

Table of contents

Foreword to the fifth edition 5

Translator's Note 7

Table of contents 9

A. General Structures 15

 I. The Legal Tradition, Areas of Law and Sources of Law 15

 1. The Legal Tradition 15

 2. Areas of Law 16

 a) Private Law – Public Law – Criminal Law 16

 b) Substantive and Adjective Law 17

 c) Relationship to European and International Law 17

 3. Sources of Law 18

 a) Statutory Instruments 18

 b) Decisions of the Courts 18

 c) Custom 20

 d) The Hierarchy of Norms 20

 e) Interpretation 22

 II. Structure and Functioning of the Court System 24

 1. General Structures and Principles 24

 2. The Structure of the Court System 25

 III. Legal Education and Careers 27

 IV. Sources of Legal Information and Research Tools 29

B. Public Law 32

 I. History of Constitutional and Administrative Law 32

 II. Constitutional Law 36

 1. General 36

 a) Concept, Nature and Function of the Constitution 36

 b) Territorial Applicability 37

 2. Fundamental Rights 38

 a) General Principles 38

 b) The Various Fundamental Rights 43

 3. Fundamental Constitutional Principles 47

 a) Democracy 47

 b) Constitutional state under the rule of law 49

 c) Social State 50

 d) Republic 50

 e) Federation 51

 f) European Integration 53

 4. Constitutional Organs 54

 a) The President of the Federation 54

 b) The German Bundestag (Parliament) 55

 c) The Bundesrat 58

 d) The Federal Government 58

 e) The Federal Constitutional Court 60

 5. Political Parties 61

9

6. The Financial Constitution	62
7. Military Defence	63
8. Religious Communities	64
III. Administrative Law	66
1. General Principles of Administrative Law	66
a) Duties and Organisation of the Public Administration	66
b) The Legal Forms of Administrative Action	68
c) Public Property	70
d) Administrative Procedure	71
e) State Liability and Rights to Compensation	73
2. Special Administrative Law	75
a) Police Law	76
b) The Law of Communal Administration	79
c) Public Construction Law	81
d) The Law Relating to Foreigners and Asylum	83
e) Identity Documents and Residence Registration	85
f) Data Protection	86
g) Public Service Law	87
h) The Law Relating to Cultural Administration	89
i) Media Law	91
j) Traffic Law	93
k) Social Security Law	94
l) Economic Administrative Law	98
m) Environmental Law	101
n) Law of Taxation	103
3. Administrative Procedural Law	105
C. Criminal Law	109
I. History and System	109
1. History	109
2. System	111
II. General Provisions of the Criminal Code	113
1. Basic Principles	113
2. Commission of an Act Corresponding to the Elements of a Crime	114
3. Intention and Negligence	116
4. Liability as a Principal and other Forms of Participation	116
5. Completed Crimes and Attempts	117
6. Illegality and Grounds of Justification	119
7. Culpability (Mens Rea) and Factors Excluding a Culpable State of Mind	121
8. Mistake in the Context of Criminal Law	123
9. The System of Penalties	124
III. Specific Offences	128
IV. The Law on Juvenile Offenders (Jugendstrafrecht)	135
V. The Law of Criminal Procedure	137
D. Private Law	145
I. History and Structure	145
1. History	145
2. Structure	147

II. The Book of General Provisions of the Civil Code	148
1. Capacity to Have Rights and Duties	148
2. Capacity to Perform Legal Acts	149
3. Legal Persons	150
4. Declaration of Will	151
5. Void and Voidable Declarations	153
6. Legal Transactions	154
7. Contract	156
8. Standard Form Contracts	157
9. Form	157
10. Agency	158
11. Public Policy	159
12. Limitation of Actions (Prescription)	160
III. The Law of Obligations	161
1. General Provisions of the Law of Obligations	161
a) Fundamental Principles	161
b) How Obligations Come Into Existence	162
c) How Obligations End	162
d) The Content of Obligations	163
aa) Good faith	163
bb) Place of Performance	164
cc) Obligations to supply ascertained goods and obligations to supply unascertained goods	164
dd) Liability for the actions of third parties (Vicarious liability)	165
ee) Contracts for the Benefit of a Third Party	165
ff) Plurality of Creditors and Debtors	166
gg) Assignment and novation	166
hh) Damages	166
ii) Causation	167
jj) Contributory Negligence	168
e) Irregularities in the Performance of a Contract (Mistake, Breach and Frustration)	168
aa) Impossibility of Performance (Frustration, and Certain Forms of Mistake and Breach)	168
bb) Failure to Perform Within the Prescribed Time (Mora)	170
cc) Pre-Contractual Liability (Culpa in Contrahendo)	170
2. The Law of Obligations – Special Obligations	171
a) Contracts Expressly Regulated by the Code	171
aa) Fundamental Principles	171
bb) Special Rules Protecting Private Consumers	172
cc) The Contract of Sale	173
dd) Contract of Donation	174
ee) Contracts of Lease, Hire, Loan and Loan for Consumption	175
ff) The Contract of Service and the Contract for Specific Services	177
gg) Other Types of Contract	178
b) Necessitous Intervention (Negotiorum Gestio)	178
c) Unjustified Enrichment (Restitution)	180

d) Law of Torts (Delict) and Strict Liability	184
aa) Basic Principles	184
bb) The Main Basis of Liability in Tort	184
cc) Other Forms of Tort	186
dd) Extent of Liability	188
ee) Mandatory and Prohibitory Injunctions	189
ff) Strict Liability	189
IV. The Law of Things (Law of Property)	191
1. Basic Principles	191
2. Possession	192
3. Ownership	193
4. Limited Real Rights	197
V. Family Law	199
1. Basic Principles	199
2. Engagement to Marry	200
3. Marriage	201
a) Entering a Marriage	201
b) Rights and Duties Arising From Marriage	202
c) Matrimonial Property	202
d) Divorce	204
4. The Registered Partnership for Life	205
5. The Law on Children	205
6. Relationship, Adoption, Guardianship and Similar Topics	207
a) Relationship by Consanguinity (Blood) and by Affinity (Marriage)	207
b) Adoption	208
c) Guardianship, Custodianship, and Curatorship for Specific Matters	209
VI. The Law of Succession	210
1. Basic Principles	210
2. Intestate Succession	211
3. Deliberate Regulation of Succession (Including Wills) and Specific Gifts	212
4. Family Provision – The Minimum Claim of the Spouse and Blood Relatives	214
5. The Position of the Heir (Beneficiary)	214
VII. Conflict of Laws (Private International Law)	216
VIII. Corporate and Commercial Law	218
1. Commercial Law	218
2. Corporations and Other Forms of Joint Undertaking	220
a) Basic Principles	220
b) Aktiengesellschaft (AG)	222
c) Gesellschaft mit beschränkter Haftung (GmbH)	224
d) Genossenschaft	225
e) Gesellschaft bürgerlichen Rechts	225
f) Offene Handelsgesellschaft	226
g) Kommanditgesellschaft and Related Forms	226
IX. Negotiable Instruments and Securities	227
X. Competition Law and the Protection of Intellectual Property	229
1. Competition Law	229
2. Monopolies and Anti-Competitive Practices	230

Table of contents

3. Patents and Trade Marks	231
XI. Copyright	232
XII. Labour Law	233
XIII. The Law of Insolvency	236
XIV. Procedure in Civil Litigation and Special Procedures in Miscellaneous Mat- ters	237
1. Basic Principles	237
2. The Course of Civil Proceedings	238
3. Summary Proceedings for the Recovery of Liquidated Claims	241
4. Execution of Judgement	242
5. Special Procedures In Family and Miscellaneous Matters (freiwillige Gerichtsbarkeit)	244
Glossary	247
Index	275