

Index

Abstraktionsprinzip (abstraction principle)
219–220, 260, 439–439

Acceptance (*Annahme, sbōdaku*)

- acknowledgement of offer, and 64 in fn 469, 72–72, 78–78, 162–162, 248, 308–308, 342 and in fn 2576, 343, 367 in fn 2724, 370, 388
 - certainty, see Certainty, acceptance
 - coming into effect, see Mailbox rule, Postal rule
 - communication, see Communication of acceptance
 - confirmation and, see acknowledgement of offer
 - congruence with offer 72–73, 161, 247, 309, 371–372, 389–389
 - counter-offer, see Offer, counter-offer
 - definition 72–73, 161–162, 247–248, 308, 369–369, 388–388
 - doctrine of offer and, see Offer, acceptance-model
 - express 74, 146, 162, 249, 310, 369, 388
 - generally 71–71, 161–161, 247–247, 308–308, 369–369, 388–389
 - implied 74, 146, 162–163, 249–249, 309–309, 369–369, 388
 - late 79, 166–166, 244, 248–248, 253, 295–295, 311–312, 375, 391–392
 - loss of effect through revocation or withdrawal 79–79, 165, 253, 312, 378–379, 379, 392, 393–393
 - method, see Method of acceptance
 - period 79, 159–161, 166, 245–245, 252–253, 296, 311, 374–375, 391–391
 - silence as, see Method of acceptance, silence
 - time frame, see period
 - unilateral contracts, in, see Method of acceptance, unilateral contracts
- Advertisements, see Invitations to treat, advertisements
- Agents (*Vertreter, dairi-nin*)
- authentication of contract by 191–191, 271, 326–327
 - authorisation of, see Seals, sign of authorisation
 - automated electronic (Smart Speakers) 340, 342, 343

- declaration of intention made by 50
- real estate, see Professionals, real estate agent
- receipt of declarations of intention by 75, 156

Agreement, see Contracts, agreements and *Allgemeine Geschäftsbedingungen (AGB)*, see Standard Terms

Annahme, see Acceptance

Arrival rule, see Mailbox rule

Auctions, see Invitations to treat, auctions

Bürgschaft, see Form and formalities, guarantees

Brexit 52–53, 308–308

Business (person), see Merchant

Certainty

- acceptance, of 72–72, 140, 165, 310
- agreement, of 29, 60, 394–395
- offer, of 65–67, 140, 149, 152, 307, 369–370, 388

Communication of acceptance

- disruptions or technical problems during 76–77, 78 in fn 577, 155
- generally 73, 145, 161, 309, 370, 374, 389
- method, see Method of acceptance
- unilateral contracts, in 73

Communication of offer

- disruptions or technical problems during 155, 243
- generally 67, 145, 149, 306–307, 387
- method, see Method of offer
- unilateral contracts, in 67

Conclusion of contracts, see Formation of contracts

Consideration, see also *Indicia of seriousness; Tetsuke*

- adequacy of 87–88, 92–92
- bargain theory, and 35, 42, 83, 87, 92
- deeds, and 42, 83 and in fn 615
- definition 83, 85–87
- function 83
- generally 82–85, 301, 316–318
- insufficient 90–91
- move from promisee 93–93
- nominal 89–90
- past 92–92

Index

- reciprocity and 35–37, 42, 83
- sufficiency of 87–89, 92–92
- thing of value 85, 87
- unilateral contracts, in 86
- Consumer
 - definition 55–56, 138–139, 214–214, 384
 - contracts and information duties 320–320
 - contracts and formalities 101, 165, 183, 183–184, 194, 206, 262–262, 343–344, 346–346, 396–397, 398, 398
 - regulation generally 79, 94, 118, 137, 138, 212, 215–215, 246–247
- Contracts (*Verträge, keiyaku*)
 - agreements, and 28–29, 35, 57–58, 116, 217, 221, 236, 300, 365, 386
 - bargains as, see Contract law, bargain theory
 - conclusion of, see Formation of contracts
 - consideration, see Consideration
 - definition 28–30, 35–37, 48–49, 115–119, 124–125, 217–218, 221–221, 300–301, 365, 386–386
 - electronic 107–110, 192–197, 259–260, 297–298, 339–351, 396–397
 - essential terms (*essentialia negotii*) 66–67, 149, 152–153, 180 in fn 1367, 238, 306, 368–368, 371, 394
 - form, see Form and formalities
 - formation, see Formation of contracts
 - freedom of, see Freedom of, contract
 - freedom of form, and, see Freedom of, form
 - generally 4
 - intention, see Intention to be legally bound
 - negotiations, and 57, 116, 163, 237–238, 353–354, 355, 357–358, 366
 - promises and 28–29, 49, 55, 83–85, 125–126, 221, 300, 386
 - smart 339–340, 348–351
 - types of, see Types of Contract
- Contract law (*Vertragsrecht, keiyaku-hō*)
 - bargain theory and 35, 300, see also Consideration, bargain theory
 - dispositive and mandatory rules of 5, 12 in fn 49, 15, 55, 94, 140, 142–143, 158, 172, 199, 236, 247, 262, 276, 292, 301, 318, 365, 388
 - equity and 14 and in fn 63, 87 in fn 651, 92, 336, see also Estoppel
 - historical development of, see Historical development of contract law
 - legal practice and 113–114, 205–207, 280–285, 351–361
 - reform of Japanese contract law (law of obligations), see Modernisation of Japanese law of obligations
 - sources of, see Sources of (contract) law
 - standard terms, see Standard terms
- Conveyance, see Form and formalities, sale of land
- Customs, see Sources of (contract) law, customs and customary law
- Dairi-nin*, see Agents
- Declarations of intention (*Willenserklärungen, ishi hyōji*)
 - acceptance as 143–144, 145, 154, 161, 236, 308
 - definition 144–145, 237–237
 - empfangsbedürftige and nicht empfangsbedürftige declarations, see types
 - generally 115, 236
 - interpretation 58–59, 147–148, 238
 - method, see Method of acceptance; Method of offer
 - offer as 143–144, 145, 149, 154, 236, 303
 - Rechtsgeschäfte, and 143–144
 - types 145–146
- Deeds
 - consideration, and, see Consideration, deeds
 - definition 43 and in fn 298
 - effect 83, 84, 111
 - generally 93–94, 101–103, 106, 318, 322–322, 357–358
 - requirements 101–102, 106, 323–324, 357–358
 - signature and seal impression 101, 102, 104, 106, 324, 326, 327–327, 337–338
 - witness 102, 324
- Dispatch rule, see Postal rule
- Donation, see Gifts
- Draufgabe*, see Indicia of seriousness, *Draufgabe*
- English law 36, 42–182, see also Contracts; Contract law; Formation of contracts
- Entrepreneur, see Merchant
- Estate agents, see Professionals, real estate agents
- Estoppel 141–142
- European Union law
 - Brexit, see Brexit
 - English law and 12, 12, 17–19
 - generally 12
 - German law and 12, 21, 26–26

Freedom of

- contract (Vertragsfreiheit, keiyaku no jiyū) 12, 140, 236, 253, 289, 300
- form (Formfreiheit, hōshiki jiyū) 58, 140, 170, 236, 297, 381, 394, 395

Form and formalities

- consequence of non-fulfilment 94, 103, 197–203, 255–256,
- consumer contracts, see Consumer, contracts and formalities
- dauerhafter Datenträger (durable medium) 181–182, 320, 397
- deeds and, see Deeds, requirements
- document (shomen) 99, 259–260, 321, see also Urkunde
- electro-magnetic record (denjiteki jiroku) 260, 345
- electronic documents and 107–108, 192–197, 260, 345–346
- electronic form (Elektronische Form) 194–197, 344–345
- evidence in writing 99–101, 319–320
- functions of 93, 94, 172–173, 254, 319
- generally 6, 30, 93–113, 253–255, 318–318, 381–381, 395–395
- gifts, see Gifts, formalities
- guarantees (Bürgschaftserklärung, hoshō keiyaku) 43, 93 in fn 697, 100, 100, 103, 106, 108, 109, 152, 178, 183, 194–195, 201, 260–261, 320, 321–321, 326–326, 345, 347, 398
- history, in 43–44, 54, 128–130, 222–224
- legal practice and, see Contract law, legal practice
- memorandum 99, 319
- notarial authentication (notarielle Beurkundung, shōsho no sakusei) and notarial deed (notarielle Urkunde, kōsei shōsho) 184–187, 269–272, 322–325
- registration of property title 110–112, 203–204, 254, 272–273
- sale of land or real estate 54–54, 100, 102, 111–112, 113, 187, 200, 203–204, 254, 272–273
- signing and sealing, see Signatures; Seals
- stamp tax, see Stamp Tax
- text form (Textform) 176–184, 319–320, 397–397
- types 93–94, 171, 318, 395
- Urkunde (instrument) 178–180, 321,
- writing 99–100, 176–184, 258–263, 319, 321–322, 396–396

Formation of contracts

- acceptance, see Acceptance
- agreement, see Contracts, agreements

- certainty, see Certainty
- consideration, see Consideration
- form and, see Form and formalities
- generally 7–9, 28–29, 57, 139–141, 236–239, 293–294, 303, 365–366, 385–386, 390
- indicia of seriousness, see Indicia of seriousness
- intention to create legal relations, see Intention to be legally bound
- invitations to treat or invitatio ad offerendum or , see Invitations to treat
- offer, see Offer

German law 42–45, 55–65, 182–309, see also Contracts; Contract law; Formation of contracts

Gifts (*Schenkung, zōyo*)

- contracts, and 30 and in fn 181, 117, 168, 217, 301
- formalities 103, 187, 237, 256, 260–260, 261, 270, 322, 324, 399
- performance of 201, 325, 399

Goods (*Waren, shōhin*)

- definition 66 in fn 482, 97–98, 364–365, 384–385
- display of, see Invitations to treat, display of goods
- software as 98, 173, 364–365, 384

Guarantees, see Form and formalities, guarantees

Hasshin shugi, see Postal rule

Historical development of contract law

- Allgemeines Landrecht für die Preussischen Staaten (ALR) 123–132
- contract forms, and 43–44, 54, 128–130, 222–224
- codifications of German and Japanese civil codes (BGB, Minpō) 133–136, 228–233
- definition of contract 35–37, 124–125, 221–221
- English law generally, in 28, 31–55
- formation of contract 41–43, 49–52, 54–54, 125–128
- forms of actions and the writ system 31, 34–35, 37–40
- German law generally, in 119–138
- Gemeines Recht (German common law) 123–132
- intention to be legally bound 51–52
- Japanese law generally, in 218–235
- postal rule 49–51, 127–127

Index

Hoshō keiyaku, see Form and formalities, guarantees

Indicia of seriousness, see also Intention to be legally bound; Form and formalities

- consideration, see Consideration
- Draufgabe 130–132, 135, 204–205, 302–302
- generally 6, 315–317
- historically 41–43, 130–132, 135, 224–225, 302–302
- tetsuke, see Tetsuke

Insbō, see Seals

Intention to be legally bound (intention to create legal relations)

- commercial relations, in 80, 314
- courtesy or kindness (Gefälligkeiten, *kōi*), acts of 80, 314–315
- definition 80, 314, 394
- family relations, in 80, 81–82, 314
- generally 80–82, 166–169, 314–315, 394–395
- interpretation 58–59, 80, 167–169, 394–395
- letters of intent (LOI) 80 in fn 595, 169, 171, 314, 369
- mere puffs and sales talk 62, 304
- social relations, in 80, 314

International law, see also Model contract laws

- English law, and 19–20
- European Convention on Human Rights (ECHR) 13, 13, 21
- German law, and 27–27
- Japanese law, and 216–216
- United Nations Convention on Contracts for the International Sale of Goods (CISG) 4, 362–382

Invitations to treat (*invitatio ad offerendum*, *mōshikomi no yūin*)

- advertisements 61, 152, 240, 305, 368, 388
- auctions 63, 150
- display of goods 62–63, 152, 241, 304, 305–306, 388
- generally 60–65, 150–152, 240–241, 303–304, 367–368, 387–388
- mere puffs and sales talk, see Intention to be legally bound, mere puffs
- petrol station 63, 151, 304
- public transport 64–64, 151, 240–241, 306
- rewards, offer of 62
- taxi 65–65, 241, 304–305
- transfer of information 62, 368

– vending machines 61, 151

Ishi hyōji, see Declaration of intention

Japanese law 310–435, see also Contracts; Contract law; Formation of contracts

Kaufmann, see Merchant

Keiyaku, see Contracts

Keiyaku-hō, see Contract law

Legal thinking (Japan, generally) 410–415

Legal tradition

- civil law 11
- classification of 11–12, 208–210
- common law 11
- hybrid or mixed 208–209

Letters of Intent (LOI), see Intention to be legally bound, letters of intent

Mailbox rule (*Zugangstheorie*, *tōtatsu shugi*)

- application of 67, 76,
 - business hours 68, 78,
 - electronic communications, and 68–69, 76,
 - generally 67–69, 75–79, 154–158,
 - instantaneous communications, and 69, 76
 - meaning 67–69, 76–78,
 - postal communications, see Postal rule
- Merchant (*Kaufmann*, *shōnin*), definition 102–103, 215–216, 318, 547

Method of acceptance

- conduct 73, 163, 249, 309, 388
- electronic means 74, 250, 341
- generally 73–74, 162–165, 249–249, 309–309, 370–370, 372–373, 388–389, 391
- inactivity 73, 163, 164, 249, 370, 389
- instantaneous means, see electronic means
- orally 74, 162, 388
- post and writing 74, 162
- silence 73, 164, 309, 370, 389
- unilateral contracts, in, see conduct

Method of offer

- conduct 60, 149
- electronic means 60, 150, 243, 341, 372,
- generally 60–60, 149–150, 242–243, 372–373, 391
- inactivity 60
- orally 60, 372
- post and written 60, 242, 372

Model contract laws: Common European Sales Law (CESL), Draft Common Frame of Reference for European Con-

- tract Law (DCFR), Principles of European Contract Law (PECL) 38, 545–567
- Modernisation of Japanese law of obligations
 - background 286
 - coming into effect of declarations of intention 289–293
 - content 288–298
 - form and formalities 296–298
 - formation of contract 293–294
 - generally 285–298
 - process 286–288
 - validity of declarations of intention 295–296
- Mono*, see Property
- Mōshikomi*, see Offers
- Mōshikomi no yūin*, see Invitations to treat
- Offer, see also Invitations to treat
 - acceptance model, and 49, 57, 116, 236, 293, 303, 365, 385
 - ad incertae personas (to unspecified persons) or to the public 60, 150, 240, 303, 367, 387–388
 - certainty, see Certainty, offer
 - coming into effect, see Mailbox rule; Postal rule
 - counter-offer 69, 72, 161, 166, 248–248, 295, 309, 311, 372, 389,
 - communication, see Communication of offer
 - definition 59–60, 149–150, 239–240, 303–303, 367, 387
 - display of goods, see Invitations to treat, display of goods
 - express and implied 60, 146, 149
 - generally, see definition
 - loss of effect through expiry 70–70, 159–160, 243–244, 307–308, 378, 380, 392
 - loss of effect through rejection 71, 161, 247, 380, 392
 - loss of effect through revocation or withdrawal 70–71, 158–159, 245–247, 295–295, 295–296, 307–307, 378–380, 392, 393–393
 - method, see Method of Offer
 - new offer, see counter-offer
- Postal rule (*hasshin shugi*)
 - application of 78, 249–252
 - electronic communications, and 78, 250, 251–252
 - generally 78–79, 249–252
 - historical development, see Historical development of contract law, postal rule
 - instantaneous communications, and 78
 - meaning 78–79, 249–250
- Professionals
 - generally 357–361, 328
 - notaries public (Notare, *kōshō-nin*) 358–359
 - real estate agents (Immobilienmakler, *fudō-san-ya*) 354–357, 360–361
 - solicitors (Rechtsanwälte, *bengo-shi*) 357–358
 - *shihō shoshi* (judicial scriveners) 261, 354–355, 360–361
- Property (things, *Sachen*, *mono*)
 - buildings (Gebäude, *tatemono*) 96, 174, 257–258
 - chattels and choses (things) 97–98
 - corporeal (körperlich) and incorporeal (unkörperlich) 173–174
 - fixtures (*teichaku-butsu*) and accessories (*Zubehör*) 96–97, 175–175, 257–258
 - general classification of 96–98, 173–175, 256–258
 - *Herrschafts-* (objects under control) and *Verfügungsobjekte* (objects of disposition) 173
 - immovable (unbeweglich, *fudō-san*) and movable (beweglich, *dōsan*) 174, 257
 - land (Grundstücke, *tochi*) 96–96, 174,
 - personal and real 96
 - software and data 97–98, 173, 257, 365
 - tangible (*yūtai-butsu*) and intangible (*mutai-butsu*) 256–257
 - timber and crops 97, 257
- Rechtsgeschäfte* (*hōritsu kōi*, juridical act)
 - contracts as 143, 236
 - definition 143
 - declarations of intention (*Willenserklärungen*, *ishi hyōji*) and 143, 236
 - generally 143–144, 148–148, 236–236
 - types 148–148
- Registration of real property, see Form and formalities, registration of property title
- Sachen*, see Property
- Sale of land or real estate, see Form and formalities, sale of land or real property
- Schenkung*, see Gifts
- Seals (*Stempel*, *inshō*)
 - definition 105, 265–265
 - electronic 108, 349–349
 - employment today 105, 106–107, 184–185, 188, 266–266, 323, 336–339
 - forms, and, see employment today
 - generally 103, 263–264, 328–329

Index

- ginkō-in 268
- jitsu'in 267–268
- historical meaning of 36, 43–44, 128–129, 222–223, 329–336
- mitome'in 269
- sign of authentication, as 128, 263
- sign of authorisation, as 331, 332
- types 223, 266–268, 330–332, 338–339
- Shomei*, see Signatures
- Shōdaku*, see Acceptance
- Shōhin*, see Goods
- Shōnin*, see Merchant
- Siegel*, see Seals
- Signatures (*Signatur*, *shomei*)
 - definition 104, 188–190, 265–265, 326, 396–397
 - electronic 108–110, 194–197, 346–348, 397
 - forms, and 100, 106, 176, 266–266, 325–326, 398–398
 - generally 103–104, 188, 263–264, 325
 - historical meaning 128–129, 222
 - marks (Handzeichen) and 104, 189–190, 327
 - method 104, 190–192, 326–327
 - other forms of signing 222, 338–339
 - sign of authentication, as 104, 188, 263
- Silence, see Method of acceptance, silence
- Sources of (contract) law
 - case law (Rechtsprechung, hanrei) 17–17, 24–26, 215–216
 - customs and customary law 14, 21, 210
 - English law generally, in 13
 - equity 14
 - EU law, see European Union law
 - German law generally, in 20–21
 - inter-relationship 13–15, 21–22, 211–212
 - international law, see International law
 - Japanese law generally, in 210–211
 - legislation (Gesetze, hōrei) 15–16, 22–24, 212–215
- Stamp tax (*inshi-zei*)
 - English law, in 112–113
 - Japanese law, in 256, 273–275
- Standard terms (*Allgemeine Geschäftsbedingungen*, AGB, *yakkan*) 181, 217, 307, 416
- Surities, see Form and formalities, guarantees
- Tetsuke*, see also Indicia of seriousness
 - definition 277–278
 - functions 275, 279–281, 315–317
 - generally 224–225, 275–281, 316–318
 - iyaku 279, 317
 - kaiyaku 275, 317
 - method of effecting 278–279
 - shōyaku 279, 317
 - types 279–281, 317–317
- Trader, see Merchant
- Trennungsprinzip* (separation principle) 218–219
- Tōtatsu shugi*, see Mailbox rule
- Types of contract
 - B2B, B2C, C2C 8
 - bilateral (gegenseitig or zweiseitig verpflichtend, sōmu) 29, 29–30, 115, 117, 217, 301, 467
 - consensual (konsensual, dakusei) 116, 217, 239, 300
 - dinglich (disposition) and schuldrechtlich (obligatory) 141
 - executed and executory 29, 302
 - formal (yōshiki) 217
 - gratuitous (unentgeltlich, mushō) and onerous (entgeltlich, yūshō) 117, 217, 218
 - multilateral, see bilateral
 - parol 93
 - real (Realvertrag, yōbutsu) 124, 126, 217
 - simple and under seal or by speciality 30, 93, 94
 - unilateral 29–30, 62, 71, 301, 309
 - unilaterally obliging (einseitig verpflichtend, henmu) 117, 217, 301
- Unilateral contracts see Types of contract, unilateral
- Unternehmer*, see Merchant
- Vertrag*, see Contracts
- Vertragsrecht*, see Contract law
- Vertreter*, see Agents
- Waren*, see Goods
- Willenserklärung*, see Declaration of intention
- Yakkan*, see Standard terms
- Zōyo*, see Gifts
- Zugangstheorie*, see Mailbox rule