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Causa contractus: auf der Suche nach den Bedingungen der Wirksamkeit des vertraglichen Willens, Veranstaltung, 2016-2018, Menaggio [VerfasserIn]; Albers, Gregor [HerausgeberIn]. [VerfasserIn]; Patti, Francesco Paolo [HerausgeberIn]. [VerfasserIn]; Perrouin-Verbe, Dorothée [HerausgeberIn]. [VerfasserIn]

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Consenting to international law

Besson, Samantha, 1973- [HerausgeberIn]; Hill, Louis [HerausgeberIn]

Cambridge: Cambridge University Press; 2024

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IPR-Nachwuchstagung, 4., 2023, Wien [VerfasserIn]; Heindler, Florian, 1986- [HerausgeberIn]; Melcher, Martina, 1985- [HerausgeberIn]; Engel, Andreas, 1984- [HerausgeberIn]; Kaesling, Katharina, 1984- [HerausgeberIn]; Köhler, Ben, 1989- [HerausgeberIn]; Rentsch, Bettina, 1988- [HerausgeberIn]; Roßbach, Susanna [HerausgeberIn]; Ungerer, Johannes [HerausgeberIn]

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Tagung "Insolvenz digital", 2022, Online [VerfasserIn]; Insolvenz-Forum, 28., 2022, Grundlsee [VerfasserIn]; Kodek, Georg E., 1963- [HerausgeberIn]

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VAT in the digital era: unilateral and multilateral options for reform

Xu, Yan [HerausgeberIn]

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Siems, Mathias, 1974- [Herausgeberln]; Yap, Po Jen [Herausgeberln]

Cambridge: Cambridge University Press; 2024

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Lengauer, Siegmar [HerausgeberIn]. [VerfasserIn]; Roiß, Irene [VerfasserIn]; Coser, Simone [VerfasserIn]; Dietrich, Johannes [VerfasserIn]; Prammer, Melanie [VerfasserIn]; Eigner, Fabian [VerfasserIn]

Wien: Jan Sramek Verlag KG; 2024

<u>Strafrecht in der alten Bundesrepublik 1949-1990 - Besonderer Teil : der Besondere Teil des</u> <u>Strafrechts im zeitgeschichtlichen Spiegel von Gesellschaft und Politik</u>

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