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Der Anspruch auf das stellvertretende commodum

[The Claim to a »Stellvertretendes Commodum".]

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According to section 285 of the German Civil Code, a debtor who is relieved of his obligation to perform due to the impossibility of the performance has to make over to the creditor whatever he has acquired as a substitute for the object he was supposed to provide. The claim to the so-called » stellvertretendes commodum « has always been interpreted as a parallel to the law of unjust enrichment by a majority of scholars and courts. In recent years, however, alternative concepts have emerged. Felix Hartmann defends the traditional view and specifies the analogies between section 285 of the German Civil Code and the law of unjust enrichment. On this basis, he develops new answers to a multitude of practical questions. The author also focuses on the changes brought about by the 2002 reform of the German law of obligations. While the section dealing with » stellvertretendes commodum « has, as such, remained almost unaltered, other modifications have an impact on the answers to some old and a number of new questions.

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