The Authors	3
List of Abbreviations	15
General Introduction	19
Chapter 1. General Background	19
§1. Geography	19
§2. POPULATION	19
§3. POLITICAL SYSTEM	20
§4. ECONOMY AND LABOUR MARKET	23
Chapter 2. Definitions and Notions	27
§1. Labour Law	27
§2. Individual Labour Law	27
§3. Collective Labour Law	27
§4. RELATIONSHIP BETWEEN INDIVIDUAL AND COLLECTIVE LABOUR LAW	28
§5. SOCIAL SECURITY LAW	28
Chapter 3. Historical Background	30
§1. THE ORIGINS	30
§2. BETWEEN TOLERANCE AND REPRESSION	30
§3. THE WEIMAR ERA	32
§4. The Nazi State	32

#### **Table of Contents** 33 §5. AFTER THE SECOND WORLD WAR 35 §6. UNIFICATION Chapter 4. The Role of Government 37 §1. GENERAL FUNCTIONS §2. SPECIFIC INSTITUTIONS 38 Chapter 5. Sources of Labour Law 40 40 §1. CONSTITUTION 40 §2. ORDINARY LEGISLATION 41 §3. COURT DECISIONS 42 §4. COLLECTIVE AGREEMENTS 43 §5. WORKS AGREEMENTS 43 §6. INDIVIDUAL LABOUR CONTRACTS 43 §7. Custom 44 §8. INTERNATIONAL SOURCES Part I. The Individual Employment Relationship 45 Chapter 1. Definitions and Concepts 45 §1. THE DEFINITION OF THE TERM 'EMPLOYEE' 45 48 §2. THE 'EMPLOYEE-LIKE' PERSON 51 §3. DIFFERENT CATEGORIES OF EMPLOYEE 51 I. Manual Workers and White-Collar Workers 51 II. Executive Staff §4. FREEDOM OF CONTRACT AS THE BASIC PRINCIPLE OF THE

52

53

53

EMPLOYMENT RELATIONSHIP

Period

§5. DIFFERENT KINDS OF INDIVIDUAL LABOUR CONTRACT

I. The Normal Case: The Full-Time Contract for an Indefinite

II. The Contract for a Definite Period	54
A. The Principal Requirement of a Justifying Reason	55
B. Exceptions	56
C. Consequences of an Invalid Limitation as to Time	58
D. The Principle of Equal Treatment	59
E. Termination of a Fixed-Term Contract	59
F. Rights to Information	60
III. Part-Time Work	60
A. The Principle of Equal Treatment	62
B. The Right to Part-Time Work	62
C. Employment on Call and Job-Sharing	65
D. Rights to Information	66
E. Dismissal Protection	67
IV. Temporary Work	67
A. Requirement of Permission	68
B. Formalities of the Temporary Employment Contract	69
C. Principle of Equal Treatment	69
V. Telework and Mobile Work	72
	-
§6. SPECIAL GROUPS OF EMPLOYED PERSONS	75
I. Apprentices	75
II. Children and Juveniles	77
III. Disabled Persons	77
IV. Foreign Employees	79
V. Posted Employees	80
Chapter 2. Conclusion of the Individual Labour Contract	84
§1. RESTRICTIONS ON THE FREEDOM OF CONTRACT	84
I. Principles of Equal Treatment	84
A. The Principle of Equal Treatment as Granted in Article 33	84
B. The Principle of Equal Treatment Granted under the AGG	85
II. Limitations on the Employer's Right to Question Applicants	89
III. The Influence of the Works Council	91
IV. Formal Restrictions by Collective Agreements	92
§2. GENERAL TERMS AND CONDITIONS OF EMPLOYMENT	93
§3. ANNULMENT OF THE LABOUR CONTRACT AND THE CONCEPT OF THE	
FACTUAL EMPLOYMENT RELATIONSHIP	95
Chapter 3. Duties of the Parties in the Course of the	
Employment Relationship	96
§1. DUTIES OF THE EMPLOYEE	96

I. The Duty to Work II. Ancillary Duties	96 98
§2. DUTIES OF THE EMPLOYER  I. The Duty to Pay Remuneration  II. The Duty to Employ the Employee  III. Ancillary Duties  IV. The Duty of Equal Treatment  A. The General Principle of Equal Treatment  B. Equal Treatment in Terms of the AGG  V. The Duty to Provide a Reference	99 99 99 100 100 100 101 103
Chapter 4. Working Time, Public Holidays and Annual Holidays	104
§1. Working Time	104
§2. OVERTIME AND SHORT-TIME WORK	106
§3. NIGHT WORK AND SHIFT WORK	107
§4. Work on Sundays and Public Holidays	108
§5. Annual Holidays	110
§6. SPECIAL LEAVE  I. Parental Time  II. Leave for Employee Representatives  III. Miscellaneous	110 110 113 114
Chapter 5. Remuneration and Benefits	115
§1. THE NOTION OF REMUNERATION	115
§2. THE REGULATION OF REMUNERATION	115
§3. PAY SYSTEMS	118
§4. Level of Remuneration	119
§5. REMUNERATION IN CASE OF TEMPORARY NON-PERFORMANCE OF WORK  I. The Theory of Employer's Risk  II. The Employee's Absence of Short Duration for Personal Real III. Sickness  IV. Pregnancy and Maternity	119 119 sons 120 121 123

V. Employee Representatives	123
Chapter 6. Employee Liability	124
Chapter 7. Termination of the Individual Labour Contract	126
§1. TERMINATION BY MUTUAL CONSENT	126
§2. Retirement	126
§3. DISMISSAL  I. Extraordinary and Ordinary Dismissal  II. Development and Basic Idea of Protection Against Dismissal  III. Common Rules for All Types of Dismissal	129 129 1 130 131
§4. Extraordinary Dismissal	132
§5. ORDINARY DISMISSAL  I. The Applicability of the Act on Protection Against Dismissal II. The Concept of Social Justification  A. Reasons Concerning the Employee's Person  B. Reasons Concerning the Employee's Behaviour  C. Economic Reasons  D. Impossibility of Further Employment	132 132 134 134 136 136
§6. THE ROLE OF THE WORKS COUNCIL IN DISMISSAL CASES	138
§7. REINSTATEMENT VERSUS FINANCIAL COMPENSATION	140
§8. DISMISSAL PROTECTION FOR SPECIFIC GROUPS  I. Pregnancy and Parenthood  II. Disabled Employees  III. Apprentices  IV. Members of Employee Representative Bodies  V. Protection by Collective Agreements	142 142 143 143 143 144
§9. PROTECTION AGAINST DISCRIMINATORY DISMISSAL	144
§10. COLLECTIVE REDUNDANCY	148
§11. Transfer of the Establishment	151
§12. DISMISSAL TO CHANGE WORKING CONDITIONS	153

Chapter 8. Covenant of Non-competition, Employee Inventions	156
M. Communication	1.7.6
§1. COVENANT OF NON-COMPETITION	156
§2. Employee Inventions	156
Chapter 9. Settlement of Individual Labour Disputes	158
§1. THE SYSTEM OF LABOUR COURTS  I. Basic Structure  II. The Judges  A. Career Judges  B. Honorary Judges  III. Parties and Their Representatives  IV. Procedure  V. Costs	158 158 160 160 161 162 163 165
§2. THE ROLE OF LABOUR COURTS IN SETTLING INDIVIDUAL DISPUTES	166
§3. Complaint Procedure	172
Part II. Collective Labour Law	173
Chapter 1. Freedom of Association	173
§1. NOTION AND HISTORICAL DEVELOPMENTS	173
§2. INDIVIDUAL FREEDOM OF ASSOCIATION	174
§3. COLLECTIVE FREEDOM OF ASSOCIATION  I. The Doctrine of Core Area  II. Renunciation of the Doctrine of Core Area	176 177 178
Chapter 2. Trade Unions and Employers' Associations	180
§1. DEFINITION OF COLLECTIVE INDUSTRIAL ORGANIZATIONS	180
§2. ORGANIZATION AND STRUCTURE OF TRADE UNIONS I. General Pattern II. The DGB and Its Member Unions III. Other Confederations and Their Members A. The Federation of Career Public Servants B. The Federation of Christian Unions C. The Association of Executive Staff	181 181 182 185 185 185
IV. Other Unions	186

§3.	ORGANIZATION AND STRUCTURE OF EMPLOYERS' ASSOCIATIONS I. Employers' Associations in the Private Sector	186 186
	II. Employers' Associations in the Public Sector	188
§4.	LEGAL AND FACTUAL POSITION OF TRADE UNIONS	188
Cha	pter 3. Collective Bargaining	190
§1.	LEVEL AND SCOPE OF COLLECTIVE BARGAINING	190
	I. Level of Collective Bargaining	190
	II. Scope and Subject of Collective Bargaining	192
	III. Collision of Collective Agreements	193
§2.	PARTIES TO A COLLECTIVE AGREEMENT	194
§3.	CONTENT AND EFFECT OF A COLLECTIVE AGREEMENT	197
	I. Obligatory Part	197
	II. Normative Part	198
	A. Individual Normative Provisions	199
	B. Collective Normative Provisions	200
	C. Normative Provisions on Common Institutions	200
§4.	FORMAL REQUIREMENTS, DURATION	201
§5.	EXTENSION OF COLLECTIVE AGREEMENTS BY ORDER IMPOSING EXTENSION	202
§6.	EXTENSION OF COLLECTIVE AGREEMENTS BY GOVERNMENTAL DECREE	203
Cha	pter 4. Dispute Resolution	205
§1.	FROM DISPUTE RESOLUTION BY STATE AUTHORITIES TO VOLUNTARY JOINT DISPUTE RESOLUTION	205
§2.	THE SYSTEM OF VOLUNTARY JOINT DISPUTE RESOLUTION	207
-	I. Composition of Joint Dispute Resolution Boards	207
	II. Initiation of the Joint Dispute Resolution Procedure	207
	III. Joint Dispute Resolution and Peace Obligation	208
	IV. Procedure and Effects of Joint Dispute Resolution	208
§3.	THE FUNCTION OF JOINT DISPUTE RESOLUTION	209
§4.	THE COMPLEMENTARITY BETWEEN COLLECTIVE BARGAINING AND INDUSTRIAL ACTION	211
§5.	FACTUAL DEVELOPMENT OF INDUSTRIAL CONFLICT	212

§6. BASIC FEATURES OF STRIKE LAW  I. The Normal Strike Pattern  II. The Warning Strike  III. The Solidarity Strike  IV. The Political Strike  V. Apprentices as Strikers  VI. Career Public Servants as Strikers  VII. New Forms of Industrial Action Beyond the Strike	216 217 219 221 222 222 225
§7. BASIC FEATURES OF THE LAW ON LOCK-OUT  I. The Notion of Equal Bargaining Power: From a Formalistic to a Substantive Concept  II. Assignment of Non-strikers as an Instrument of Defence	225 225 228
§8. LEGAL EFFECTS OF STRIKES AND LOCK-OUTS I. The Individual Contract of Employment II. Tort Liability	229 229 230
§9. THE DUTY TO UPHOLD ESSENTIAL SUPPLIES AND SERVICES	231
§10. THE POSITION OF EMPLOYEES IN ENTERPRISES INDIRECTLY AFFECTED BY INDUSTRIAL ACTION  I. The Employer's Duty to Pay Remuneration  II. The Role of the Works Council  III. The Neutrality of the State and the Duty of the Employment Agency to Pay Unemployment Benefits	233 233 233 234
§11. Injunctions	236
§12. Concluding Remarks	237
Chapter 5. Institutionalized Forms of Employee Participation: The Works Constitution	238
§1. Notion and Historical Development	238
§2. THE WORKS CONSTITUTION IN THE PRIVATE SECTOR  I. The Basic Organizational Structure  II. Executive Staff in the Works Constitution  III. The Role of Unions Within the Works Constitution  IV. The Legal Status of Works Council Members  V. Legal Restrictions on Works Council Activities  VI. The Arbitration Committee  VII. Competences of the Works Council  A. Specific Rights of Participation	239 239 243 245 246 249 250 252 252
B. Works Agreements	258

Table of	of Contents
VIII. The Relationship Between Collective Bargaining and the Competence of the Works Council	259
§3. THE WORKS CONSTITUTION IN THE PUBLIC SECTOR	263
Chapter 6. Employee Representation on the Supervisory Board	265
§1. HISTORICAL DEVELOPMENT	265
§2. THE ROLE OF THE SUPERVISORY BOARD	265
§3. THE BASIC STRUCTURE OF EMPLOYEE REPRESENTATION ON THE SUPERVISORY BOARD  I. The Model of the Mining, Iron and Steel Industry II. The Model of the One-Third Participation Act III. The Model of the 1976 Co-determination Act	267 267 270 270
§4. LEGAL STATUS OF EMPLOYEE REPRESENTATIVES	275
§5. Characteristic Features of the Reality of Employee Representation on the Supervisory Board	277
§6. Transposition of European Directives on Employee Representation	278
Chapter 7. The Role of Courts in Collective Labour Law	279
§1. THE ROLE OF LABOUR COURTS	279
§2. THE ROLE OF OTHER COURTS	283
Selected Bibliography	285

Index