
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 Constitutional Law in the United States (<i>Raymond T. Diamond/ Frédéric Gilles Sourges</i>)	
1. Interpretation	1
1.1 Originalism	1
1.2 Living Constitution	1
1.3 Methodological Conclusions	2
2. Separation of Powers	2
2.1 The Legislative Process	2
2.1.1 Bicameralism	2
2.1.2 Presentment	3
2.2 Executive Power	4
2.2.1 The Relationship Between Executive and Legislative Power – Executive Orders	4
2.2.2 The Relationship Between Executive and Legislative Power – Impoundment	4
2.2.3 Presidential Appointments	5
2.3 The Judiciary	5
2.3.1 Terms of Appointment of the Federal Judiciary	6
2.3.2 Judicial Review	6
3. Federalism	7
3.1 Federalism and Congress	7
3.1.1 The Limits of Congressional Powers	7
3.1.2 Preemption	8
3.2 Federalism and the Executive	9
3.3 Federalism and the Judiciary	9
4. Constitutional Rights	9
4.1 The First Amendment	9
4.1.1 Freedom of Speech	10
4.1.2 The Establishment Clause	11
4.2 The Second Amendment	11
4.3 The Fourth Amendment	12
4.3.1 Unreasonable Searches and Seizures	12
4.3.2 Probable Cause	13
4.3.3 Police Good Faith	13
4.4 The Fifth Amendment	14
4.4.1 Double Jeopardy	14
4.4.2 Right to Remain Silent	15
4.4.3 Due Process of Law	15

Table of Contents

I.B	The British Constitution (<i>Michael H. Whincup</i>)	17
1.	The Executive	18
2.	The Legislature	18
3.	The Judiciary	21
4.	Human Rights	22
I.C	German Constitutional Law (<i>Hermann Pünder</i>)	25
1.	Historical background	25
2.	The Basic Law and the constitutional situation in the <i>Länder</i> (states) – an overview	27
3.	The rule of law principle (<i>Rechtsstaatsprinzip</i>)	27
3.1	Guarantees of fundamental rights	28
3.2	Legal reservation for a restriction of fundamental rights; principle of proportionality	28
3.3	Statutory supremacy; recourse to the courts of law	29
4.	The principle of democracy	30
4.1	Representative democracy	30
4.2	Responsibilities of the <i>Bundestag</i> ; democratic legitimacy; theory of materiality (<i>Wesentlichkeitstheorie</i>)	30
4.3	Elections to the <i>Bundestag</i> : personalised proportional representation and the “five per cent hurdle”	31
4.4	Fundamental rights of communication; loss of fundamental rights; status of political parties	32
4.5	The Federal President and the Federal Government	33
5.	The principle of federalism	33
5.1	The role of the <i>Bundesrat</i>	34
5.2	Division of powers between the federation and the <i>Länder</i>	34
5.3	Municipal autonomy	35
6.	Social state principle	35
7.	Open statehood	36
I.D	The Constitution of Austria (<i>Manfred Stelzer</i>)	37
1.	Historical Background and Structural Features	37
1.1	Historical Background	37
1.2	Engineering Constitutional Changes	38
1.3	Principles of the Constitution	38
2.	The Federal System	39
3.	Parliaments	40
4.	The Federal President	42
5.	The Executive Branch of Government	43
6.	Judiciary	44
7.	Fundamental and Human Rights	46
	Constitutional Law Glossary	49
	Glossar Verfassungsrecht	57

II.A	Administrative Law in the United States (<i>Raymond T. Diamond/Frédéric Gilles Sourgen</i>)	65
1.	Administrative Law and the Constitution	65
1.1	Separation of Powers	65
1.1.1	Delegation Doctrine	66
1.1.2	Functional Appraisal of the Delegation Doctrine	66
1.2	Federalism	66
2.	Rulemaking	67
2.1	Types of Rulemaking	67
2.2	Formal Rulemaking	67
2.2.1	Initiation of Rulemaking	67
2.2.2	The Proposed Rule	68
2.2.3	Fact-finding and Formal Rulemaking	68
2.2.4	Initial Decision	68
2.2.5	Review	68
2.2.6	Problems in Formal Rulemaking	68
2.3	Informal Rulemaking	69
2.3.1	Initiation of Rulemaking	69
2.3.2	Proposed Rule	69
2.3.3	Notice and Comment	69
2.3.4	Final Rule and Review	69
2.3.5	Problems in Informal Rulemaking	70
2.4	Hybrid Rulemaking	70
2.5	Deference	70
3.	Enforcement (Adjudication)	71
3.1	Formal Adjudication	71
3.1.1	The Functions of Administrative Law Judges	71
3.1.2	Administrative Hearing Process	71
3.1.3	Decision	72
3.1.4	Review	72
3.1.5	Precedential Value of Formal Administrative Law Adjudications	73
3.2	Informal Adjudication	73
3.2.1	Origin of Informal Adjudication	73
3.2.2	Scope of Informal Adjudication	73
3.2.3	Hearing in Informal Adjudication	74
3.2.4	Decision in Informal Adjudication	74
3.2.5	Review of Informal Adjudication	74
3.2.6	Deference and Informal Adjudication	74
II.B	Introduction to Administrative Law in England and Wales (<i>Erika Pircher-Eschig/Peter A. Eschig</i>)	75
1.	General	75
1.1	Scope of administrative law	75
1.2	Characteristics and definition of administrative law	75

Table of Contents

2.	Constitutional framework	76
2.1	No written constitution	76
2.2	Jurisprudence as a source of law	77
2.3	The rule of law	77
2.3.1	Principle of legality	77
2.3.2	Restriction of discretionary powers	77
2.3.3	Fairness of administrative action	78
3.	Essential features and principles of administrative law	78
3.1	The central role of courts	78
3.2	The ultra vires principle	79
3.3	Sources of administrative power	79
3.4	No general obligation to state reasons for a decision	79
4.	Discretionary power	80
4.1	Administrative powers not to be abused	80
4.2	Unreasonableness	80
4.3	The principle of proportionality	80
5.	Principles of natural justice and administrative law	81
5.1	The principle of natural justice in general, and its effect	81
5.2	No man may be judge in his own case – no biased decision	81
5.3	<i>Audi alteram partem</i> – the right to be heard	82
6.	Judicial review	82
6.1	General	82
6.2	Public law (prerogative) remedies available in the course of judicial review	83
6.2.1	General	83
6.2.2	Grounds for judicial review	83
6.2.3	Remedies in judicial review	84
6.3	Summary – review not appeal	84
7.	Statutory tribunals	85
8.	Alternative legal means to address administrative grievances	85
II.C	German Administrative Law (<i>Hermann Pünder</i>)	86
1.	Historical background	86
2.	Administrative law under the influence of the Basic Law for the Federal Republic of Germany (<i>Grundgesetz – GG</i>) and European Union law	87
2.1	Administrative law as “specified constitutional law”	87
2.2	Administrative law overruled by European Union requirements	88
3.	General administrative law	88
3.1	Distinction between private and public law, administrative courts	88
3.2	Administrative structure	89
3.3	Legal basis of administrative law	90
3.4	Administrative acts and other instruments of the administration	90
3.5	The administration’s freedom of manoeuvre	92
3.6	Administrative proceedings	93

4.	Special administrative law	93
4.1	Police and public order law	94
4.2	Building law	94
4.3	Environmental law	94
4.4	Administrative business law	94
5.	Protection of rights	95
5.1	Protection of rights within the administration	95
5.2	Adjudication of administrative courts	95
5.3	Types of court actions and special prerequisites for a judgment on the merits	96
5.4	Provisional judicial relief	98
II.D	Administrative Law in Austria (<i>Karl Stöger</i>)	99
1.	General Principles of Administrative Law	99
2.	Administrative Procedure and Judicial Review	101
3.	Selected Statutory Sources of Administrative Law	103
3.1	Overview	103
3.2	Public security administration	104
3.3	Business (administrative) law	104
3.4	Education and social law	106
3.5	Data protection law	106
3.6	Planning law, construction law, transfer of land law	106
3.7	Environmental law	107
3.8	Traffic law	107
	Administrative Law & Administrative Procedure Glossary	109
	Glossar Verwaltungs- und Verwaltungsverfahrensrecht	115
III.A	Criminal Law in the United States (<i>Eric L. Dobbeteen</i>)	123
1.	Introduction	123
2.	Federal and State Criminal Jurisdiction	123
3.	Preemption	124
4.	Model Penal Code	124
5.	Necessary Elements of a Crime	125
6.	Types of Crimes	126
6.1	Crimes Against the Person	127
6.1.1	Murder/Manslaughter	127
6.1.2	Assault/Battery	127
6.1.3	Rape	127
6.1.4	Kidnapping	128
6.2	Crimes Against Property	128
6.2.1	Larceny	128
6.2.2	Robbery	129
6.2.3	Embezzlement	129
6.2.4	False Pretenses	129
6.2.5	Burglary	129
6.2.6	Arson	130

Table of Contents

6.3	Crimes Against the Country	130
6.3.1	Espionage	130
6.3.2	Treason	130
6.4	Crimes Against Community Standards/Morals	131
6.5	Regulatory Enforcement Crimes	132
6.6	Inchoate Crimes	132
6.6.1	Attempts	132
6.6.2	Solicitations	133
6.6.3	Conspiracy	133
7.	Classifications of Crimes	133
8.	Defenses to Crimes	134
8.1	Failure of Proof of an Essential Element	134
8.2	Justification Defenses	134
8.2.1	Self-defense/Defense of Another/Defense of Property	134
8.2.2	Defense of Necessity	135
8.2.3	Other Justification Defenses	136
8.3	Excuse Defenses	136
8.3.1	Insanity	136
8.3.2	Intoxication	137
8.3.3	Minority	137
8.3.4	Duress	137
8.3.5	Entrapment	138
8.4	Statutes of Limitations	138
9.	Conclusion	138
III.B	English Criminal Law (<i>David Hutchins</i>)	139
1.	Introduction	139
2.	Sources of Criminal Law	139
3.	Elements of Criminal Liability	140
4.	Criminal Legal Capacity	140
5.	The Burden of Proof and the Standard of Proof	141
6.	Principals and Accessories	142
7.	Theft and Theft-Related Offences	143
7.1	Theft	143
7.2	Robbery	143
7.3	Burglary	143
7.4	Fraud	144
8.	Assaults and Offences of Violence	144
9.	Defences	145
	Intoxication: Voluntary & Involuntary	145
10.	Other General Defences	145
11.	Self-Defence	146
12.	Consent	147
13.	Inchoate Offences	147

14.	Voluntary Manslaughter	147
14.1	Diminished Responsibility	148
14.2	Loss of Control	148
14.3	Suicide Pacts	148
15.	Involuntary Manslaughter	148
16.	Public Order Offences	149
III.C	Criminal Law in Germany (<i>Jasper von Schlieffen</i>)	150
1.	Sources of law; bases	150
2.	The General Part of the German Criminal Code	151
2.1	Wilful intent/negligence	151
2.2	Attempt and completion	152
2.3	Offenders and accomplices	152
2.4	Self-defence and necessity as a justification	153
2.5	Sanctions	153
2.6	Seizure	154
2.7	Statutory limitation of prosecution	154
3.	The Special Part of the German Criminal Code	155
4.	Juvenile Criminal Law	157
5.	Enforcement of sentences and the administration of prison sentences	158
5.1	Enforcement of sentences	158
5.2	Administration of prison sentences	158
III.D	An Outline of Austrian Criminal Law (<i>Alexia Stuefer</i>)	160
1.	Case resolution scheme	161
1.1	Geographical applicability: Austria	161
1.2	Personal applicability	162
1.3	Aspects of time	163
1.4	No punishment without law (<i>nulla poena sine lege</i>)	164
1.5	No punishment without guilt (<i>nulla poena sine culpa</i>)	165
1.6	Wilful intent and negligence	165
1.7	Types of offenders	166
1.8	Statutory grounds for exemption from punishment (<i>Strafausschließungsgründe</i>) or withdrawal of punishment (<i>Strafaufhebungsgründe</i>)	166
1.9	Justifications	167
1.10	Ignorance of the law	167
1.11	Excuses	168
1.12	Active regret	168
2.	The system of penalties and measures of rehabilitation and prevention	169
2.1	Penalties, forfeiture and preventive measures	169
2.2	Suspension of prison sentence on probation and conditional release from prison on probation	171
2.3	Financial consequences of a conviction	171
2.4	Alternative methods of responding to punishable behaviour	172
2.5	Preventative measures	173

Table of Contents

IV.A	Criminal Procedure in the United States (<i>Eric L. Dobbertine/Alisa Edelson</i>)	175
1.	Introduction	175
2.	Preliminary Considerations	175
3.	The Stages of Criminal Procedure	177
3.1	Stage 1: Investigation, Arrest, Detention	177
3.1.1	Arrest and Detention	177
3.1.2	Investigation: Searches and Seizures	178
3.1.3	Consequences for Violations of Rights at Stage 1	179
3.1.4	Prosecutorial Discretion	179
3.2	Stage 2: Prosecution and Trial	179
3.2.1	Bail	179
3.2.2	Pretrial Procedures	180
3.2.3	The Criminal Trial	180
3.2.4	Right to be Present and Confront Evidence and Witnesses	181
3.2.5	Right Against Self-Incrimination	181
3.2.6	Organization of the Trial	182
3.2.7	Jury Deliberations and Verdict	183
3.3	Stage 3: Post-Conviction and Sentencing	183
3.3.1	General Considerations	183
3.3.2	Types of Sentences	184
3.3.3	Capital Punishment	184
3.3.4	Incarceration	185
3.3.5	Probation	185
3.3.6	Intermediate Sanctions	185
3.3.7	Fines	186
3.4	Stage 4: Appeal	186
3.4.1	Right to Appeal	186
3.4.2	Right to An Attorney On Appeal	187
3.5	The Concept of Double Jeopardy	187
3.6	Application and Scope of Double Jeopardy	187
4.	Conclusion	188
IV.B	Criminal Procedure in England and Wales (<i>David Hutchins</i>)	190
1.	Composition of the Magistrates' Court	193
2.	Procedure in the Magistrates' Court	193
3.	Statistics	194
4.	Trial at the Crown Court	194
5.	Offences Taken Into Consideration ("TICs")	197
6.	Sentencing Generally	197
7.	Appeals	198
7.1	From the Magistrates' Court (including a Youth Court) to the Crown Court	198
7.2	From the Magistrates' Court to the High Court by way of Case Stated	198
7.3	Judicial Review by Divisional Court of Magistrates' Court Decision	199
7.4	From the Crown Court to the Court of Appeal, Criminal Division	199

8.	Prosecution Appeals	200
9.	Applications for a Retrial	200
10.	The Criminal Case Review Commission	201
11.	Appeals to the Supreme Court	201
12.	Trials Without a Jury	201
13.	Solicitors, Barristers and Judges	201
14.	Deferred Prosecution Agreements (DPAs)	202
15.	Section 73 Agreements: SOCPA 2005	202
16.	Advance Sentence Indications	203
17.	Newton Hearings (<i>R v Newton</i> , 1983)	203
18.	The Victim Surcharge	203
IV.C	Criminal Procedure Law in Germany (<i>Jasper von Schlieffen</i>)	205
1.	Principles; sources of law	205
2.	The different stages of criminal proceedings	206
2.1	Preliminary investigation	206
2.2	Interlocutory proceedings	208
2.3	Main proceedings (Sections 213 to 295 <i>StPO</i>)	209
2.4	Appellate proceedings	211
2.5	Re-opening of proceedings (Sections 359 to 373a <i>StPO</i>)	212
2.6	Involvement of the person harmed in the proceedings (Sections 374 to 406h <i>StPO</i>)	213
2.7	Special types of proceedings	213
2.8	Enforcement of punishment	214
IV.D	An Outline of Austrian Criminal Procedure (<i>Alexia Stuefer</i>)	215
1.	Introduction	215
2.	The Austrian Code of Criminal Procedure	215
2.1	General aspects; procedural principles	215
3.	Preliminary investigations	216
3.1	Agencies with responsibility for preliminary investigations	216
3.2	Measures of investigation	216
3.3	The suspect; the person charged	217
3.4	Victims and civil claimants	217
3.5	The court's role in preliminary investigations	218
3.5.1	Decision on the admissibility of investigation measures and judicial taking of evidence	218
3.5.2	Objection on the grounds of infringement of a right; judicial protection of rights in preliminary investigations	219
3.5.3	Supervision of discontinuation of preliminary investigation and length of proceedings	220
3.5.4	Appeals against decisions of the court responsible for remand, detention and the protection of rights (<i>Haft- und Rechtsschutz-</i> <i>gericht</i>)	220
3.6	Closure of preliminary investigation proceedings	221

Table of Contents

4.	Main proceedings (trial)	221
4.1	Types of courts and jurisdictions	221
4.1.1	District courts	221
4.1.2	Regional courts	221
4.2	The course of the main proceedings (trial)	222
4.2.1	Institution of the main proceedings	222
4.2.2	Principles of the trial	222
4.2.3	Parties to criminal proceedings	223
4.2.4	End of trial; pronouncement of sentence	224
5.	Appellate proceedings	224
5.1	Two-stage proceedings	224
5.2	Types of appeals	225
5.2.1	Appeals on the grounds of nullity	225
5.2.2	Appeals based on the pronouncement of guilt and the sentence	225
6.	International cooperation in criminal matters	226
6.1	General aspects	226
6.2	Major sources of law related to cross-border cooperation	227
6.2.1	The General Act on Extradition and Judicial Assistance (<i>Allgemeines Auslieferungs- und Rechtshilfegesetz – ARHG</i>)	227
6.2.2	Multilateral conventions of the Council of Europe	227
6.2.3	Sources of European Union law regarding cooperation in criminal matters	227
6.2.4	Other sources of EU law on cooperation in criminal matters	228
7.	European Convention for the Protection of Human Rights and Fundamental Freedom	228
	Criminal Law & Criminal Procedure Law Glossary	231
	Glossar Strafrecht und Strafprozessrecht	253
V.A	Antitrust Law in the United States (<i>Alan Kolod/David Rabinowitz/ Daniel Hoffman</i>)	265
1.	U.S. Antitrust Framework and Background	265
1.1	Sources and Enforcement	265
1.1.1	Enforcement Mechanisms and Remedies	266
1.2	Federal Statutory History	267
1.3	State Statutory History	268
1.4	Prohibited Practices	269
1.4.1	Standards of Review of Practices	269
1.4.2	Specific Practices	269
2.	International Implications	271
2.1	U.S. Antitrust Law Reach Abroad	272
2.1.1	Foreign Trade Antitrust Improvement Act (FTAIA)	272
2.1.2	Use of Criminal Sanctions Against Foreign Citizens	272
2.2	Antitrust Leniency Programs	272
2.2.1	United States Corporate Leniency Program	272
2.2.2	Conditions of Leniency	273
2.2.3	EU Leniency Program	273

3.	Current Antitrust News and Litigation	274
3.1	Antitrust Inquiries into Big Tech	274
3.2	Antitrust Enforcement on Foreign Cartels	274
3.3	Direct vs. Indirect Purchasers	275
3.4	Antitrust in the Pharmaceutical Industry	276
3.4.1	Pay-For-Delay	276
3.5	Antitrust in the Cable and Telecommunications Industries	277
3.6	Antitrust in the New Technology Industry	278
3.7	Antitrust, Patents and Other Technology	278
3.7.1	Patents and Monopoly	278
3.7.2	Essential Facilities Doctrine	279
3.7.3	Copyright Misuse	279
V.B	Competition Law in the United Kingdom (<i>Becket McGrath/Christine Graham</i>)	280
1.	Overview of public enforcement of UK competition law	280
1.1	Relevant legislation and institutions	280
1.2	Inter-relationship with European law	281
2.	Prohibition of anti-competitive agreements	282
2.1	Overview	282
2.2	Prohibited agreements and restrictions	283
2.3	Exemption	284
3.	Prohibition of abuse of a dominant position	285
3.1	Overview	285
3.2	Dominance	285
3.3	Abuse	286
4.	Chapter I and Chapter II prohibitions: powers of investigation and consequences of infringement	286
4.1	Powers of investigation	286
4.2	Consequences of infringement	287
5.	The cartel offence	288
6.	Private enforcement	289
7.	Market studies and investigations	290
7.1	Market studies	290
7.2	Market investigations	290
8.	Merger control	291
8.1	Overview	291
8.2	Merger filing thresholds	291
8.3	Merger review procedure	292
9.	Implications of Brexit	293
9.1	Overview	293
9.2	Withdrawal Agreement	293
9.3	After the transition period	294

Table of Contents

V.C	Antitrust Law in Germany (<i>Carsten Heuel</i>)	295
1.	Introduction	295
2.	Prohibition on agreements restricting competition (<i>Verbot wettbewerbsbeschränkender Vereinbarungen</i>) (Section 1 GWB)	296
2.1	The prohibition	296
2.2	Exemption from the prohibition	297
3.	Monitoring of unfair practices by the Cartel Office (Sections 18 to 21 GWB)	297
4.	Merger control (<i>Zusammenschlusskontrolle</i>) (Sections 35 et seq. GWB)	299
4.1	Scope of application	299
4.2	Concentrations covered by the GWB	300
4.3	Definition of turnover	301
4.4	Prohibition of mergers (significant impediment to effective competition)	301
4.5	Merger control procedure	302
4.6	Prohibition of putting a concentration into effect during the merger control procedure	302
4.7	Notification that a concentration has been put into effect	302
5.	Relationship between German and European antitrust law	303
5.1	Prohibition of agreements restricting competition	303
5.2	Monitoring of unfair practices	303
5.3	Merger control	303
6.	Sanctions for breach of antitrust law	303
7.	Investigations by German cartel authorities	304
V.D	Antitrust Law in Austria (<i>Astrid Ablasser-Neuhuber/Florian Neumayr</i>)	306
1.	Relevant legislation	306
2.	The amendment of 2013	306
3.	The amendment of 2017	307
4.	Relevant institutions	308
4.1	The Federal Competition Agency (BWB)	308
4.2	The Federal Antitrust Prosecutor	309
4.3	The Cartel Court	309
4.4	The regulators	309
4.5	The Competition Commission	309
4.6	Management and Labor	310
5.	Cartels	310
5.1	Prohibition of cartels	310
5.2	Legal and practical consequences of an infringement	311
5.3	Exemption from the prohibition of cartels	311
5.4	The leniency program	312
6.	Abuse of a dominant position	313
6.1	Definition of dominant position	313
6.2	Practices that constitute abuse	313
7.	Investigation and procedural steps	314

8.	Mergers	314
8.1	The notion of a concentration	314
8.2	Notification thresholds	315
8.3	Calculation of turnover	316
8.4	Obligation to suspend implementation	316
8.5	Procedure and substantive test	317
9.	Fines	318
	Antitrust Law Glossary	321
	Glossar Kartellrecht	329
VI.A	Intellectual Property Law in the United States (<i>Jack M. Tanner/ Craig N. Johnson</i>)	335
1.	Patent Law	335
1.1	Applying for and receiving a patent	335
1.2	Rights upon issuance	336
1.3	Enforcement of patent rights	337
1.3.1	Patent litigation	337
1.3.2	Remedies	337
1.3.3	Defenses	337
2.	Copyright Law	338
2.1	What is protected under the Copyright Act?	338
2.2	The registration process	338
2.3	Ownership of copyrighted works	339
2.4	Rights protected under the Copyright Act	339
2.5	Duration of copyright protection	340
2.6	Copyright infringement	340
2.6.1	The ‘fair use’ defense	340
2.6.2	Remedies for copyright infringement	340
3.	Trademark Law	341
3.1	Definition of ‘trademark’	341
3.1.1	The ‘distinctiveness’ requirement	342
3.2	Trademark registration	342
3.2.1	Principal Register versus Supplemental Register	342
3.3	Priority of rights	343
3.4	Trademark infringement	343
3.5	Trademark dilution	343
3.6	Remedies	343
3.7	Anti-cybersquatting provisions	344
4.	Trade Secrets Law	344
4.1	What is a ‘trade secret’?	344
4.2	The ‘secrecy’ requirement	345
4.3	Misappropriation of trade secrets	345
4.3.1	Remedies for misappropriation	345

Table of Contents

VI.B Intellectual Property Law in the United Kingdom (<i>Philip Rogers/Carole Frapin</i>)	347
1. Copyright	347
1.1 Overview	347
1.2 Duration of copyright	349
1.3 Authorship	349
1.4 Ownership	350
1.5 Permitted Acts	351
1.5.1 Fair Dealing	351
1.5.2 Temporary Copies	351
1.5.3 Parliamentary and judicial proceedings	352
1.5.4 Unknown or deceased authors	352
1.5.5 Defences	352
1.6 Restricted Acts	352
1.6.1 Copying	353
1.6.2 Reproduction	354
1.6.3 Computer Programs	354
1.6.4 Copying Computer Programs	354
1.6.5 Implied Licence to Use	354
1.6.6 Source References	354
1.6.7 Substantial Part of the Work	355
1.6.8 Issuing copies to the public	355
1.6.9 Renting or lending of works to the public	355
1.6.10 Performing, showing or playing a work in public	356
1.6.11 Communicating to the public by electronic transmission	356
1.6.12 Making of an adaptation	356
1.6.13 Authorising infringements	356
1.7 Civil Actions And Remedies	357
1.7.1 Injunctions	357
1.7.2 Damages	357
1.8 Criminal Offences	357
2. Patents	358
2.1 Overview	358
2.2 Reasons For Patent Protection	359
2.3 Ownership	359
2.4 Patentable Inventions	360
2.4.1 Novelty	360
2.4.2 Inventive Step	360
2.4.3 Industrial Application	360
2.4.4 Specific Exclusions	361
2.5 Application Process For Patents	361
2.6 Relief Available For Infringement	362

3.	Trade Marks	362
3.1	Overview	362
3.2	Requirements for Registration	362
3.2.1	Absolute Grounds for Refusal	363
3.2.2	Relative Grounds for Refusal	363
3.3	Infringement	365
3.4	Surrender, Revocation, Invalidity, Alteration and Rectification	365
3.5	Assignment and Licensing	366
VI.C	Intellectual Property Law in Germany (<i>Stephan Bahner</i>)	368
1.	Introduction	368
2.	Patents and Utility Models	368
2.1	General	368
2.2	Requirements for protection	369
2.2.1	Substantive requirements	369
2.2.2	Procedural requirements	370
2.3	Ownership	370
2.4	Application proceedings, duration	370
2.4.1	Patent	370
2.4.2	Utility model	371
2.5	Infringement of patents or utility models	371
2.5.1	Patents	371
2.5.2	Utility models	371
3.	Designs	372
3.1	General	372
3.2	Requirements for protection	372
3.3	Ownership	372
3.4	Application process, duration	372
3.5	Rights arising from protected designs	373
4.	Trade Marks	373
4.1	General	373
4.2	Requirements for trade mark protection	374
4.3	Registration process	374
4.4	Trade mark infringements	375
5.	Copyright and Neighbouring Rights	376
5.1	General	376
5.2	Requirements for protection	376
5.3	Rights arising from copyrights	377
5.4	Neighbouring rights	377
6.	Remedies	377
7.	Licensing	378
8.	Unfair Competition	378
8.1	Examples of unfair commercial practices according to Sec. 3a et seq. UWG	379
8.2	Misleading commercial practices	380
8.3	Comparative advertising	381

Table of Contents

8.4 Unacceptable pestering	381
8.5 Remedies	382
VI.D Intellectual Property Law in Austria (<i>Zuzana Nötstaller</i>)	383
1. Trade Marks	383
1.1 Signs	384
1.2 Trade mark registration	384
1.3 Trade mark rights	385
1.4 Enforcement of trade mark rights	387
1.4.1 Cancellation	387
1.4.2 Civil claims	388
2. Patents	388
2.1 Requirements for protection	388
2.2 Registration	389
2.3 Opposition proceedings	390
2.4 Nature and scope of protection	390
2.5 Employee inventions	391
2.6 Patent claims and their enforcement	392
2.7 Invalidation	392
2.8 Revocation	392
3. Utility Models	393
4. Design	393
5. Copyrights	394
5.1 Scope of protection	394
5.2 Enforcement	395
6. Competition Law	395
6.1 Protection against counterfeiting	395
6.2 Protection of trade names	396
6.3 Protection of trade secrets	396
6.4 Enforcement of trade secrets	397
Intellectual Property Law Glossary	399
Glossar Immaterialgüterrecht	413
VII.A Tax Law in the United States (<i>Johannes Mittermaier</i>)	423
1. Introduction	423
1.1 General	423
1.2 Persons Subject to Income Tax	423
2. Key Features of the U.S. Tax Systems	423
3. Sources of Law	424
3.1 Federal Level	424
3.2 State and Local Levels	425
4. Tax Administration	425
4.1 Federal Level	425
4.2 State and Local Levels	425

5.	Tax Judicial Process	425
5.1	Federal Level	425
5.2	State and Local Levels	426
6.	Entity Classification – ‘Check-the-Box’ Election	426
7.	Income Taxation of Corporations	427
7.1	Domestic Corporations	427
7.2	Foreign Corporations	428
7.3	Branch Profits Tax and Branch Interest Tax	430
7.4	Taxation of Capital Gains and Losses	430
7.5	Affiliated Groups – Consolidated Returns	430
7.6	Loss Utilization	431
7.7	Tax Credits	431
7.8	Additional Taxes	432
7.9	State and Local Corporate Income Taxation	432
8.	Formation of a Corporation	433
9.	Non-liquidating Distributions	433
10.	Stock Redemptions and Partial Liquidations	433
11.	Stock Distributions and IRC § 306 Stock	434
12.	Complete Liquidations	434
13.	Taxable Acquisitions of a Corporation	434
13.1	Taxable Asset Acquisitions	435
13.2	Taxable Stock Acquisitions	435
14.	Tax-Free Reorganizations	435
14.1	Acquisitive Reorganizations	436
14.2	Non-acquisitive, Non-divisive Reorganizations	436
15.	Corporate Divisions	436
16.	Corporations with Special Corporate Tax Status	436
17.	Income Taxation of Individuals	437
17.1	Resident and Non-resident Aliens	437
17.2	Computation of Tax	438
17.3	Tax Rates	438
17.4	Qualified Business Income Deduction – IRC § 199A	438
17.5	Net Investment Income Tax – IRC § 1411	438
17.6	Tax Return Forms	438
18.	Income Taxation of Trusts and Estates	439
18.1	Federal Income Taxation of Trusts and Estates	439
18.2	State and Local Income Taxation of Trusts and Estates	440
19.	Partnerships – Income Taxation of the Partners	440
19.1	The Term Partnership for Federal Tax Purposes	440
19.2	Nature of a Partnership for Tax Purposes and Terminology	441
19.3	“Outside” and “Inside” Bases	441
19.4	The Tax Rules for Partnerships	441
19.5	Partnership Returns	441

Table of Contents

20.	Anti-Deferral Regimes Applicable to U.S. Persons	442
20.1	Controlled Foreign Corporations (“CFCs”) – Subpart F Income	442
20.2	Passive Foreign Investment Companies (“PFICs”)	442
20.3	Base Erosion and Anti-Abuse Tax (“BEAT”)	443
20.4	Related Party Payments Involving Hybrid Entities or Hybrid Transactions	443
21.	Payroll Taxes	444
22.	Dispositions of U.S. Real Property Interests by Foreign Persons	444
23.	Transfer Pricing – Allocation of Income and Expenses Among Related Persons	444
24.	Indirect Taxation	445
24.1	Federal Excise Taxes	445
24.2	State and Local Indirect Taxes	445
25.	Taxes on Transfers During Lifetime and at Death	446
26.	Foreign Bank Account Report (“FBAR”) Reporting	447
VII.B	Tax Law in the United Kingdom (<i>Christian Halwachs/Veronika Kumer</i>)	448
1.	Business Taxation	448
1.1	Corporations	448
1.2	Taxation of Non-corporate Entities	449
1.3	Taxation of Profits and Gains	449
1.4	Groups and Consortia	450
1.5	Losses	450
1.6	Capital Gains	450
1.7	Relief for Foreign Taxes	450
1.8	Transfer Pricing	451
1.9	Withholding Taxes	451
2.	Indirect Taxation	451
3.	Taxation of Individuals	451
3.1	Taxable Income	451
3.2	Taxation of Capital Gains	453
3.3	Inheritance Tax	453
VII.C	Tax Law in Germany (<i>Stefan Behrens</i>)	454
1.	Direct Taxes	454
1.1	General Principles	454
1.2	Taxation of Corporations	457
1.3	Individuals	460
1.3.1	Taxable Income of Residents	460
1.3.2	Taxable Income of Non-Residents	461
1.3.3	Capital Gains	461
1.3.4	Inheritance and Gift Tax	461
1.4	Partnerships	461
2.	Indirect Taxes	462
3.	Real Estate Transfer Tax (<i>Grunderwerbsteuer</i>)	464
4.	Real Property Tax	466

5.	Double Tax Agreements (<i>Doppelbesteuerungsabkommen</i>)	467
6.	Digital Tax (<i>Digitalsteuer</i>)	468
7.	Financial Transaction Tax (<i>Finanztransaktionssteuer</i>)	468
	8. DAC 6	469
VII.D	Tax Law in Austria (<i>Bernhard Vanas</i>)	470
1.	Taxation of Businesses	470
1.1	Common Principles of Taxation	470
1.2	Taxation of Partnerships	471
1.3	Taxation of Corporations	471
1.4	Taxation of Private Foundations	474
1.5	Taxation of Branches and Permanent Establishments	475
1.6	Reorganisations	475
2.	Taxation of Individuals	475
2.1	Taxation of Resident Individuals	475
2.2	Taxation of Non-Resident Individuals	477
2.3	Inheritance and Gift Tax	477
2.4	Net Worth Tax	478
3.	Indirect Taxes	478
3.1	Value Added Tax (VAT)	478
3.2	Standard Consumption Tax	478
3.3	Real Estate Transfer Tax	478
3.4	Real Estate Registration Fee	479
3.5	Stamp Duty	479
3.6	Real Estate Taxes	479
3.7	Various indirect taxes	479
3.8	Taxes on Capital	479
	Tax & Accounting Glossary	481
	Glossar Steuerrecht & Rechnungswesen	501
VIII.A	Insolvency Proceedings in the United States (<i>Caroline C. Fuller</i>)	519
1.	Introduction	519
2.	Types of Bankruptcy Proceedings	519
2.1	Bankruptcy Code Chapters	519
2.2	Chapter 7	519
2.3	Chapter 9	519
2.4	Chapter 11	520
2.5	Chapter 12 and Chapter 13	520
2.6	Chapter 15	520
2.7	Involuntary Bankruptcies	520
3.	Commencement and Management of Bankruptcy Case	521
3.1	Procedure	521
3.2	Assets of Estate	521
3.2.1	Exemptions	522
3.2.2	Abandonment	522

Table of Contents

3.3 Automatic Stay	522
3.3.1 Relief from Stay	522
4. Administration of Estate	523
4.1 Who is in Control	523
4.1.1 Appointment of Trustees and Examiners in Chapter 11	524
4.2 Financing	524
4.2.1 Post-Petition Borrowing	524
4.2.2 Use of Cash Collateral	524
4.3 Leases and Contracts	525
4.4 Asset Sales	525
5. Resolution of Proceeding	526
5.1 Plans of Reorganization	526
5.1.1 Chapter 11	526
5.1.2 Chapter 9	527
5.1.3 Chapters 12 and 13	527
5.2 Chapter 7	527
5.3 Conversion or Dismissal	527
5.4 Discharge	528
6. Claims Administration	528
7. Litigation in the Bankruptcy Court	529
7.1 Dischargeability Litigation	529
7.2 Avoidance Actions	530
7.2.1 Preferential Transfers	530
7.2.2 Fraudulent Transfers	530
7.2.3 Unauthorized Post-Petition Transfers	530
7.3 Other Litigation	530
7.4 Bankruptcy Court's Limited Jurisdiction	531
8. Alternative Insolvency Proceedings under State and Federal Law	531
8.1 Receivership	531
8.2 Assignment for Benefit of Creditors	532
VIII.B Insolvency Law in the United Kingdom (<i>Peter A. Eschig/Richard Calnan</i>)	533
1. Introduction	533
1.1 Insolvency, bankruptcy and liquidation	533
1.2 Historical background	533
1.3 Important legislation and recent reforms	534
1.4 Insolvency practitioners as the dominant actors	536
2. Personal insolvency	537
2.1 General	537
2.2 Alternatives to bankruptcy	537
3. Corporate insolvency in the United Kingdom (England & Wales)	538
3.1 General	538
3.2 Meaning of insolvency	539

3.3	The formal English law insolvency procedures available to companies (not including partnerships)	540
3.3.1	Compulsory liquidation (Winding-up by the court)	540
3.3.2	Creditors' and members' voluntary liquidation	540
3.3.3	Administrative receivership	541
3.3.4	Administration	541
3.3.5	Company voluntary arrangement ("CVA")	542
3.3.6	Schemes of arrangement ("Schemes")	542
3.3.7	Compromise or arrangement under Part 26A ("Restructuring Plan")	543
4.	Summary and proposed reform	543
VIII.C	German Insolvency Law (<i>Christian Darge</i>)	545
1.	Introduction	545
2.	Structure of insolvency proceedings	545
3.	Normal insolvency proceedings	546
3.1	Applicability	546
3.2	Procedure	546
3.2.1	Grounds for opening insolvency proceedings	547
3.2.2	Preliminary insolvency proceedings	549
3.2.3	Opening of insolvency proceedings	549
3.2.4	Insolvency plan	551
3.2.5	Debtor-in-possession proceedings	552
4.	Consumer insolvency proceedings	552
5.	Relief from residual debt	553
5.1	Course of the proceedings	553
5.2	Effect of relief from residual debt	554
VIII.D	Insolvency Law in Austria (<i>Norbert Abel/Matthias Prior</i>)	556
1.	Legal basis	556
2.	Types of proceedings	556
2.1	Bankruptcy proceedings	557
2.2	Reorganisation proceedings with/without the debtor in possession	558
2.3	Debt settlement proceedings	559
3.	Parties in insolvency proceedings	560
3.1	The court	560
3.2	The insolvency administrator	561
3.3	The creditors' meeting	562
3.4	The creditors' committee	562
3.5	Creditor protection agencies	562
4.	Legal status of the debtor	563
5.	Legal status of the creditor	563
5.1	The insolvency creditor	563
5.2	The subordinate insolvency creditor	564
5.3	Creditors entitled to separation and recovery (<i>Aussonderungsgläubiger</i>); preferred creditors (<i>Absonderungsgläubiger</i>)	565

Table of Contents

5.4 Creditors whose claims have arisen only after the insolvency proceedings were opened (<i>Massegläubiger</i>)	565
6. Substantive insolvency law	566
6.1 Effects of proceedings on contractual relationships	566
6.2 Effects on continuing obligations	566
6.3 Offsetting	566
6.4 Avoidance	566
7. International insolvency law	567
Insolvency Law Glossary	569
Glossar Insolvenzrecht	579
IX.A Insurance Law in the United States (<i>Franz J. Heidinger/Jim Leonard</i>)	583
1. Introduction	583
2. Types of Insurance Companies	583
3. Types of Insurance	584
3.1 Life Insurance	584
3.2 Casualty Insurance	585
3.3 Marine Insurance	585
4. Premiums	585
5. Doctrine of Insurable Interest	585
6. Claims Procedure	586
7. Coverage Disputes	586
8. Reinsurance	587
9. Regulation of the Business of Insurance	588
10. Captive Insurance	588
IX.B Insurance Law in England and Wales (<i>Christopher N. Hegarty/Susan Moyce</i>)	589
1. Indemnity Insurance	589
2. Non-indemnity Insurance	589
3. General Principles	590
4. Third Party Rights	591
5. Legal Expenses Insurance	591
6. Non-indemnity Claims	592
7. Indemnity Claims	592
8. Regulation of Insurance	593
IX.C Insurance Law in Germany (<i>Bettina Plaßmann-Robertz</i>)	594
1. Introduction	594
1.1 Sources of law in private insurance law	594
1.2 The reform of the German Insurance Contract Act (VVG)	594
2. Insurance Contract Law	595
2.1 Basic concept of the VVG	595
2.2 Definition of an insurance contract	595
2.3 Conclusion of an insurance contract	595
2.4 Description of the insured risk by use of General Terms and Conditions of Insurance (<i>Allgemeine Versicherungsbedingungen</i>)	596

2.5 Typical duties of the parties	596
2.5.1 The duty to pay the agreed insurance premium	596
2.5.2 Obligations	597
2.5.3 Assumption of a financial risk by the insurer	598
2.5.4 Indemnity insurance (<i>Schadenversicherung</i>), fixed-benefit insurance (<i>Summenversicherung</i>), personal insurance (<i>personenbezogene Versicherung</i>) and non-personal insurance (<i>nicht personenbezogene Versicherung</i>)	598
2.5.5 Other notable insurance	599
3. The Burden of Proof in Insurance Litigation	600
4. Insurance Agents, Insurance Brokers and Insurance Advisors/Consultants	600
5. Reinsurance	601
IX.D Insurance Law in Austria (Alexander L. Seel)	602
1. Public Law Insurance – Private Law Insurance	602
2. Social Security Law	602
3. The Austrian Insurance Contracts Act (<i>Versicherungsvertragsgesetz/VersVG</i>)	602
3.1 Regulations for all areas of insurance (Sections 1-48 <i>VersVG</i>)	604
3.2 Regulations for all areas of indemnity insurance (Sections 49-80 <i>VersVG</i>)	606
3.3 Property insurance	607
3.4 Third party liability insurance	608
3.5 Transport insurance	608
3.6 Legal expense insurance	609
4. The Austrian Motor Vehicle Liability Insurance Act (<i>Kraftfahrzeug-Haftpflichtversicherungsgesetz/KHVG</i>)	609
5. Special Features of Austrian Insurance Practice	609
5.1 Term of insurance	609
5.2 Insurance tax	610
5.3 Motor vehicle liability insurance	610
Insurance Law Glossary	611
Glossar Versicherungsrecht	617
Index	625