

Index

- abusive litigation, 28–29, 35, 62, 107, 251, 260, 268, 280–281, 283, 288, 293, 308, 311, 340, 350–351, 354, 359, 365
- account of profits, 321, 323–324
- anti-trust, *see competition*
- attorney's fees, 329
- blue-pencilling, 190–191, 209, 213, 227–228, 240, 359
- compensation, 110, 116, 173, 176, 178, 182, 188, 191, 196, 215, 231, 242, 354, 358
- compensatory damages, 319, 324
- competition, 29, 106, 120, 151, 185, 192, 233, 237, 243, 339, 358, 364
- competition by imitation, 27
- competition by innovation, 27, 120
- competitive advantage, 19, 22, 41, 73, 88, 90, 134, 148, 221, 252, 258, 266, 274, 284, 301, 326, 360–361
- competitive value, 42, 62, 176, 184, 203, 258
- complex product, 315, 328, 338
- compulsory licence, 339, 345, 347
- conditional non-compete agreement, 186
- consideration, 99, 142, 174, 178, 196, 209, 211, 215, 219, 227, 231, 241
- contractual freedom, *see freedom of contracting*
- contractual penalty, 179, 194, 216
- copyright, 9, 19, 79, 81, 85, 325, 335, 339, 341
- covenant not to use, *see non-use agreement*
- creative employees, 11, 17, 214, 225–226, 350
- criminal law, 44, 51–52, 80, 91, 95, 108, 194, 245–246
- damages, 248, 301, 312, 336, 359, 361, 365
 - in Germany, 313
 - in the United Kingdom, 318
 - in the United States, 325
 - under TSD, 330
- damages in lieu of injunction, 338, 347, 353, 361, 366
 - in Germany, 338
 - in the United Kingdom, 341
 - in the United States, 343
 - under TSD, 344
- discretion, 259, 261, 267, 275, 281, 286, 293, 303, 311, 317, 324, 342, 360
- discrimination based on nationality, 238
- dominant position, 24, 28, 107, 120, 236, 339, 350
- economic growth, 23, 25, 106, 150, 350
- employee invention, 48, 104, 114, 117, 131, 136, 145, 157
- equitable, 122, 246, 266, 276, 299, 303, 318, 322, 337
- ethics, 32–33, 120, 150, 161
- ex parte, 286, 290, 302, 311
- exemplary damages, 276, 323, 325, 329, 335, 337
- fast-moving industries, 90, 355, 362
- fictitious licence, *see reasonable royalty*
- fidelity, 7, 49, 108–109, 124, 185, 262
- former colleagues, 98, 104, 109, 115, 119, 166, 177, 180, 205, 355
- freedom of contracting, 121, 177, 190, 201, 216, 219, 229, 241, 359, 363
- freedom of movement of persons, 238
- freedom of self-determination, 3, 10, 57, 168, 354
- freedom to choose employment, *see freedom to choose occupation*
- freedom to choose occupation, 110, 129, 155, 182, 185, 279, 362, 364
- freedom to compete with the former employer, 10, 109, 159, 178, 182, 188

390 Index

- garden leave, 185, 208, 213, 359
 good faith, *see fidelity*
 goodwill, 198–199, 204, 206, 217,
 221–223, 235, 296, 301
- head start, *see competitive advantage*
- implied obligation of confidentiality, 159,
 202, 210–211, 220, 229, 349
 in Germany, 94, 108
 in the United Kingdom, 121
 in the United States, 140
- incentive, 11, 18, 23, 90, 163, 225, 357,
 362
- inevitable disclosure doctrine of, 147, 226,
 269–270, 284, 303
- information about clients, 96, 102, 109,
 112, 132, 147, 158, 173, 180, 204,
 206, 222, 239, 265, 277, 284,
 316
- information about illegal behaviour, 39, 51,
 58, 60, 74
- information policy, 139, 162, 367
- information unique to employer's business,
 144, 148, 160
- information which is a by-product of a
 business activity, 128, 139
- infringer's profit, 314, 316, 318, 321–322,
 330, 332
- injunction, 248–249, 283, 314, 319, 325, 360,
 364
 in Germany, 250
 clarity, 253
 duration, 255
 requirements, 250
 substance, 252
 in the United Kingdom, 259
 clarity, 262
 duration, 263
 for past misuse, 265
 requirements, 259
 substance, 261
 in the United States, 267
 clarity, 274
 duration, 274
 requirements, 267
 substance, 269
 under TSD, 277
 duration, 282
 requirements, 277
 substance, 282
- injunction against security, 290, 292, 296,
 302, 306, 310–311, 351, 360, 365
- innovation, 12, 18, 28, 35, 85, 89, 106, 150,
 161–162, 226, 240, 350, 356, 364
- inseparability theory of, 94
- intimate information, *see private information*
- investment, 11, 13, 16, 31, 90, 216, 240,
 350, 354
- know-how, 70
- lead time, *see competitive advantage*
- legal nature, 77, 82, 158
- licence analogy, *see reasonable royalty*
- licensing, 8, 13, 17, 307, 314
- limitation of employee's liability for
 damages, 331, 337, 361
- market experimentation, 23, 350, 357
- measures to maintain secrecy, 14, 42, 49,
 51, 57, 65, 68, 143, 159
- monopoly, 24, 200, 217
- moral prejudice, 333, 361, 366
- negative information, 60, 72
- negative knowledge, *see negative information*
- non-compete agreement, 17, 29, 67, 77,
 106, 166
 competition law, 233
 in Germany, 177
 duration, 184
 requirements, 178
 substance, 183
 territory, 182
 in the United Kingdom, 206
 duration, 207
 scope, 206
 territory, 208
 in the United States, 222
 duration, 222
 scope, 222
 territory, 223
 under TSD, 242
- non-dealing clauses, 205
- non-disclosure agreement, 20, 29, 67, 165,
 229, 242
 in Germany, 169, 177
 duration, 173
 substance, 171, 173
 in the United Kingdom, 201
 duration, 202
 substance, 201
 in the United States, 219
 substance, 219
 under TSD, 242
- non-poaching agreement, 167, 205, 221,
 228, 230
- non-solicitation agreement, 166, 230
 in Germany, 190

Index

391

- in the United Kingdom, 193, 204
- in the United States, 220, 228
- opportunity costs, 17, 350
- parent company, 181, 200
- patent, 9, 16, 19, 22, 72, 85, 103, 118, 132, 145, 357
- personal information, *see private information*
- personality rights, 84, 336
- plaintiff's loss, 316, 318–319, 326, 330, 332
- pre-employment experience, 146, 170, 172
- preliminary injunction, 285, 310, 351, 360, 365
 - in Germany, 286
 - duration, 291
 - requirements, 286
 - revocation on request, 291
 - substance, 290
 - in the United Kingdom, 293
 - duration, 298
 - quia timet injunction, 294
 - requirements, 293
 - substance, 298
 - in the United States, 300
 - duration, 303
 - requirements, 300
 - substance, 303
 - under TSD, 304
 - duration, 307
 - requirements, 304
 - revocation on request, 307
 - substance, 307
- presumption, 27, 115, 251, 288, 301
- private commercial information, 68
- private information, 38, 45, 53, 56, 68, 72, 76, 200
- property right, 77, 81, 83
- proportionality, 174, 240, 278–279, 282–283, 335, 340, 348, 360, 364
- punitive damages, *see exemplary damages*
- punitive effect, 255, 266, 276, 334, 352, 361
- radius clause, 206
- reasonable royalty, 328, 334, 337
- repudiatory breach, 210
- reputation, 128, 301, 327, 333
- restraint of trade doctrine of, 236
 - in the United Kingdom, 192–193, 208, 212
 - reasonableness, 194, 200
 - in the United States, 216, 227–228
 - reasonableness, 216
- reverse engineering, 15, 40, 47, 72, 84, 155, 327
- reversed burden of proof, 115, 152
- rule of reason, 224, 237
- separability theory of, 107, 136, 159
- service employees, 225–226
- service-oriented economy, 10
- shop right, 145
- Silicon Valley, 24, 31, 35
- spill-overs, 22, 120, 139, 162, 223, 241, 347, 357, 359, 361
- springboard, 256, 263, 266, 274, 283, 298, 304, 314, 328
- start-up, 22–24, 151, 161
- subsidiary, 181, 200
- tacit knowledge, 20, 38, 76, 113, 118, 356
- technical information, 75, 102, 112, 118, 147, 262, 265, 275, 356
- transaction costs, 13, 16, 20, 242, 364
- welfare, 28–30, 106