

# TABLE OF CONTENTS

Authors of individual chapters .....	XI
Autobiographies of the authors .....	XIII
List of abbreviations .....	XIX
Foreword .....	XXI
<b>Chapter one Introduction</b> .....	<b>1</b>
<b>Chapter two What entity can engage in legal conduct?</b> .....	<b>10</b>
2.1 Introduction .....	10
2.2 What is the meaning of conduct? .....	10
2.3 What are the specific aspects of legal conduct? .....	12
2.4 Who can engage in legal conduct? .....	14
2.5 Slave as a human being who is endowed with reason and still is not a person .....	15
2.6 A human being without reason as a person lacking legal capacity .....	18
2.7 Legal capacity in the sense of imputability of reason and will .....	20
2.8 Summary .....	22
<b>Chapter three Can a juristic person really enjoy legal capacity?</b> .....	<b>24</b>
3.1 Introduction .....	24
3.2 Conclusions derived from theories of juristic persons in terms of legal capacity .....	26
3.3 What is the reason and will of a juristic person? .....	31
3.4 Summary .....	34
<b>Chapter four Juristic persons as holders of fundamental rights</b> .....	<b>37</b>
4.1 Introduction .....	37
4.2 Theories of justification of human rights and their applicability in respect of juristic persons .....	39
4.3 Fundamental rights vested in juristic persons in the Czech Republic .....	43
4.4 Specific features of juristic persons of public law .....	44
4.5 German legislation, its genesis and practice .....	48
4.6 Admissibility of applications filed by juristic persons with the European Court of Human Rights .....	50
4.7 Summary .....	52

<b>Chapter five</b>	<b>How can a juristic person act under substantive law?</b> . . . . .	54
5.1	Status of the governing body when acting on behalf of a juristic person . . . . .	55
5.1.1	Basic concept—member of the governing body as a juristic person’s representative <i>sui generis</i> . . . . .	55
5.1.2	Member of the governing body (exceptionally) as a juristic person’s contractual representative . . . . .	58
5.1.3	Member of the governing body (exceptionally) as a juristic person’s statutory representative . . . . .	62
5.2	Applicability of the rules on representation to acts made on behalf of a juristic person by a member of the governing body . . . . .	63
5.2.1	Can a member of the governing body grant a power of attorney for the given juristic person? (Applicability of Sections 438 and 439 of the Civil Code) . . . . .	63
5.2.2	Presumption of representation—why is a representative deemed to act on his own behalf in case of doubt? (Applicability of Section 436 (1) of the Civil Code) . . . . .	64
5.2.3	When can representative’s good faith be attributed to the juristic person being represented? (Applicability of Section 436 (2) of the Civil Code) . . . . .	69
5.2.4	How should a conflict of interests between a member of a (business) corporation’s governing body and that corporation be resolved? (Applicability of Section 437 of the Civil Code) . . . . .	78
5.2.5	Is it possible to approve <i>ex post</i> any acts taken by members of the governing body who went beyond the limits of their authorisation to represent the juristic person? (Applicability of Section 440 of the Civil Code) . . . . .	81
5.3	Joint representation by a member of the governing body and a corporate agent . . . . .	83
5.4	Summary . . . . .	90
<b>Chapter six</b>	<b>Specific features of legal acts taken (not only by juristic persons) in procedural law</b> . . . . .	93
6.1	Introduction . . . . .	93
6.2	The term “procedural act” . . . . .	94
6.3	Procedural acts of the parties . . . . .	95
6.3.1	General remarks . . . . .	95
6.3.2	Requisites of procedural acts of the parties . . . . .	97
6.3.3	Interpretation of procedural acts of the parties . . . . .	99
6.3.4	Are conditional procedural acts permissible? . . . . .	100
6.3.5	Defects of procedural acts of the parties . . . . .	102

6.3.6	Can procedural acts of the parties have substantive effects? . . .	104
6.3.7	Certain remarks on procedural agreements . . . . .	107
6.4	Specific aspects of procedural acts of juristic persons . . . . .	109
6.5	Summary . . . . .	112
<b>Chapter seven</b>	<b>Juristic person as a subject of responsibility . . . . .</b>	<b>114</b>
7.1	Fault-based liability of juristic persons . . . . .	115
7.2	No-fault liability of juristic persons . . . . .	116
7.3	Capacity of juristic persons to bear legal responsibility (liability) . . . . .	119
7.4	Summary . . . . .	119
<b>Chapter eight</b>	<b>No-fault liability of juristic persons . . . . .</b>	<b>121</b>
8.1	Introduction . . . . .	121
8.2	Introduction: characteristics of no-fault liability—its function and purpose in contemporary tort law . . . . .	122
8.3	No-fault liability from comparative perspective—various approaches . . . . .	123
8.4	Liability of legal entities—imputation of consequences . . . . .	127
8.5	Selected cases of no-fault liability of legal entities . . . . .	130
8.5.1	Liability for activities . . . . .	130
8.5.1.1	Operational damage (Section 2924) . . . . .	130
8.5.1.2	Damage caused by a particularly hazardous operation (Section 2925) . . . . .	131
8.5.1.3	Damage caused by other operational activities . . . . .	133
8.5.1.4	Damage caused by operation of means of transport . . . . .	136
8.5.1.5	Damage caused in exercise of public authority . . . . .	137
8.5.1.6	Damage to real property . . . . .	140
8.5.2	Liability for damage caused by a thing . . . . .	140
8.5.2.1	Damage caused by a thing . . . . .	140
8.5.2.2	Damage caused by a product defect . . . . .	143
8.6	Summary . . . . .	145
<b>Chapter nine</b>	<b>Liability of juristic persons based on fault . . . . .</b>	<b>147</b>
9.1	Introduction . . . . .	147
9.2	Identification of liability based on fault . . . . .	148
9.3	Approach in foreign laws . . . . .	149
9.3.1	German law . . . . .	150
9.3.2	Austrian law . . . . .	151
9.4	Liability based on fault under valid regulation . . . . .	152
9.4.1	Conditions for establishing liability based on fault . . . . .	152
9.4.2	Section 2909—Breach of good morals . . . . .	153
9.4.3	Section 2910—General liability based on fault . . . . .	154

9.5	Imputability of natural person's conduct . . . . .	155
9.5.1	General rule (Section 167) . . . . .	156
9.5.2	Assistant person (Section 2914) . . . . .	157
9.5.2.1	Scope of application . . . . .	158
9.5.2.2	Notion of assistant . . . . .	158
9.5.2.3	Scope of principal's liability . . . . .	159
9.6	Culpability . . . . .	162
9.6.1	Capacity to be liable for a wrong . . . . .	163
9.6.1.1	Capacity of a natural person to be liable for a wrong . . . . .	163
9.6.1.2	Capacity of a juristic person to be liable for a wrong (delictual capacity) . . . . .	164
9.6.1.3	Analogous concept of delictual capacity of a juristic person . . . . .	165
9.6.1.4	Gaps in the concept of imputation . . . . .	166
9.6.2	Viewpoint for assessing culpability . . . . .	167
9.6.2.1	Assessing culpability of natural persons . . . . .	167
9.6.3	Viewpoint of culpability of juristic persons . . . . .	171
9.6.4	Standard of conduct . . . . .	172
9.6.4.1	Setting the standard of conduct for natural persons . . . . .	172
9.6.4.2	Setting the standard of conduct for juristic persons . . . . .	173
9.7	Summary . . . . .	174
<b>Chapter ten</b>	<b>Vicarious liability of juristic persons . . . . .</b>	<b>177</b>
10.1	Introduction . . . . .	177
10.2	Vicarious liability and similar concepts in the Czech Civil Code . . . . .	179
10.3	Liability and responsibility in the Czech legal theory . . . . .	181
10.3.1	Liability in the ABGB . . . . .	184
10.3.2	Liability as an integral part of an obligation . . . . .	189
10.3.2.1	Schuld und Haftung (1874) . . . . .	191
10.3.2.2	Reception of the "Schuld und Haftung" doctrine in the Czech environment . . . . .	192
10.3.3	Liability in the sense of responsibility . . . . .	194
10.4	A circular relationship between responsibility (liability) and duty . . . . .	197
10.4.1	A solution to the circular relationship by abandoning the notion of liability . . . . .	199
10.4.2	The first loss of the meaning of responsibility . . . . .	201
10.4.3	Interim conclusions . . . . .	202
10.5	The normativist account of vicarious liability . . . . .	204
10.6	Vicarious liability as the only form of secondary liability of juristic persons . . . . .	206

<b>Chapter eleven Administrative-law liability of juristic persons . . . . .</b>	<b>207</b>
11.1 Introduction . . . . .	207
11.2 Czech legislation on administrative offences committed by juristic persons until 1 July 2017 . . . . .	208
11.3 New regulation of corporate liability for administrative offences existing since 2017. . . . .	211
11.4 Case-law of the European Court of Human Rights, the principle of <i>ne bis in idem</i> and its impact on the Czech national practice of administrative punishment. . . . .	216
11.5 Summary . . . . .	224
<b>Chapter twelve Conclusion . . . . .</b>	<b>225</b>
12.1 General remarks . . . . .	225
12.2 What entity can engage in legal conduct? . . . . .	225
12.3 Can a juristic person really enjoy legal capacity? . . . . .	227
12.4 Juristic persons as holders of fundamental rights . . . . .	229
12.5 How can a juristic person act under substantive law? . . . . .	230
12.6 Specific features of legal acts taken (not only by juristic persons) in procedural law . . . . .	233
12.7 Juristic person as a subject of responsibility . . . . .	234
12.8 No-fault liability of juristic persons . . . . .	235
12.9 Liability of juristic persons based on fault. . . . .	236
12.10 Vicarious liability of juristic persons . . . . .	238
12.11 Administrative-law liability of juristic persons . . . . .	239
Summary . . . . .	241
Bibliography . . . . .	247
List of case law . . . . .	258
Index . . . . .	262