



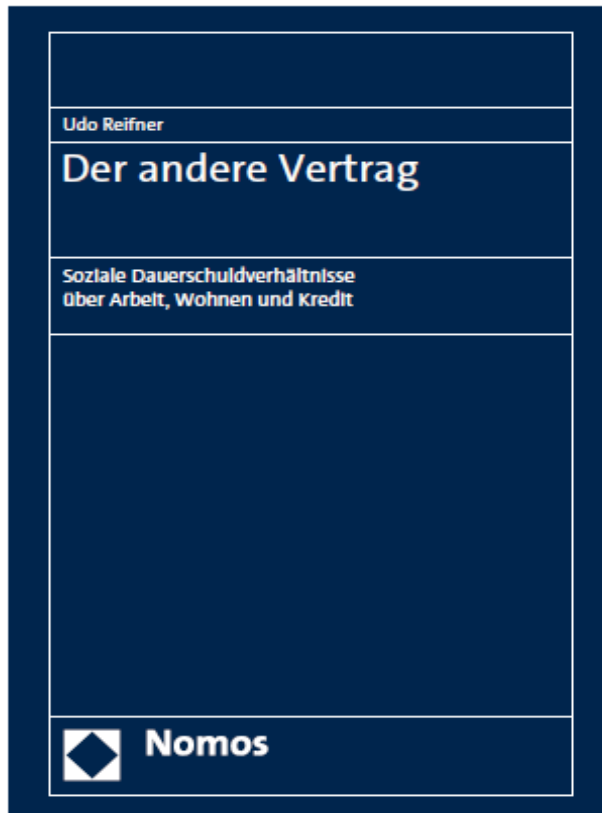
“The other contract”

a common basis for Credit, Labour & Tenancy Law

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Association of Consumer Law on
Challenges and Unanswered Questions of Consumer Law
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Prof. em. Udo Reifner, Hamburg

Farewell to Slavery in Contract Law – Towards an Alternative Concept of Contracts



Der andere Vertrag

Soziale Dauerschuldverhältnisse über Arbeit, Wohnen und Kredit

By Prof. em. Dr. Udo Reifner

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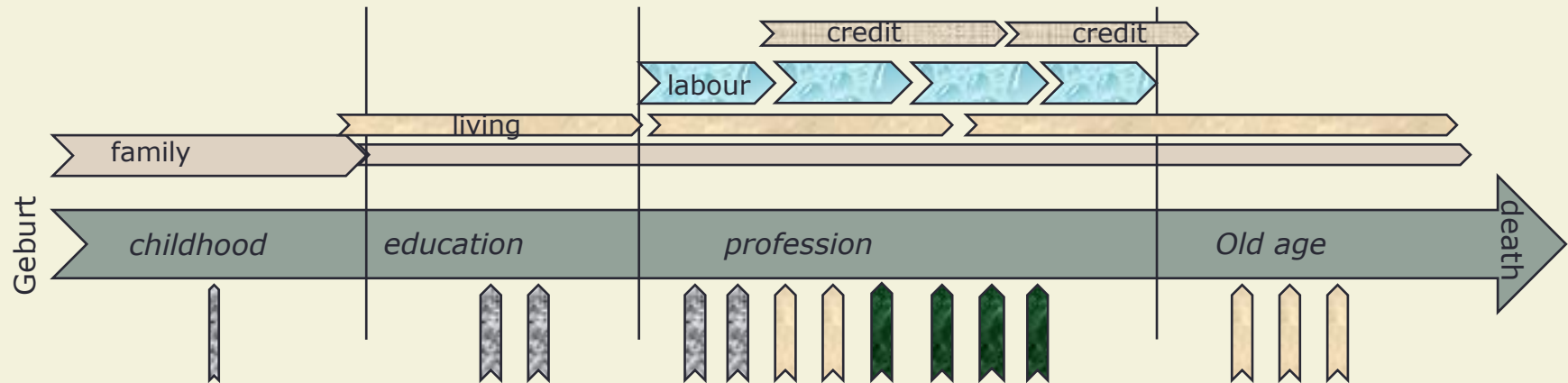
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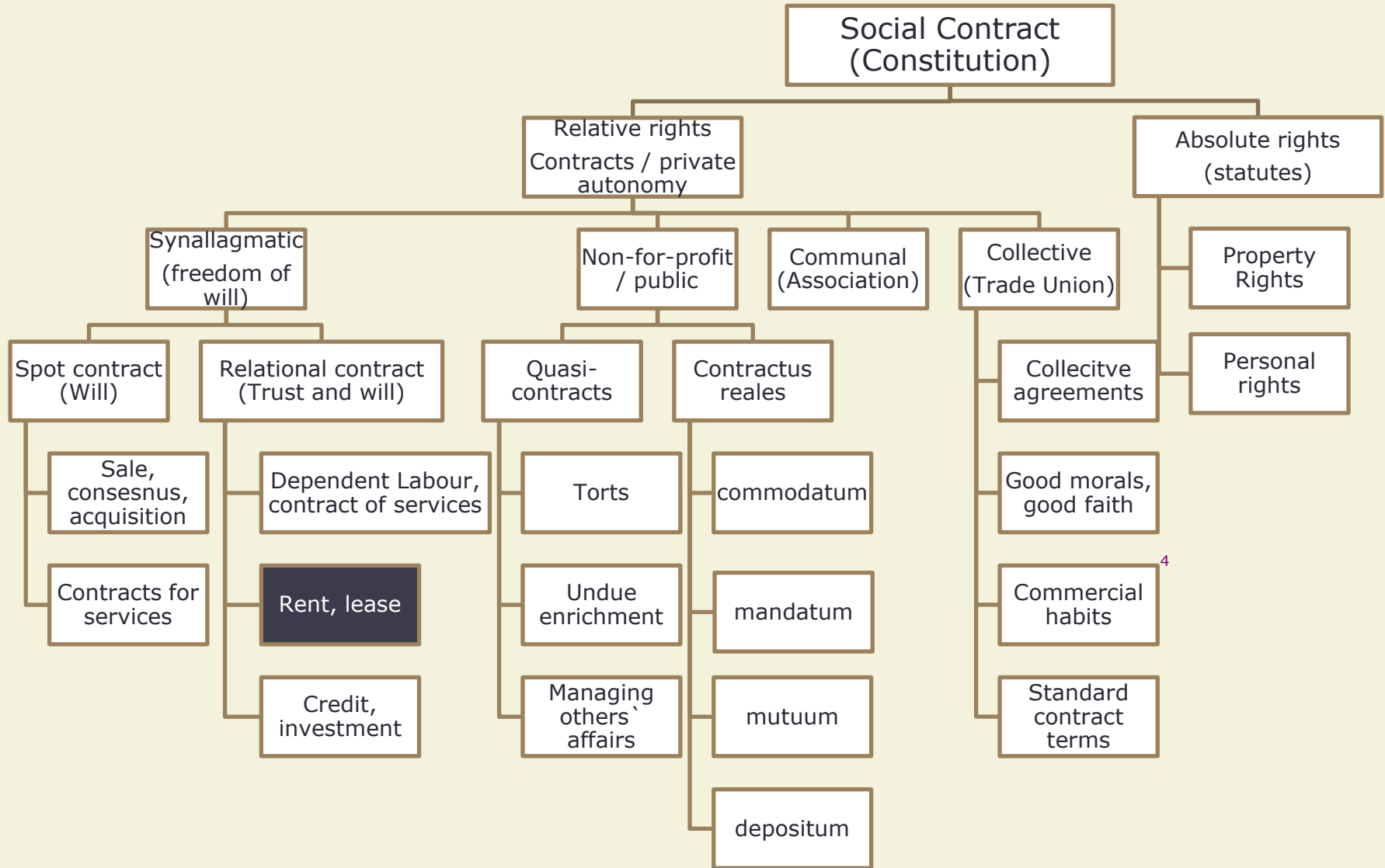
Contracts secure freedom and democracy. But with regard to social longterm relations the dominating sales model fails to take into account purpose and duration. Instead ideologies of slavery like subordination and dependency still dominate where the law has to solve problems with regard to the use of jobs, homes and consumer credit. The historical

alternative of a rent contract (*locatio conductio*) was and is still able to replace the sales contract model. Its application with regard to its history and structure would revolutionize the law of obligations and lead to a contract model that would be more just in its double sense.

Long term contracts: Trust and Cooperation



Sales and Service: Relation and free Will



The use of capital

Ownership and Rent

Ownership

Section 903 BGB
Powers of the owner

The owner of a thing may ... ***deal with the thing at their discretion and exclude others*** from exercising any influence whatsoever.

Sec. 433 BGB
Purchase agreement

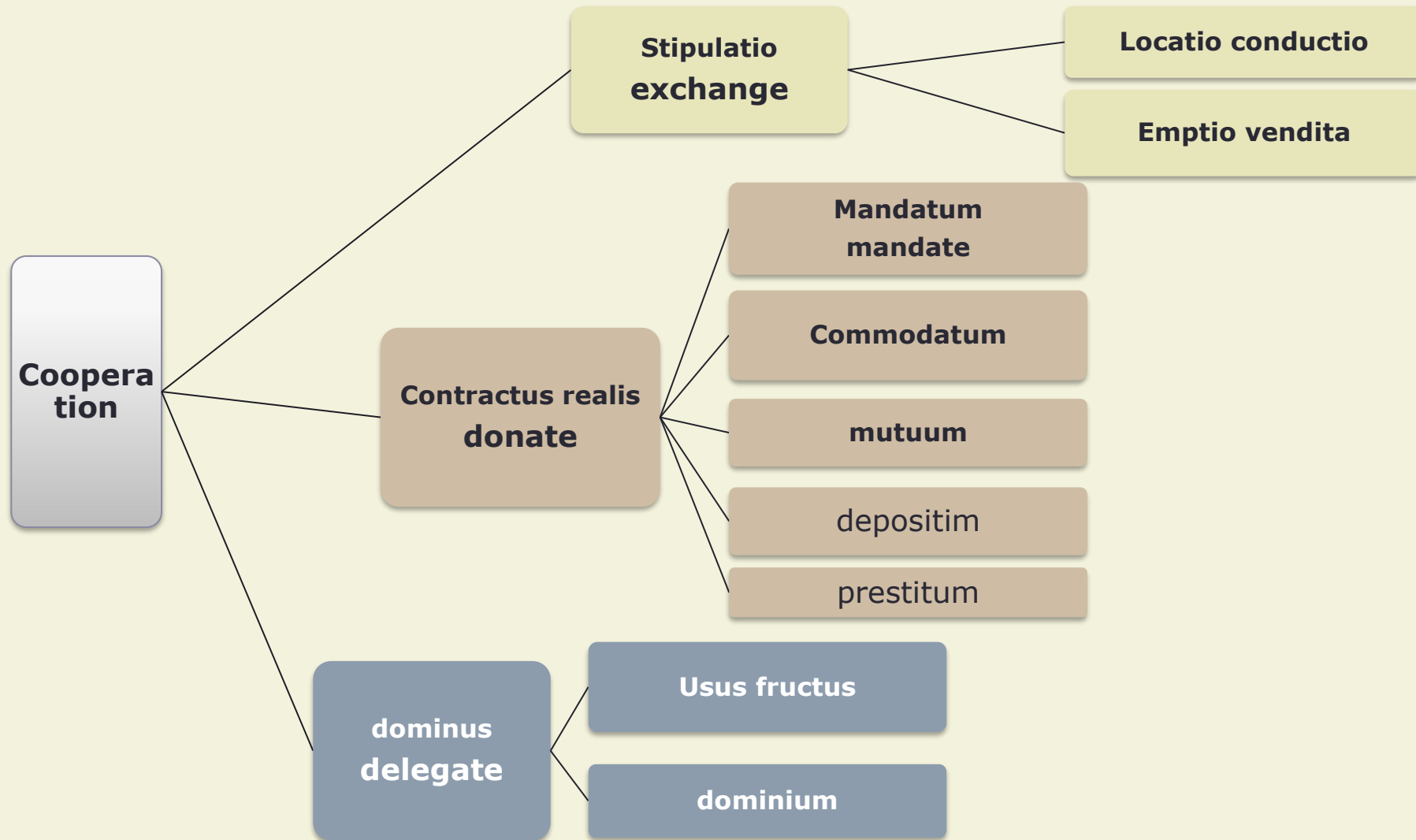
By a purchase agreement, the seller of a thing is obliged to deliver the thing to the buyer and to ***procure ownership of the thing for the buyer***. The seller is to procure the thing for the buyer free from material defects and defects of title.

Contractual use

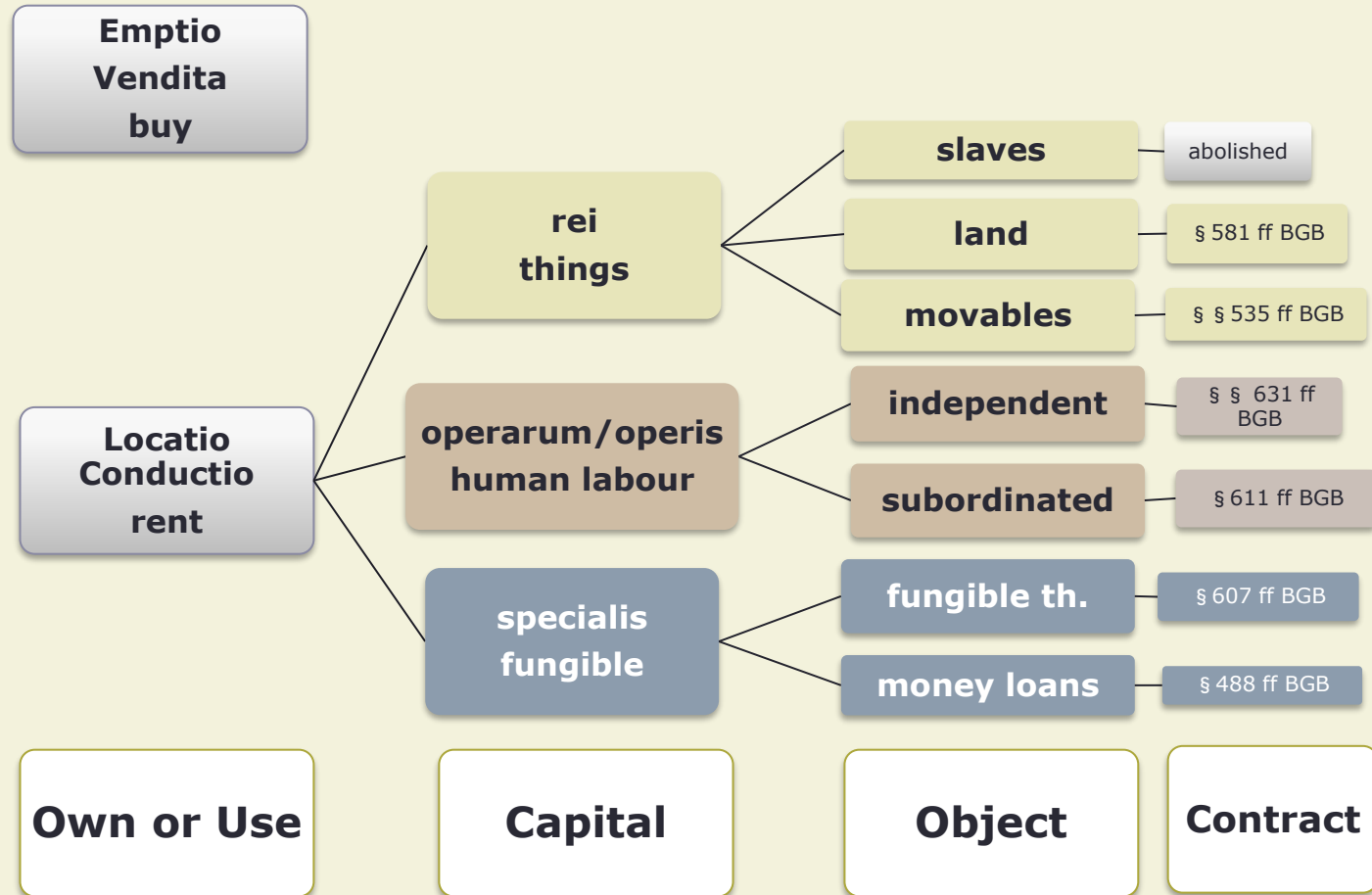
Section 535
Lease agreement

(1) ... The lessor is to make available the leased property to the lessee in a condition ***suitable for use*** as contractually agreed and ***maintain it*** in this condition for the lease period. The lessor is to bear all costs to which the leased property is subject.

Co-operation in feudal and capitalist societies



To have or to be - that is the question! (Fromm & Shakespeare)



Contract and Peace

pactum & Vertrag

1 Make Peace

A “contract” is the central legal heuristic for organizing social relations. According to the German Constitutional Court it is through contract that the law realizes individual freedom and democracy: Roman law offered different views on contract like pactum, contractus, conventum, consensus which are still in use in German as Pakt, Kontrakt, Konvention, Konsens or Einigung.

2 Contract or contracts?

But is “contract” really a single institution or rather a collective term covering quite different phenomena? *Bund* or “covenant” *treaties* “collective agreement” *Tarifvertrag*, General terms and conditions of business (GTC clauses) EU-Directive 93/13/EEC Art. 307 (2) 2 BGB “the nature of the contract is jeopardized.” “juridical act”, that is, the parties’ declaration of intention, which should be timely, clear, and free of error.

Duration? Justice involves *equal freedom* for all members of society. It presupposes first that the model of thought used is *adequate* regarding the underlying reality of interests and conditions. Secondly it supposes an *equal* distribution of rights and duties in this reality.

Labour contract slavery or renting a workplace

5 Labour contract

- no model of an employment contract in pre-industrial society; only service obligations;
- the contract for work was the free alternative to slavery in Roman law,
- service relationship is no liberal alternative to slavery. Restrictions have not been derived from the nature of the labour contract but introduced only through general *bona fides* principles;
- “labour power” does not exist separate from the worker as a contracting party;
- the free worker is contractor and tenant of a collectively integrated workplace;
- employees cannot rent or sell themselves as a person, or a fictitious separate **labour power**.

Sec. 611a German Civil Code Employment or Slavery?

BGB

Section 611a (1) Employment (*slave*) contract

By the employment contract, the employee (*slave*) is obliged to perform work in the service of another, such work being tied to instructions and determined by others, and to do so in a relationship of personal dependency (*slavery*). The right to issue instructions may concern the substance, implementation, time and place at which the activities are pursued. Anyone who is not able to essentially determine their activities freely and to determine the times at which they work (*as a slave*) is tied to instructions. In this context, the degree of personal dependency (*slavery*) will be subject also to the specific nature of the activity concerned.

LTC

Section 611a (1) Employment contract

By the labour contract the worker is obliged to deliver the work achieved according to the requirements of production set by the employer.
The employer is obliged to set the conditions (substance, implementation, time and place), maintain the necessary workplace, and pay the salary as convened.

Principles of the Other Contract

6 Freedom and bona fide (will and perception)

Sales contracts and contracts for use are no alternatives. The freedom of individuals is no consequence of changed economic circumstances; it is the effect of a fictively defined free will of each party which includes an agreement to subordination.

7 Long term principles

§§313 (*rebus sic stantibus*) and 314 (termination for good cause) BGB to be exceptions instead of typical characteristics of a contract of duration.

consumer loan is the pioneer. Its reformulation in the 2002 German law from gift to rent revealed this.

„The other contract “ Nomos 2023

§1 Contracts in modern Private Law

- I. Models
- II. Functions
- III. Deficiencies

§ 2 Contracts in Roman Law

- I. Slavery
- II. Property
- III. Locatio Conductio (Rent)
- IV. Mutuum (Credit)
- V. Locatio conductio operarum (Rent of work)
- VI. Locatio conductio operis (Rent of works)

§ 3 Social Longterm Contracts (LTC)

- I. Social Longterm relations (Life Time Contracts)
- II. Use and Exchange Value
- III. Elements of contracts on social use (LTC)
- IV. Principles of LTC
- V. Definition of LTC

§4 Tenancy contract

(locatio conductio rei)

- I. Rent or live
- II. Power of the landlord
- III. Price, duration and regulation
- IV. Definition of the tenancy contracts

§5 Labour Contract

(locatio conductio operis/operarum)

- I. Labour contract
- II. Worker's contract
- III. Contract on the use of labour force
- IV. The other labour contract
- V. Legal problems in the light of the industrial contracts for works
- VI. Definition of the Labour contract

§6 Consumer credit contract

(locatio conductio specialis)

- I. Rent or undue enrichment
- II. Money or claims
- III. Use of money and debts
- IV. Definition of the consumer credit contract