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Topoi verdeckter
Rechtsfortbildungen
im Zivilrecht

Jus Privatum

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Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht

Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht

Matthias Pflughaupt



Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht:

The Characterization of Provisions Protecting Forced Heirs Against Lifetime Dispositions Raphael de Barros

Fritz, 2023-07-07 Legal systems with rules about forced heirship usually also protect forced heirs by constraining lifetime dispositions of assets Raphael de Barros Fritz addresses the characterization of such mechanisms in conflicts of laws Back cover
Judicial Cooperation in European Private Law Fabrizio Cafaggi, Stephanie Law, 2017-05-26 Notwithstanding recent increases in the scope for judicial cooperation and dialogue between European courts little research has been undertaken into the impact of the jurisprudence of the European Court of Justice and the dialogue that arises therefrom in national legal systems between courts and regulators This coherent collection of original chapters provides unique insights into these developments with a particular focus on consumer law from a broad range of stakeholders including academics and judges from the EU and the US

Civil Judgments at First Instance Zhixun Cao, 2025-02-19 This book provides an in depth discussion and introduction to Chinese civil procedure from both a theoretical and practical perspectives as well as a comparative study of its relevant systems with those of the West The subject matter of this book is Chinese civil judgments Judgments as the final judicial product which affects the legal relationship between both parties or even multiple parties provide a desirable objects to observe and evaluate the service of judicial proceedings and the protection of the parties procedural rights And since judgments are in most cases regarded as the default termination of any civil litigation there is no need to argue for a comparative study on this topic which has already inspired Chinese doctrines and newest reforms One of the aims of such research is to modernize Chinese civil justice considering the experience of leading legal counterparts Next to the theoretical analysis this book introduces empirical data in China to the English literature which could provide a vivid illustration for legal researchers to be better informed about the Chinese legal system and its real version of rule of law In other words this book likes to describe the real judicial practice in China and summarize how Chinese lawyers understand and facilitate the production of civil judgments Moreover this book intends to focus on the adjudicative techniques in the civil litigation which should constitute the mutual basis of most civil justice Even there is no well developed theory under the name of Adjudicate Techniques in some jurisdictions it is not uncommon to discover some principles methods institutions and practical operation which is functionally and substantially comparable to the ones in other civil justice systems

Reinheit des Rechts Otto Depenheuer, 2010-06-11 Otto Depenheuer K In Gliederung I Reinheit als Ideal II Der Reinheitsgedanke in der Rechtswissenschaft 1 Reinheitspostulat als Ausdifferenzierungskompensation 2 Reinheit der Rechtserkenntnis 3 Die Reine Rechtslehre Hans Kelsens als Paradigma 4 Recht als System III Der Preis der Reinheit Distanz zum Leben IV Gefahren der Reinheitsidee 1 Tribunalisierung der Wirklichkeit 2 Fundamentalismus 3 Rechtsautismus und Doppelmoral V Lob der Unreinheit 1 Wohltemperierte Reinheit 2 Reinheit des Rechts als regulative Idee 3 Reinheit der Wissenschaft als unbedingte Verpflichtung I Reinheit als Ideal Reinheit bedarf des Abstands zum Empirischen Die reine Vernunft zeichnet nach

Immanuel Kant das Vermögen der Erkenntnis aus Prinzipien a priori und steht derart im Gegensatz zu jeder Erfahrung. Reine Anschauung deutet entsprechend die von Empfindung leere formale Anschauung. Es heißt aber jede Erkenntnis rein, die mit nichts Fremdartigem vermischt ist. Besonders aber wird eine Erkenntnis schlechthin rein genannt, in die sich überhaupt keine Erfahrung oder Empfindung einmischt, welche mithin a priori möglich ist. Topoi verdeckter Rechtsfortbildungen im Zivilrecht Christian Fischer, 2007. Die Rechtsfortbildung zählt heute zu den legitimen Aufgaben der Zivilrechtsprechung. Der Paradigmenwechsel in der Theorie der Rechtsfindung hat indes keine Entsprechung in der Begründungspraxis. Zwar bilden die Zivilgerichte auf breiter Front das Gesetzesrecht fort. Hierzu bedienen sie sich aber regelmäßig herkommener Begründungsfiguren, welche den Eindruck vermitteln, die Gesetze würden lediglich ausgelegt und angewendet. Diese Topoi verdeckter Rechtsfortbildungen werden von Christian Fischer in einer Gesamtschau aus der Perspektive des Zivilprozessrechts und der juristischen Methodenlehre untersucht. Nach einer Analyse des Rechtsfortbildungsbegriffs, der Rechtsprechungsgeschichte und der Rechtsprechungspraxis der obersten Zivilgerichte zeigt der Autor mögliche Gründe rechtliche Beurteilungsmaßstäbe und prozessrechtliche Sanktionen für Topoi verdeckter Rechtsfortbildungen auf. **Die konkludente Willenserklärung** Lajana von zur Gathen, 2021-06-30. Die Arbeit betrachtet die konkludente Willenserklärung im Spannungsfeld zwischen dem Ausdruck rechtsgeschäftlicher Selbstbestimmung und reinem Billigkeitsinstrument. Anhand von Fallgruppen werden die von der Rechtsprechung geforderten subjektiven und objektiven Anforderungen schlüssiger Willenserklärungen herausgearbeitet und dogmatisch eingeordnet. Entgegen einer zunehmenden Objektivierung der Rechtsgeschäftslehre setzt die Verfasserin als Verpflichtungsgrund einer Primärverpflichtung den Willen bzw. das Erklärungsbewusstsein voraus. Des Weiteren formuliert die Verfasserin Mindestanforderungen an die Ermittlung des Rechtsfolgewillens, um der zunehmenden Auflösung der Grenze zwischen erlaubter und ergötzender Auslegung entgegenzuwirken. Rechtsfähige Wohnungseigentümergeinschaft und nichtrechtsfähige Gemeinschaft der Wohnungseigentümer Henning Blaufuß, 2010. Rechtsetzung ist im demokratischen Rechtsstaat nicht auf die Legislative beschränkt. Auch der Judikative kommt die Aufgabe der Rechtsetzung dort zu, wo Normzweckverwirklichung zu scheitern droht oder Normzwecke entfallen sind. Am Beispiel der Entscheidung des BGH zur Rechtsfähigkeit der Wohnungseigentümergeinschaft wird deutlich, dass die Grenzen erlaubter Rechtsfortbildung immer wieder überschritten werden. Die Arbeit zeigt auch, dass unerlaubte Rechtsfortbildung nicht nur grundsätzliche Bedenken wegen Verletzung des Gewaltenteilungsprinzips aufwirft, sondern die vermeintliche Problemlösung oft neue Probleme schafft. Auch im Gesetzgebungsverfahren zur Normierung der Rechtsfähigkeit fand eine umfassende Folgenabschätzung nicht statt, was anhand ausgewählter Folgeprobleme verdeutlicht wird. Die Nichtöffentlichkeit des Schiedsverfahrens Nassim Eslami, 2016-10-20. Die Schiedsgerichtsbarkeit ist aus dem System der Streitbeilegungsmechanismen nicht mehr wegzudenken. Mit deren wachsender Bedeutung ist aber auch die Kritik wegen der mangelnden Transparenz der Verfahren

laut geworden Inwieweit gewährleistet die Schiedsgerichtsbarkeit tatsächlich Vertraulichkeit Bei dieser Diskussion herrscht jedenfalls weitestgehend Einigkeit dass die Verfahren generell unter Ausschluss der Öffentlichkeit geführt werden und auch die Schiedssprüche ohne ausdrückliche Einwilligung der Parteien nicht publiziert werden dürfen Auf der anderen Seite wird die Schiedsgerichtsbarkeit als echte Rechtsprechung qualifiziert Vor diesem Hintergrund widmet sich Nassim Eslami der Frage ob für die Schiedsgerichtsbarkeit nicht ein Mindestmass an Öffentlichkeit zwingend zu fordern ist Die Autorin konzentriert sich auf die Handelsschiedsgerichtsbarkeit bezieht aber auch Fragen der Investitionsschiedsgerichtsbarkeit ausländisches Schiedsverfahrensrecht sowie zahlreiche institutionelle Schiedsordnungen mit ein Die Arbeit schliesst mit einem Gesetzgebungsvorschlag Kreditsicherheiten an beweglichen Sachen und Forderungen Moritz Brinkmann, 2011 English summary The law of secured transactions is particularly significant in times when it is becoming more difficult for companies to obtain credit Moritz Brinkmann studies the extent to which German law is able to meet the challenges it is facing and describes alternative models which exist on a national and a European level German description Kreditsicherheiten an beweglichen Sachen und Forderungen sind von wesentlicher Bedeutung für die Versorgung eines Unternehmens mit Fremdkapital Ihr Wert zeigt sich insbesondere in der Insolvenz des Sicherungsgebers Moritz Brinkmann analysiert die materiell und haftungsrechtlichen Voraussetzungen der insolvenzrechtlichen Anerkennung von Mobiliarsicherheiten Er weist nach dass insbesondere für revolvingende Globalsicherheiten ein haftungsrechtliches Legitimationsdefizit besteht das von der Rechtsprechung durch die Anwendung von 138 Abs 1 BGB und des Insolvenzanfechtungsrechts korrigiert wird Der Autor arbeitet die sich hieraus ergebenden materiell insolvenz und kollisionsrechtlichen Unsicherheiten für die Parteien eines Sicherungsgeschäfts heraus und stellt dem deutschen Recht andere Regelungsmodelle u a Article 9 UCC und Book IX des DCFR für ein künftiges Mobiliarsicherheitsrecht gegenüber Prozessökonomie Matthias Pflughaupt, 2011 English summary Judicial economy is a phenomenon which characterizes some proceedings However what demands can it make on the law if it has no clear expression in the rules of procedure By using constitutional law Matthias Pflughaupt attempts to answer this question which is significant for the application of the law German description Die Prozessökonomie ist ein Phänomen dem man als Argument nicht nur immer wieder begegnet sondern auch nahezu gewohnheitsmassig Verständnis oder Wohlwollen entgegenbringt Doch nicht nur die ihr beigemessene Relevanz bleibt oft unbegründet auch wird selten der Versuch unternommen den Inhalt dessen zu klären was die Prozessökonomie vom konkreten Sachverhalt losgelöst gebietet so dass sie als ein verlässlich zu handhabendes Werkzeug für die juristische Arbeit betrachtet werden konnte Die einzelnen Verfahrensordnungen helfen hier wenig während das Argument gerichtsbareitsubergreifend wirkt und dabei eine auch verfassungsrechtliche Bedeutung entfaltet Konsequenterweise widmet sich Matthias Pflughaupt den verfassungsrechtlichen Säulen des Prozessökonomiearguments um herauszuarbeiten wie belastbar es überhaupt ist

Reviewing **Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht**: Unlocking the Spellbinding Force of Linguistics

In a fast-paced world fueled by information and interconnectivity, the spellbinding force of linguistics has acquired newfound prominence. Its capacity to evoke emotions, stimulate contemplation, and stimulate metamorphosis is truly astonishing. Within the pages of "**Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht Topoi Verdeckter Rechtsfortbildungen Im Zivilrecht**," an enthralling opus penned by a highly acclaimed wordsmith, readers attempt an immersive expedition to unravel the intricate significance of language and its indelible imprint on our lives. Throughout this assessment, we shall delve in to the book is central motifs, appraise its distinctive narrative style, and gauge its overarching influence on the minds of its readers.

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