

# B05 A Frame Analysis of German Legal Terms

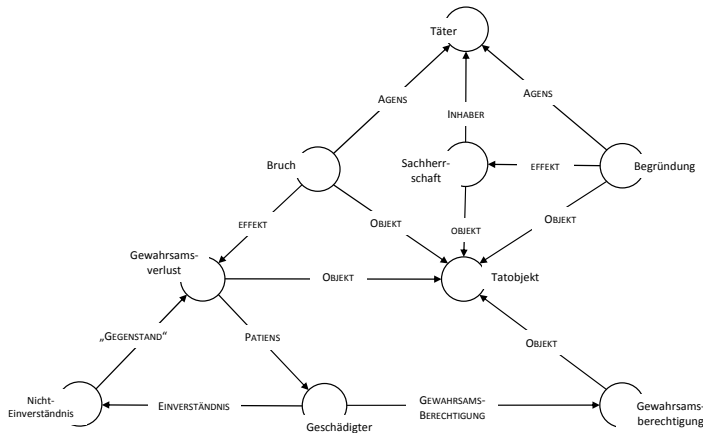
## Project outline

Subject matter for analysis in project B05 consists of terms from statutory law. Aim of the project is a frame-semantic analysis of German legal terms taken from three domains of statutory law (criminal law, civil law, public law). The following analyses shall be undertaken:

- a complete analysis of the German Criminal Law (StGB) section on **Diebstahl** (theft) (§ 242) including all its related concepts and subconcepts: an exhaustive conceptual analysis of the single term theft
- a comparative and contrastive analysis of the two related German Civil Law (BGB) concepts **Eigentum** (ownership) and **Besitz** (possession), both play a crucial role in the conceptual structure of the German Criminal Law definition of Diebstahl (via the concept fremde Sache [third-party property])
- a contrastive analysis of the criminal law term (**mit**) **Gewalt** (by force) with two different objectives: (a) an analysis of differing conceptual structures of the same expression in several sections of the German Criminal Law Codex (StGB), such as Nötigung (coercion) or Raub (robbery), and (b) an analysis of the differing interpretations of the same expression in the interpretive history of the German Criminal Law Codex section on Nötigung (coercion) (§ 240 StGB).

## Diebstahl: Frame-semantic description of "Bruch & Begründung"

The law term *wegnehmen* (take away) in § 242 StGB on theft is interpreted in the commentaries as "breach of someone else's safekeeping and establishment of a new safekeeping".

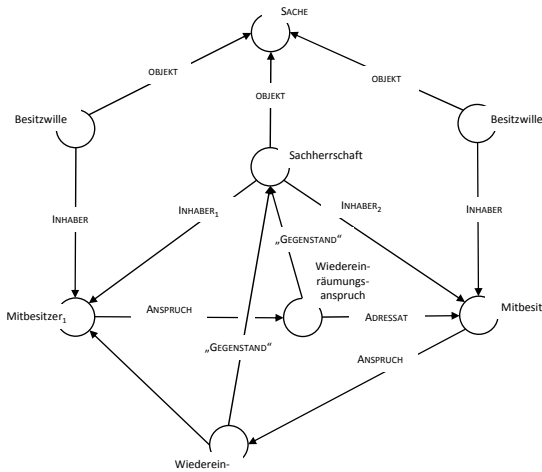


## Besitz: Frame-semantic description of "Mitbesitz" (co-possession)

§ 866 BGB *Mitbesitz* (co-possession)

Besitzen mehrere eine Sache gemeinschaftlich, so findet in ihrem Verhältnis zueinander ein Besitzschutz insoweit nicht statt, als es sich um die Grenzen des den einzelnen zustehenden Gebrauchs handelt.

If more than one person has co-possession of property, there shall be no protection of possession in their relationship to each other with regard to the limits of the use to which each of them is entitled.



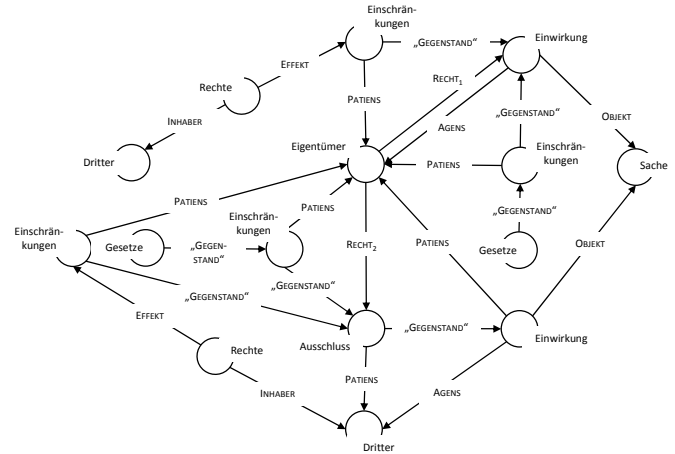
Example: co-possession of the stairway or the elevator in an apartment-house: If one of the tenants uses the stairway / elevator in such a way that the others are no longer able to use it, this can be seen as a case of deprivation of possession (*Besitzentziehung*, see § 861 BGB).

## Eigentum: Frame-semantic description of § 903 BGB

§ 903 *Befugnisse des Eigentümers* (powers of the owner)

Der Eigentümer einer Sache kann, soweit nicht das Gesetz oder Rechte Dritter entgegenstehen, mit der Sache nach Belieben verfahren und andere von jeder Einwirkung ausschließen. [...]

The owner of a thing may, to the extent that a statute or third-party rights do not conflict with this, deal with the thing at his discretion and exclude others from every influence. [...]



## Frame-semantic description of "(mit) Gewalt"

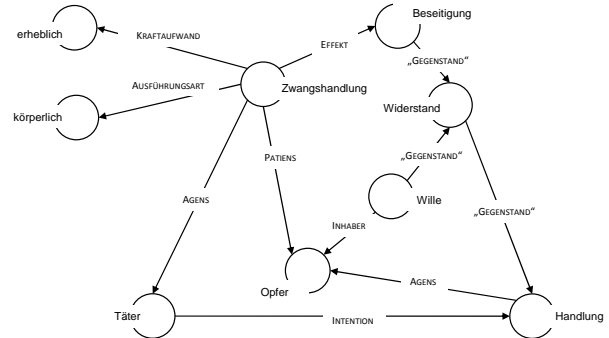
§ 240 StGB *Nötigung* (coercion)

(1) Wer einen Menschen rechtswidrig mit Gewalt oder durch Drohung mit einem empfindlichen Übel zu einer Handlung, Duldung oder Unterlassung nötigt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft.

(1) Whosoever unlawfully with force or threat of serious harm causes a person to commit, suffer or omit an act shall be liable to imprisonment not exceeding three years or a fine.

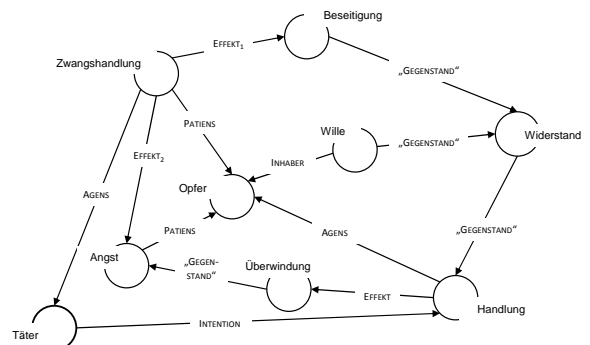
**Traditional concept of (mit) Gewalt: Emphasis on the use of physical strength on the part of the offender**

Gewalt ist „die durch Anwendung körperlicher Kraft erfolgte Beseitigung eines tatsächlich geleisteten oder bestimmt erwarteten und deshalb von vornherein durch Körperkraft zu unterdrückenden Widerstandes“ (RGSt 56 (1921), 87f.) [elimination of actual or expected resistance, suppressed by actual physical force].



**Modern concept of (mit) Gewalt: Emphasis on the effects on the part of the victim (Zwangswirkung), e.g. (extreme) fear, (physical) inability to resist the coercion etc.**

Gewalt ist „jede körperliche Tätigkeit, durch die körperlich wirkender Zwang ausgeübt wird, um geleisteten oder erwarteten Widerstand zu überwinden“ (Rengier, Strafrecht BT 2, § 23 Rn 23) [any physical activity, whereby pressure / coercion is exercised, which has physical effects (on the part of the victim)].



Example: coercion by tailgating: forcing sb. to change lanes