

# Index

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

Acceptance (*Annahme, shōdaku*)

- 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

- 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
- dispersive 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, 318–319, 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

*Hashin 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

*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

*Inshō*, 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  
*Ishī 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 incertas 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 (*basshin 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 (yūta-butsu) and intangible (mutai-butsu) 256–257
  - timber and crops 97, 257
- Rechtsgeschäfte* (*bōritsu 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 (*Siegel, 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

- 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
- Sureties, 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 (obligationary) 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