

19.2.2026**Author**

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Title

Einführung in das Prüfungsrecht / Markus Pein

Publication year

2015

Source/Footnote

In: Wissenschaftsrecht. - 48 (2015) 3/4, S. 362 - 396

Inventory number

41939

Keywords

Prüfungswesen

Abstract

The body of law governing university examinations is as diverse as it is fragmented. Countless norms are part of sub-statutory autonomous university legislation. Their constitutional foundation is Articles 12 para. 1 and 3 para. 1 of the German Constitution (Basic Law). Where there is no express rule, general principles of the law of university examinations govern the case. Adjudication usually resolves around questions relating to the quality and quantity of test questions, to multiple-choice-tests, to cheating, to downgrading after an appeal, to the categories of errors, and the appropriate form of legal remedy. The subjects to which test questions may relate can usually be found in the regulations governing the conduct of the examination. If the exam is specific to one profession, the demands of the respective profession may also be taken into consideration.

Multiple-choice exams need a legal foundation which must contain rules about the permissible percentage of failing candidates in order to react to the relative difficulty of the test. With respect to adjudicating cheating, it is important to note that the question whether or not the cheater was successful is irrelevant. Just as in general administration law, there is the possibility of ending up with

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a worse result after the appeal (reformation in peius) – the law governing examination is no exception in this regard. In other words, the grade may get worse. However, there are stricter rules than usual, pertaining to particularities of the law governing examinations. There are two categories of errors: one is a material grading error, the other a procedural error. Material grading errors are usually remedied by grading the test again. Procedural errors demand a repeated examination, at least pertaining to the faulty part. The adjudication of material grading errors poses difficulties. Part of the grading process is an assessment by the examiner which is subject to no more than limited judicial review. That, of course, is a rule of law problem – in order to compensate, the examiner must be granted the opportunity to "rethink" his or her grade. The public law governing examinations may also guide civil law suits in that area and provides the applicable foundations. (HRK / Abstract übernommen)