Abstract

Discounted Cash Flow Principles in Collective Investment Schemes and Tort Law

On the Relevance of Economic Asset Valuation in the Legal Context

Only at first glance do dividends, health, a claim for damages and pension arrangements have little in common. Individuals behave in a utility-maximizing way. From a human perspective, only the benefit contained in all these things can be the relevant core. A closer look therefore shows that it is essentially always about utility, even if it exists in different forms. A judge who determines the amount of a claim for damages and a stock analyst who evaluates a stock thus devote themselves to the same task in essence. Both try to correctly determine a certain amount of utility. Only in economics is the study of utility a major focus of research. Law, on the other hand, relies on the insights of economics to solve more complicated cases. Therefore, an investigation of law that raises questions that are answered only in economics, but not in law itself, requires an interdisciplinary approach to investigation such as that used in this thesis.

The capital market offers investors the opportunity to choose from an increasingly wide range of collective investment vehicles on offer. From the regulation of various collective investment vehicles, it is possible to determine how lawmakers assess the suitability of these vehicles for various investment activities. For example, it can be determined whether the lawmakers consider a particular vehicle to be suitable only for certain investors or for all investors on the basis of its investment activity.

These lawmaker assessments are relevant, among others, for providers of collective investment vehicles to choose a vehicle based on the respective regulation and depending on their own goals and ambitions.

The broad range of collective investment vehicles on offer is also a challenge for investors who are seeking a vehicle that meets their demands. In this context, investors can be guided by the regulation of individual vehicles and thereby by the related assessments of the lawmaker.

Accordingly, this thesis addresses the question of which lawmakers' assessments can be derived from the regulation of various collective investment vehicles regarding their qualification for a collective investment suitable for the general public. In connection with this, it is examined whether these assessments appear to be correct against the background of the statements of the DCF principles. The distinction between speculation and investment/value investing as the two contrasting forms of capital investment is at the heart of the evaluation of

the risk of various investment activities; this can be determined with the help of the DCF principles.

The valuation of assets is not only of importance in capital investment on the capital market, but also, for example, in the tort law of §§ 249 ff. BGB, when pecuniary damages have to be compensated. This is because only if an asset or the loss of an asset is correctly determined can the compensation to be paid also be correctly determined. There is no precise specification in the law as to how pecuniary losses are to be determined in the context of tort law. However, it is very clear that neither undercompensation nor overcompensation is in principle compliant with the legal requirements: Whoever is obligated to compensate for damages must restore the condition that would exist if the circumstance obligating compensation had not occurred, Section 249 (1) of the German Civil Code. If a pecuniary loss to be compensated is underestimated, the compensation is consequently too low, which means that the injured party does not receive compensation from the damaging party for at least part of the losses he has suffered. If, on the other hand, the pecuniary loss to be compensated is assessed too high, the tortfeasor must subsequently pay more to the injured party than the injured party actually lost as a result of the damaging event.

In cases related to the capital market, for example, the relevance of DCF principles is regularly recognized. In cases of tort law, which lack a connection to the capital market, a relevance of the DCF principles is often overlooked. The question arises whether, with the help of the DCF principles, an approach can be worked out with the help of which pecuniary damages can be determined logically and reliably.