Consequences of Impaired Consent Transfers
A Structural Comparison of English and German Law

by Birke Häcker

DESCRIPTION:
Birke Häcker explores the English and German law on impaired consent transfers of movable property and their reversal in comparative perspective, paying particular attention to the interaction - within each legal system - between the rules and principles of contract law, property law, and the law of unjustified enrichment. In two-party situations, the author focuses on the relationship between contract and conveyance and the closely related question of the transferor's position in the event of the transferee's insolvency. While German law resolves these issues by reference to the well-established principles of separation and abstraction, the relevant English law is still unsettled. The author argues for a generalized power model of so-called 'proprietary restitution' and seeks to demonstrate that conveyances by delivery are best regarded as abstract in English as well as in German law, but explains why English law nevertheless lacks the gist of abstraction à la BGB. Building on this analysis, the author then goes on to examine three-party situations. She looks first at the position of third parties who have acquired the object in question before the transferor has had a chance to reclaim it (raising issues of bona fide purchase and 'leapfrogging') and thereafter at the extent to which the transferor can assert rights to the object's traceable substitutes. As far as English law is concerned, the author shows that the supposed 'third party rights bar to rescission' is not only unnecessary, but misconceived, and that it ought to be abolished.

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