

CLARENDON LAW SERIES

The Philosophical Origins of Modern Contract Doctrine

JAMES GORDLEY



The Philosophical Origins Of Modern Contract Doctrine

Clarendon Law Series

Sergio Mittlaender



The Philosophical Origins Of Modern Contract Doctrine Clarendon Law Series:

The Philosophical Origins of Modern Contract Doctrine James Gordley,1991 The common law of England and the USA and the civil law of continental Europe have a similar doctrinal structure This book argues that this structure was created in the 16th century in an attempt to synthesize Roman law and the moral philosophies of Aristotle and Aquinas

The Theory of Contract Law Peter Benson,2001-02-05 Although the law of contract is largely settled there appears to be no widely accepted comprehensive theory of its main principles and doctrines or of its normative basis Contract law theory raises issues concerning the relation between law and morality the role and the importance of rights the connection between justice and economics and the distinction between private and public law This collection of six full length essays written by some of the most eminent scholars in the field explores the general theory of contract law from a variety of theoretical perspectives The volume addresses a wide range of issues both methodological and substantive in the theory and practice of contract law While the essays build upon past theoretical contributions they also attempt to take contract theory further and suggest promising ways to develop theory of contract law [A Framework for AI-Made Mistakes in German and English Contract Law](#) Turkhan Ismayilzada,2024-06-19 This book tries to answer the question What happens if an AI system makes a mistake while contracting by applying an interdisciplinary and comparative legal methodology It offers a tantalizing glimpse into the intricate web of legal psychological and technical phenomena involved and how they are interconnected within the realm of contractual mistake doctrine as we know it today It covers a wide range of topics including the common origins of German and English contract law the pivotal role of intentions as a prerequisite for effectual contracts in both jurisdictions the classification of and psychological approach to contractual mistakes and the complexities of AI s participation in contract law Particular attention is paid to the juxtaposition of human and AI made mistakes from the perspective of information processing As a result the book offers a jurisdiction agnostic framework for AI made contractual mistakes that can aid legislators and policymakers in their deliberations on the regulation of AI in contract law The framework considers cultural and historical differences between German and English contract law and thus proposes an approach that can fit both and potentially other similar jurisdictions with minor adjustments In addition to these novel discussions the work explores the views of prominent scholars and international experts in the field As such it will appeal to researchers and scholars in the fields of law technology psychology and especially Artificial Intelligence By presenting a framework for AI made mistakes in German and English contract law Dr Ismayilzada offers a valuable contribution to the field inviting readers to explore the uncharted territory of AI and the law Join the author on this intellectual journey and gain insights that will redefine your perception of contracts in the age of AI [Liberty and Law](#) Brian Tierney,2014-02-14 Liberty and Law examines a previously underappreciated theme in legal history the idea of permissive natural law The idea is mentioned only peripherally if at all in modern histories of natural law Yet it engaged the attention of jurists philosophers and

theologians over a long period and formed an integral part of their teachings This ensured that natural law was not conceived of as merely a set of commands and prohibitions that restricted human conduct but also as affirming a realm of human freedom understood as both freedom from subjection and freedom of choice Freedom can be used in many ways and throughout the whole period from 1100 to 1800 the idea of permissive natural law was deployed for various purposes in response to different problems that arose It was frequently invoked to explain the origin of private property and the beginnings of civil government

Precedent in English Law, 1991-06-13 The previous three editions of this book have established it as the most comprehensive account of precedent in English law for students teachers and practitioners alike The aim of the book is to present a basic guide to the current doctrine of precedent in England set in the wider context of the jurisprudential problems which any treatment of the topic involves Such problems include the nature of the ratio decidendi of a precedent and of its binding force the significance of precedents alongside other sources of law their role in legal reasoning and the account which must be taken of them by any general theory of law In examining these matters the late Sir Rupert Cross expounded a fairly traditional practitioners view and this approach has been preserved in the fourth edition although references are included to competing answers taking into account developments in the literature since the third edition Considerable re writing has been undertaken to update case law and take account of the possible implications for the doctrine of precedent of the impact of European community law making it an indispensable work of reference for readers interested in the past history present state and future developments of the English rules of precedent Dr J W Harris is a Fellow of Keble College Oxford The late Sir Rupert Cross was formerly Vinerian Professor of Law at the University of Oxford and a Fellow of Magdalen College Oxford

Law, Language and Change Caroline Laske, 2020-09-25 In this monograph Caroline Laske traces the advent of consideration in English contract law by analysing the doctrinal development in parallel with the corresponding terminological evolution and semantic shifts between the fourteenth and nineteenth centuries It is an innovative interdisciplinary study showcasing the value of taking a diachronic corpus linguistics based approach to the study of legal change and legal development and the semantic shifts in the corresponding terminology The seminal application in the legal field of these analytical methodologies borrowed from pragmatic linguistics goes beyond the content approach that legal research usually practices and it has allowed for claims of semantic change to be objectified This ground breaking work is pitched at scholars of legal history law language and linguistics

(Un)masking the Realities of Power Erik Bom, Marijke Janssens, Toon van Houdt, 2010-12-10 Starting from Justus Lipsius's *Monita et exempla politica* 1605 this book offers a collection of essays dealing with the disputed Macchiavellian Tacitean or Neostoic character of Lipsius's political thought and its impact on the dynamics of political discourse in Early Modern Europe

Legal Positivism in a Global and Transnational Age Luca Siliquini-Cinelli, 2019-08-30 A theme of growing importance in both the law and philosophy and socio legal literature is how regulatory dynamics can be identified that is conceptualised and operationalised and normative

expectations met in an age when transnational actors operate on a global plane and in increasingly fragmented and transformative contexts A reconsideration of established theories and axiomatic findings on regulatory phenomena is an essential part of this discourse There is indeed an urgent need for discontinuity regarding what we think we know about among other things law legality sovereignty and political legitimacy power relations institutional design and development and pluralist dynamics of ordering under processes of globalisation and transnationalism Making an important contribution to the scholarly debate on the subject this volume features original and much needed essays of theoretical and applied legal philosophy as well as socio legal accounts that reflect on whether legal positivism has anything to offer to this intellectual enterprise This is done by discussing whether global and transnational cultural socio political economic and juridical challenges as well as processes of diversification fragmentation and transformation significantly de formalisation reinforce or weaken legal positivists assumptions claims and methods The themes covered include but are not limited to absolute and limited state sovereignty the new international legal positivism Hartian legal positivism and the normative positivist account the relationship between modern secularisation social conventionalism and meta ontological issues of temporality in postnational jurisprudence the social positivisation of human rights the formation and content of jus cogens norms feminist critique the global and transnational migration of principles of justice and morality the Vienna Convention on the Law of Treaties rule of interpretation and the responsibility of transnational corporations

Rethinking Judicial Jurisdiction in Private International Law Milana Karayanidi, 2020-02-20 This book explores the theory and practice of judicial jurisdiction within the field of private international law It offers a revised look at values justifying the power of courts to hear and decide cross border disputes and demonstrates that a re conceptualisation of jurisdiction is needed Rather than deriving from territorial power of states jurisdiction in civil and commercial cross border matters ought to be driven by party autonomy This autonomy can be limited by certain considerations of equality and critical state sovereign interests The book applies this normative view to the existing rules of jurisdiction in the European Union and the Russian Federation These regimes are chosen due to their unique positions towards values in private international law and contrasting societal norms that generate and accommodate these values Notwithstanding disparate cultural and political ideas these regimes reveal a surprising level of consistency when it comes to enforcement of party autonomy There is nevertheless room for improvement The book demonstrates to scholars policy makers and lawmakers that jurisdiction should be re centred around the interests of private actors and proposes ways to improve the current rules

Home Equity and Ageing Owners Lorna Fox O'Mahony, 2012-01-06 The growing use of housing equity to support a range of activities and needs raises complex issues particularly for older owners In an environment in which older owners are pushed towards housing equity transactions to meet income and welfare costs they are required to make choices from a complex and sometimes bewildering range of options The transactions which facilitate the use of home equity as a resource to spend in later life from trading down and ordinary

secured and unsecured debt to targeted products including reverse lifetime mortgages home reversion plans and sale and rentback agreements raise important legal and regulatory issues This book provides a contextual analysis of the financial transactions that older people enter into using their housing equity It traces the protections afforded to older owners through the ordinary law of property and contract as well as the development of specific regulatory protections focused on targeted products The book employs the notion of risk to highlight the nature and causes of the situational vulnerabilities to which older people are now subject as consumers of housing equity showing that the older owner's personal situation is crucial in determining whether and why they may seek to release equity the options and products available to them and the impact of harms resulting from adverse transactions The book critically evaluates the extent to which this context is incorporated in the legal frameworks through which these transactions are governed as a measure of the appropriateness of existing legal provision as well as considering the arguments surrounding special protection for older owners in housing equity transactions

Oedipus Lex Peter Goodrich, 2023-11-15 Oedipus Lex offers an original and evocative reading of legal history and institutional practice in the light of psychoanalysis and aesthetics It explores the unconscious of law through a wealth of historical and contemporary examples Peter Goodrich provides an anatomy of law's melancholy and boredom of addiction to law of legal repressions and the aesthetics of jurisprudence He retraces the genealogy of law and invokes the failures and exclusions the poets women and outsiders that legal science has left in its wake Goodrich analyzes the role and power of the image of law and details the history of law's plural jurisdictions and traditions of resistance to law He explores mechanisms of repression and representation as constituents of modern subjectivity using long abandoned medieval texts and early appearances of feminism as resources for the understanding and renewal of legal scholarship Not simply deconstruction but also reconstruction this work is keenly attuned to the discontinuities silences and gaps in the cultural tradition called law This title is part of UC Press's Voices Revived program which commemorates University of California Press's mission to seek out and cultivate the brightest minds and give them voice reach and impact Drawing on a backlist dating to 1893 Voices Revived makes high quality peer reviewed scholarship accessible once again using print on demand technology This title was originally published in 1995

Contractual Relations David Campbell, 2022 Contractual Relations is a critique of the theoretical doctrinal and practical foundations of the entire law of contract It argues that resolution of the inadequacies of the classical law of contract and of the welfarist response to the classical law requires recognition of the social relational nature of exchange and contract

Revolution and Evolution in Private Law Sarah Worthington, Andrew Robertson, Graham Virgo, 2018-01-11 The development of private law across the common law world is typically portrayed as a series of incremental steps each one delivered as a result of judges dealing with marginally different factual circumstances presented to them for determination This is said to be the common law method According to this process change might be assumed to be gradual almost imperceptible If this were true however then even Darwinian style evolution which is subject

to major change inducing pressures such as the death of the dinosaurs would seem unlikely in the law and radical and revolutionary paradigms shifts perhaps impossible And yet the history of the common law is to the contrary The legal landscape is littered with quite remarkable revolutionary and evolutionary changes in the shape of the common law The essays in this volume explore some of the highlights in this fascinating revolutionary and evolutionary development of private law The contributors expose the nature of the changes undergone and their significance for the future direction of travel They identify the circumstances and the contexts which might have provided an impetus for these significant changes The essays range across all areas of private law including contract tort unjust enrichment and property No area has been immune from development That fact itself is unsurprising but an extended examination of the particular circumstances and contexts which delivered some of private law s most important developments has its own special significance for what it might indicate about the shape and the shaping of private law regimes in the future *Just Price Theory* Joaquín Reyes,2023-08-10

This book presents an original theory of the just price and it is a welcome addition to scholarship on a radically underdeveloped field This work reassesses the age old idea that there is a just price of things one that goes beyond the Scholastic tradition of the just price and its exclusive concern with commutative justice There is more to just price theory than the concern for keeping equality of value between goods exchanged Modern concerns over efficiency autonomy and distributive justice can also find a place within a theory of the just price The book Presents a new approach to just price theory through a broad analysis of different values and the incorporation of those conceptions into a wider normative framework Argues that these different values ground varied conceptions of the just price and Promotes a virtue based approach to price justification as an adequate framework for meeting the challenges that stem from each conception Perfect for scholars and students in the fields of jurisprudence philosophy of private law contract law and political theory this book makes a significant contribution to legal theory and the emerging field of the philosophy of economics **Equity,**

Efficiency, and Ethics in Remedies for Breach of Contract Sergio Mittlaender,2022-12-02 This book analyzes the conflict that emerges between parties after a breach of contract and how different legal remedies can best reduce conflict Causes for conflict include equity efficiency and ethical reasons that parties might consider and use to blame the other or to justify breach In the end if not resolved through apologies or renegotiation conflict leads to aggrievement and behavioral reactions in form of retaliation by the victim against the promisor in breach The book provides empirical evidence from laboratory experiments for how individuals react to perceived wrongful acts such as breach of contract and for the function of legal remedies to reduce retaliation by disappointed promisees in providing them compensation It reveals how the inequality in the outcome and not the inefficiency of breach of contract causes aggrievement and retaliation by victims The book concludes with a comparative law and economic analysis of remedies for breach of contract adopted in different leading jurisdictions with important normative implications for the American insistence on expectation damages the French

expansion of specific performance with astreinte the German junction of specific performance expectation damages and disgorgement damages and the British timid acceptance of partial disgorgement damages The book will appeal to scholars researchers and students of economics and law interested in a better understanding of remedies for breach of contract

The Americas in the Spanish World Order James Muldoon, 2015-09-01 Juan de Solorzano Pereira 1575 1654 was a lawyer who spent eighteen years as a judge in Peru before returning to Spain to serve on the Councils of Castile and of the Indies Considered one of the finest lawyers in Spain his work *De Indiarum Jure* was the most sophisticated defense of the Spanish conquest of the Americas ever written and he was widely cited in Europe and the Americas until the early nineteenth century His work and that of the Spanish School of international law theorists generally is often seen as leading to Hugo Grotius and modern international law However as James Muldoon shows the *De Indiarum Jure* represents the fullest development of a medieval Catholic theory of international order that provided an alternative to the Grotian theory *New Essays on the History of Autonomy* Natalie Brender, Larry Krasnoff, Jerome B. Schneewind, 2004-06-07 Kantian autonomy is often thought to be independent of time and place but J B Schneewind in his landmark study *The Invention of Autonomy* has shown that there is much to be learned by setting Kant's moral philosophy in the context of the history of modern moral philosophy The distinguished authors in the collection continue Schneewind's project by relating Kant's work to the historical context of his predecessors and to the empirical context of human agency This will be a valuable resource for professionals and advanced students

The Legal Philosophy and Influence of Jeremy Bentham Guillaume Tusseau, 2014-06-20 Gathering together an impressive array of legal scholars from around the world this book features essays on Jeremy Bentham's major legal theoretical treatise *Of the Limits of the Penal Branch of Jurisprudence* reassessing Bentham's theories of law as well as his impact on jurisprudence While offering a suggestive picture of contemporary Bentham studies the book provides a thorough examination of concepts such as legal discourse legal norms legal system and subjective legal positions The book compares Bentham's approach with other landmark theories and the works of major legal philosophers including Austin Hart and Kelsen and explores Bentham's treatise through major trends in contemporary legal thought such as the imperative theory of law deontic logic Scandinavian and American legal realisms the pure theory of law and critical legal thought Resisting any apologetic stance the book elucidates how consistent with Bentham's all encompassing project of utilitarian reform *Limits* turns out to be and how this sheds light on contemporary modes of governance The book will be of great use and interest to scholars and students of contemporary jurisprudence legal theory 19th century philosophy and public law

Scholars of Contract Law James Goudkamp, Donal Nolan, 2022-12-01 This book provides a counter balance to the traditional focus on judicial decisions by exploring the contribution of legal scholars to the development of private law In the book the work of a selection of leading scholars of contract law from across the common law world ranging from Sir Jeffrey Gilbert 1674 1726 to Professor Brian Coote 1929 2019 is addressed by legal historians and current scholars in the field The focus is on the nature

of the work produced by the scholars in question important influences on their work and the impact which that work in turn had on thinking about contract law The book also includes an introductory chapter and an afterword by Professor William Twining that explore connections between the scholars and recurrent themes The process of subjecting contract law scholarship to sustained analysis provides new insights into the intellectual development of contract law and reveals the central role played by scholars in that process And by focusing attention on the work of influential contract scholars the book serves to emphasise the importance of legal scholarship to the development of the common law more generally

Manitoba Law Journal: A Review of the Current Legal Landscape 2017 Volume 40(1) Darcy L. MacPherson, et al., The Manitoba Law Journal is a peer reviewed journal founded in 1961 The MLJ's current mission is to provide lively independent and high caliber commentary on legal events in Manitoba or events of special interest to our community This issue has articles from a variety of contributing authors including Bryan P Schwartz Thomas A Cromwell Charles Jr Donahue Anne Krahn Sarah Inness Stacy Cawley Bettina Schaible G Greg Brodsky Thomas S Harrison Francois Du Toit and Darcy L MacPherson

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