

Table of contents

Foreword to the sixth 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	23
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	38
2. Fundamental Rights	39
a) General Principles	39
b) The Various Fundamental Rights	44
3. Fundamental Constitutional Principles	48
a) Democracy	48
b) Constitutional state under the rule of law	50
c) Social State	51
d) Republic	52
e) Federation	52
f) European Integration	54
4. Constitutional Organs	55
a) The President of the Federation	55
b) The German Bundestag (Parliament)	56
c) The Bundesrat	59
d) The Federal Government	60
e) The Federal Constitutional Court	61
5. Political Parties	62
	9

Table of contents

6. The Financial Constitution	63
7. Military Defence	64
8. Religious Communities	66
III. Administrative Law	67
1. General Principles of Administrative Law	67
a) Duties and Organisation of the Public Administration	67
b) The Legal Forms of Administrative Action	70
c) Public Property	72
d) Administrative Procedure	72
e) State Liability and Rights to Compensation	74
2. Special Administrative Law	77
a) Police Law	77
b) The Law of Communal Administration	81
c) Public Construction Law	83
d) The Law Relating to Foreigners and Asylum	85
e) Identity Documents and Residence Registration	87
f) Data Protection	88
g) Public Service Law	89
h) The Law Relating to Cultural Administration	90
i) Media Law	93
j) Traffic Law	95
k) Social Security Law	96
l) Economic Administrative Law	99
m) Environmental Law	102
n) Law of Taxation	104
3. Administrative Procedural Law	107
C. Criminal Law	111
I. History and System	111
1. History	111
2. System	113
II. General Provisions of the Criminal Code	115
1. Basic Principles	115
2. Commission of an Act Corresponding to the Elements of a Crime	116
3. Intention and Negligence	118
4. Liability as a Principal and other Forms of Participation	118
5. Completed Crimes and Attempts	119
6. Illegality and Grounds of Justification	121
7. Culpability (Mens Rea) and Factors Excluding a Culpable State of Mind	123
8. Mistake in the Context of Criminal Law	125
9. The System of Penalties	126
III. Specific Offences	131
IV. The Law on Juvenile Offenders (Jugendstrafrecht)	138
V. The Law of Criminal Procedure	139
D. Private Law	148
I. History and Structure	148
1. History	148
2. Structure	150

Table of contents

II. The Book of General Provisions of the Civil Code	151
1. Capacity to Have Rights and Duties	151
2. Capacity to Perform Legal Acts	152
3. Legal Persons	153
4. Declaration of Will	154
5. Void and Voidable Declarations	156
6. Legal Transactions	157
7. Contract	159
8. Standard Form Contracts	160
9. Form	161
10. Agency	162
11. Public Policy	162
12. Limitation of Actions (Prescription)	164
III. The Law of Obligations	164
1. General Provisions of the Law of Obligations	164
a) Fundamental Principles	164
b) How Obligations Come Into Existence	165
c) How Obligations End	166
d) The Content of Obligations	167
aa) Good faith	167
bb) Place of Performance	167
cc) Obligations to supply ascertained goods and obligations to supply unascertained goods	168
dd) Liability for the actions of third parties (Vicarious liability)	168
ee) Contracts for the Benefit of a Third Party	169
ff) Plurality of Creditors and Debtors	169
gg) Assignment and novation	169
hh) Damages	170
ii) Causation	171
jj) Contributory Negligence	171
e) Irregularities in the Performance of a Contract (Mistake, Breach and Frustration)	172
aa) Impossibility of Performance (Frustration, and Certain Forms of Mistake and Breach)	172
bb) Failure to Perform Within the Prescribed Time (Mora)	173
cc) Pre-Contractual Liability (Culpa in Contrahendo)	174
2. The Law of Obligations – Special Obligations	174
a) Contracts Expressly Regulated by the Code	174
aa) Fundamental Principles	174
bb) Special Rules Protecting Private Consumers	175
cc) The Contract of Sale	176
dd) Contract of Donation	178
ee) Contracts of Lease, Hire, Loan and Loan for Consumption	179
ff) The Contract of Service and the Contract for Specific Services	180
gg) Other Types of Contract	181
b) Necessitous Intervention (Negotiorum Gestio)	182
c) Unjustified Enrichment (Restitution)	184

Table of contents

d) Law of Torts (Delict) and Strict Liability	188
aa) Basic Principles	188
bb) The Main Basis of Liability in Tort	188
cc) Other Forms of Tort	190
dd) Extent of Liability	192
ee) Mandatory and Prohibitory Injunctions	193
ff) Strict Liability	193
IV. The Law of Things (Law of Property)	195
1. Basic Principles	195
2. Possession	196
3. Ownership	197
4. Limited Real Rights	201
V. Family Law	203
1. Basic Principles	203
2. Engagement to Marry	205
3. Marriage	205
a) Entering a Marriage	205
b) Rights and Duties Arising From Marriage	206
c) Matrimonial Property	206
d) Divorce	208
4. The Registered Partnership for Life	210
5. The Law on Children	210
6. Relationship, Adoption, Guardianship and Similar Topics	212
a) Relationship by Consanguinity (Blood) and by Affinity (Marriage)	212
b) Adoption	213
c) Guardianship, Custodianship, and Curatorship for Specific Matters	213
VI. The Law of Succession	214
1. Basic Principles	214
2. Intestate Succession	215
3. Deliberate Regulation of Succession (Including Wills) and Specific Gifts	216
4. Family Provision – The Minimum Claim of the Spouse and Blood Relatives	218
5. The Position of the Heir (Beneficiary)	219
VII. Conflict of Laws (Private International Law)	221
VIII. Corporate and Commercial Law	223
1. Commercial Law	223
2. Corporations and Other Forms of Joint Undertaking	225
a) Basic Principles	225
b) Aktiengesellschaft (AG)	227
c) Gesellschaft mit beschränkter Haftung (GmbH)	229
d) Genossenschaft	230
e) Gesellschaft bürgerlichen Rechts	230
f) Offene Handelsgesellschaft	231
g) Kommanditgesellschaft and Related Forms	231
IX. Negotiable Instruments and Securities	232
X. Competition Law and the Protection of Intellectual Property	234
1. Competition Law	234
2. Monopolies and Anti-Competitive Practices	235

Table of contents

3. Patents and Trade Marks	236
XI. Copyright	237
XII. Labour Law	238
XIII. The Law of Insolvency	241
XIV. Procedure in Civil Litigation and Special Procedures in Miscellaneous Matters	242
1. Basic Principles	242
2. The Course of Civil Proceedings	243
3. Summary Proceedings for the Recovery of Liquidated Claims	246
4. Execution of Judgement	247
5. Special Procedures In Family and Miscellaneous Matters (freiwillige Gerichtsbarkeit)	249
Glossary	251
Index	283