Die Eheschließung*) 518
    - 3.3 Non-existent and voidable marriages (*Nichtehen und aufhebbarer Eheri*) 519
    - 3.4 Legal consequences and the obligations of marriage 519
    - 3.5 Marital property (*Ehegüterrecht*) 519
    - 3.6 Divorce (*Scheidung der Ehe*) 520
  - 4 Relationship (*Verwandschaft*) 522
    - 4.1 The legal relationship between parents and children 522
    - 4.2 Adoption (§§ 1741-72) 523
  - 5 Guardianship (*Vormundschaft*), curatorship (*Pflegschaft*), and care and control (*Betreuung*) 523
- Further reading 524

## G Book Five: The Law of Succession (*Erbrecht*)

524

- 1 Introduction, sources, and scope 524
- 2 The basic principles of succession 525
  - 2.1 The principle of universal succession (*Gesamtrechtsnachfolge/Universalsukzession*) 525

2.2 Automatic inheritance ( <i>Vonselbsterwerb</i> )	526
2.3 Capacity	526
2.4 Testamentary and intestate succession	526
3 The acquisition of the inheritance	526
3.1 Acceptance	527
3.2 Repudiation of the inheritance	527
4 Rights and liabilities in succession	527
5 Heirs	527
6 Intestate succession ( <i>gesetzliche Erbfolge</i> )	528
7 Testamentary succession ( <i>gewillkurte Erbfolge</i> )	528
7.1 The will ( <i>Das Testament</i> )	529
7.2 The succession contract ( <i>Erbvertrag</i> )	530
7.3 The ineffective or invalid will	530
8 Compulsory portion ( <i>Pflichtteil</i> )	530
9 The execution of the estate	530
Further reading	531
<b>H Private international law/conflict of laws</b>	<b>531</b>
1 International civil procedural law ( <i>Internationales Zivilverfahrensrecht—IZVR</i> )	532
2 International private law ( <i>Internationales Privatrecht</i> )	533
Further reading	534
<b>11 Private law II: Business and labour law</b>	<b>535</b>
<b>A Commercial law and the law of business association</b>	<b>535</b>
1 Introduction	535
2 Commercial law	536
2.1 History	536
2.2 The structure of the HGB	536
2.3 HGB Book One	537
2.4 Book Two: Partnerships under the Commercial Code	542
2.5 Book Three: Business accounts	542
2.6 Book Four: Commercial transactions	542
2.7 Commercial arbitration	544
3 The law of business association	545
3.1 Introduction	545
3.2 Partnerships	546
<b>B Company law (<i>Gesellschaftsrecht</i>)</b>	<b>551</b>
1 The private limited liability company ( <i>GmbH</i> )	551
1.1 Formation	552
1.2 Capital	553
1.3 Registration	553
1.4 Pre-incorporation status ( <i>Vor-GmbH</i> )	553
1.5 The rights and duties of shareholding ( <i>Gesellschafter</i> )	554
1.6 Management ( <i>Geschäftsführung</i> )	555
1.7 General meetings	556
1.8 The supervisory board ( <i>Aufsichtsrat</i> )	556
1.9 Alteration to the articles	557
1.10 Dissolution and liquidation ( <i>Auflösung</i> )	557
1.11 Company restructuring, mergers, and acquisitions	557

- 2 The joint stock corporation 558
  - 2.1 History 558
  - 2.2 Formation (*Grundung*) 559
  - 2.3 The board of management (*Vorstand*) 560
  - 2.4 The supervisory board (*Aufsichtsrat*) 561
  - 2.5 The general meeting of shareholders (*Hauptversammlung*) 561
  - 2.6 Shares 562
  - 2.7 Minority protection 562
  - 2.8 Accounting provisions 563
  - 2.9 Dissolution (*Auflösung*) 563
  - 2.10 Acquisition and mergers 564
- 3 The limited stock partnership/association limited by shares 565
- 4 The law of groups of companies (*Konzernrecht*) 566
  - Further reading 568

## C Competition law and anti-trust law 570

- 1 Introduction 570
- 2 Competition law (*Lauterkeits- or Wettbewerbsrecht*) 570
  - 2.1 The general prohibition of § 3 I UWG 570
  - 2.2 Remedies 571
- 3 Anti-trust law (*Kartellrecht*) 572
  - 3.1 Horizontal agreements between undertakings 574
  - 3.2 Dominant positions and mergers 575
- Further reading 576

## D Labour law (*Arbeitsrecht*) 577

- 1 Introduction and history of German labour law 577
- 2 Categories of labour law 579
  - 2.1 Individual labour law (*Individualarbeitsrecht*) 579
  - 2.2 Worker protection laws (*Arbeitsschutzrecht*) 579
  - 2.3 Collective labour law (*Kollektivesarbeitsrecht*) 579
  - 2.4 Procedural law 580
- 3 Sources of labour law 580
  - 3.1 Constitutional law 580
  - 3.2 Civil law 580
  - 3.3 Case law 581
  - 3.4 Contractual agreements 582
- 4 Labour law institutions 582
  - 4.1 Union and employers' associations 583
  - 4.2 The works council (*Betriebsrat*) 583
  - 4.3 The supervisory board (*Aufsichtsrat*) 583
  - 4.4 Labour Courts 584
- 5 Individual labour law 584
  - 5.1 The employment relationship 584
  - 5.2 The formation of contracts of employment 586
  - 5.3 Works councils and hiring employees 587
  - 5.4 General terms of contracts 587
  - 5.5 Ending the employment relationship, and dismissal 589
- 6 Worker protection laws 592
- 7 Collective labour law (*Kollektivesarbeitsrecht*) 593
  - 7.1 Industrial conflict law 594
  - 7.2 Worker representation and co-determination 596

Procedural law 600

8.1 Individual disputes 601

8.2 Collective disputes 602

8.3 Judicial investigation 602

Further reading 602

<i>Appendix: Extracts from the German Constitution</i>	605
<i>Glossary</i>	623
<i>Index</i>	633