

Übersetzung des Bürgerlichen Gesetzbuches durch ein Übersetzer-Team des Langenscheidt  
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## German Civil Code

### BGB

of 18 August 1896

Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I p. 42, 2909; 2003 I p. 738), last amended by Article 2 (16) of the statute of 19 February 2007 (Federal Law Gazette [*Bundesgesetzblatt*] I p. 122)

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last amended by statute of 4 December 2008 I 2586

This statute serves to transpose into national law the following directives:

1. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39 of 14 February 1976, p. 40),
2. Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61 of 5 March 1977, p. 26),
3. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 of 31 December 1985, p. 31),
4. Council Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42 of 12 February 1987, p. 48, last amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 101 of 1 April 1998, p. 17),
5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158 of 23 June 1990, p. 59),
6. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95 of 21 April 1993, p. 29),
7. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280 of 29 October 1994, p. 82),
8. Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers (OJ L 43 of 14 February 1997, p. 25),
9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144 of 4 June 1997, p. 19),
10. Articles 3 to 5 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166 of 11 June 1998, p. 45),

11. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171 of 7 July 1999, p. 12),
12. Articles 10, 11 and 18 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce" OJ L 178 of 17 July 2000, p. 1),
13. Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200 of 8 August 2000, p. 35).

Book 1

## **General Part**

Division 1

### **Persons**

Title 1

#### **Natural persons, consumers, entrepreneurs**

##### **Section 1**

Beginning of legal capacity

The legal capacity of a human being begins on the completion of birth.

##### **Section 2**

Beginning of majority

Majority begins at the age of eighteen.

##### **Sections 3 - 6**

(repealed)

##### **Section 7**

Residence; establishment and termination

(1) A person who settles permanently in a place establishes his residence in that place.

(2) There may be a residence in more than one place at the same time.

(3) Residence is terminated if the person abandons the place of residence with the intention of giving it up.

##### **Section 8**

Residence of persons who lack full capacity to contract

(1) A person who is not capable of contracting or who has limited capacity to contract can neither establish nor terminate residence without the consent of his legal representative.

(2) A minor who is or has been married may independently establish and terminate residence.

## **Section 9**

Residence of a soldier

(1) A soldier has his residence in his garrison. The residence of a soldier who has no garrison within the country is deemed to be his last garrison within the country.

(2) These provisions do not apply to soldiers who are merely doing compulsory military service or who cannot independently establish residence.

## **Section 10**

(repealed)

## **Section 11**

Residence of a child

A minor child shares the residence of its parents; it does not share the residence of a parent who lacks the right to care for the person of the child. If neither parent has the right to care for the person of the child, the child shares the residence of the person who has this right. The child retains the residence until it validly abandons it.

## **Section 12**

Right to a name

If the right of a person to use a name is disputed by another person, or if the interest of the person entitled to the name is injured by the unauthorised use of the same name by another person, the person entitled may require the other to remove the infringement. If further infringements are to be feared, the person entitled may seek a prohibitory injunction.

## **Section 13**

Consumer<sup>\*)</sup>

A consumer means every natural person who enters into a legal transaction for a purpose that is outside his trade, business or profession.

<sup>\*) Official note: These provisions serve to implement the directives set out above under numbers 3, 4, 6, 7, 9 and 11.</sup>

## **Section 14**

Entrepreneur<sup>\*)</sup>

(1) An entrepreneur means a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

(2) A partnership with legal personality is a partnership that has the capacity to acquire rights and to incur liabilities.

<sup>\*) Official note: These provisions serve to implement the directives set out above under numbers 3, 4, 6, 7, 9 and 11.</sup>

## **Sections 15 - 20**

(repealed)

Title 2

## **Legal persons**

Subtitle 1

### **Associations**

Chapter 1

#### **General provisions**

##### **Section 21**

Non-commercial association

An association whose object is not commercial business operations acquires legal personality by entry in the register of associations of the competent local court [Amtsgericht].

##### **Section 22**

Commercial association

An association whose object is commercial business operations acquires legal personality, for lack of special provisions under Reich law, by state grant. The grant is in the power of the state [Bundesstaat] in whose territory the association has its seat.

##### **Section 23**

Foreign association

An association whose seat is not in a state [Bundesstaat] may, for lack of special provisions under Reich law, be granted legal personality by a resolution of the Federal Council [Bundesrat]<sup>\*)</sup>.

\*) Under Article 129 of the Basic Law [Grundgesetz], the Federal Minister of the Interior [Bundesminister des Innern] is now competent.

##### **Section 24**

Seat

The seat of an association, unless otherwise provided, is the place where the management is conducted.

##### **Section 25**

Constitution

The constitution of an association with legal personality is, to the extent that it is not based on the following provisions, determined by the articles of association.

##### **Section 26**

Board; representation

(1) An association must have a board. The board may consist of more than one person.

(2) The board represents the association in court and out of court; it has the status of a legal representative. The extent of its power of agency may be restricted by the articles of association with effect against third parties.

## **Section 27**

Appointment of and management by the board

- (1) The appointment of the board is by resolution of the general meeting.
- (2) The appointment is revocable at any time, notwithstanding the claim to payment in conformity with contract. The revocability may be restricted by the articles of association to the case where there is a compelling reason for the revocation; such a reason includes without limitation a gross breach of duty or inability to effect proper management.
- (3) The management by the board is governed by the provisions on mandate in sections 664 to 670 with the necessary modifications.

## **Section 28**

Passing of resolutions and representation

- (1) If the board consists of more than one person, resolutions are passed under the provisions of sections 32 and 34, which govern the resolutions of the members of the association.
- (2) If a declaration of intent is to be made to the association, it is sufficient for it to be made to a member of the board.

## **Section 29**

Emergency appointment by local court [Amtsgericht]

To the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases, for the period until the defect is corrected, on the application of a person concerned, by the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat.

## **Section 30**

Special representatives

It may be provided by the articles of association that, in addition to the board, special representatives are to be appointed for particular transactions. In case of doubt, the power of agency of such a representative extends to all legal transactions that the sphere of business allocated to him normally entails.

## **Section 31**

Liability of an association for organs

The association is liable for the damage to a third party that the board, a member of the board or another constitutionally appointed representative causes through an act committed by it or him in carrying out the business with which it or he is entrusted, where the act gives rise to a liability in damages.

### **Section 32**

General meeting; passing of resolutions

(1) The affairs of the association, to the extent that they are not to be attended to by the board or another organ of the association, are dealt with by resolution in a meeting of the members. In order for the resolution to be valid, it is necessary for the subject to be stated when the meeting is convened.

The resolution is decided by the majority of the members present.

(2) Even without a meeting of the members, a resolution is valid if all members declare their approval of the resolution in writing.

### **Section 33**

Amendment of articles of association

(1) A resolution containing an amendment of the articles of association must have a majority of three quarters of the members present. In order to alter the objects of the association, the approval of all members is necessary; the approval of the members not present must be declared in writing.

(2) If the legal personality of the association results from a grant, state ratification is necessary for every amendment of the articles of association, or, if the grant was made by the Federal Council [Bundesrat], the ratification of the Federal Council [Bundesrat]<sup>\*)</sup>.

\*) Under Article 129 of the Basic Law [Grundgesetz], the Federal Minister of the Interior [Bundesminister des Innern] is now competent.

### **Section 34**

Exclusion from voting

A member has no right to vote if the resolution concerns entering into a legal transaction with him or commencing or disposing of litigation between him and the association.

### **Section 35**

Special rights

Special rights of a member may not be adversely affected by a resolution of the general meeting without his approval.

### **Section 36**

Convening of the general meeting

(1) The general meeting is to be convened in the cases laid down in the articles of association and when the interests of the association require it.

### **Section 37**

Convening a meeting at the request of a minority

(1) The general meeting is to be convened if the proportion of the membership laid down in the articles of association or, in the absence of a provision, one-tenth of the members call in writing for a meeting to be convened, stating the purpose and the reasons.

(2) If the request is not granted, the local court [Amtsgericht] may authorise the members who made the request to convene the meeting; it may make orders on the conduct of the chairmanship at the meeting. The court with jurisdiction is the local court [Amtsgericht] that keeps the register of associations for the district in which the association has its seat. The authorisation must be referred to in the notice convening the meeting.

### **Section 38**

Membership

Membership is not transferable and not inheritable. The exercise of membership rights cannot be entrusted to another person.

### **Section 39**

Leaving the association

(1) The members have the right to leave the association.

(2) The articles of association may specify that leaving is admissible only at the end of a business year or only after a notice period; the maximum notice period is two years.

### **Section 40**

Flexible provisions

The provisions of section 27 (1) and (3), section 28 (1) and sections 32, 33 and 38 do not apply where otherwise provided by the articles of association.

### **Section 41**

Dissolution of the association

An association may be dissolved by resolution of the general meeting. The resolution must have a majority of three-quarters of the members present, unless otherwise provided in the articles of association.

## **Section 42**

### Insolvency

(1) An association is dissolved by the commencement of insolvency proceedings. If the proceedings are discontinued on the application of the debtor or terminated after the confirmation of an insolvency plan that provides for the association to continue in existence, the general meeting may pass a resolution that the association is to continue in existence. The articles of association may provide that, if insolvency proceedings are commenced, the association is to continue as an association without legal personality; in this case too, if the requirements of sentence two above are satisfied, a resolution may be passed to continue the association as an association with legal personality.

(2) If an association is insolvent or is overindebted, the board must petition for the commencement of insolvency proceedings. If there is delay in petitioning, the members of the board who are at fault are responsible to the creditors for the damage resulting from this; they are liable as joint and several debtors.

## **Section 43**

### Deprivation of legal personality

(1) An association can be deprived of its legal personality if it endangers the common good by an unlawful resolution of the general meeting or by unlawful conduct of the board.

(2) An association whose objects under its articles of association are not commercial business operations may be deprived of legal personality if it pursues such objects.

(3) (repealed)

(4) An association whose legal personality is the result of a grant can be deprived of its legal personality if it pursues objects different from those in the articles of association.

## **Section 44**

### Jurisdiction and proceedings

(1) The jurisdiction and the proceedings in the cases set out in section 43 are decided under the law of the Land in which the association has its seat.

(2) If the legal personality results from a grant by the Federal Council [Bundesrat], the deprivation is by a resolution of the Federal Council [Bundesrat]<sup>\*)</sup>.

<sup>\*)</sup> Under Article 129 of the Basic Law [Grundgesetz], the Federal Minister of the Interior [Bundesminister des Innern] is now competent.



#### **Section 45**

Devolution of the assets of the association

- (1) On the dissolution of the association or its deprivation of legal personality, the assets devolve on the persons specified in the articles of association.
- (2) The articles of association may provide that the persons entitled to receive the assets are specified by a resolution of the general meeting or by another organ of the association. If the objects of the association are not commercial business operations, the general meeting may, even without such a provision, allocate the assets to a public foundation or institution.
- (3) If no persons entitled are specified, then if according to its articles the association exclusively served the interests of its members, the assets pass in equal shares to the members at the date of the dissolution or the deprivation of legal personality, and failing this to the treasury of the state [Bundesstaat] in whose territory the association had its seat.

#### **Section 46**

Devolution on the treasury

If the assets of the association devolve on the treasury, the provisions on an inheritance that devolves on the treasury as the heir on intestacy apply with the necessary modifications. The treasury shall if possible use the assets in a manner corresponding to the objects of the association.

#### **Section 47**

Liquidation

If the assets of the association do not devolve on the treasury, there must be a liquidation, unless insolvency proceedings have commenced with regard to the assets of the association.

#### **Section 48**

Liquidators

- (1) The liquidation is effected by the board. Other persons may also be appointed as liquidators; the appointment is governed by the provisions for the appointment of the board.
- (2) The liquidators have the legal status of the board, unless the purpose of the liquidation leads to a different conclusion.
- (3) If there is more than one liquidator, their resolutions require a unanimous vote unless otherwise provided.

## **Section 49**

### Duties of the liquidators

(1) The liquidators must complete the current business, collect the receivables, convert the rest of the assets into cash, satisfy the creditors and pay out the surplus to those entitled to receive it. In order to complete transactions that are in progress, the liquidators may also enter into new transactions. The collection of receivables and the conversion of the rest of the assets into cash may be omitted to the extent that these measures are not necessary to satisfy the creditors or to distribute the surplus among those entitled to receive it.

(2) The association is deemed to continue in existence until the end of the liquidation if the purpose of the liquidation requires this.

## **Section 50**

### Public notice of the association in liquidation

(1) The dissolution of the association or its deprivation of legal personality must be announced by the liquidators in a public notice. In the notice, the creditors must be requested to register their claims. The public notice is made through the newspaper specified in the articles of association for this purpose. Public notice is deemed to have been made at the end of the second day after the publication or first publication.

(2) Known creditors must be requested by special invitation to register their claims.

## **Section 50a**

### Newspaper for notices

If an association has not specified a newspaper in the articles of association, or if the newspaper specified for notices has ceased publication, notices of the association must be published in the newspaper that is specified for public notices of the local court [Amtsgericht] in whose district the association has its seat.

## **Section 51**

### One-year waiting period

The property may not be paid out to the persons entitled to receive it until a year has passed after the announcement by public notice of the dissolution of the association or the deprivation of legal personality.

## **Section 52**

### Security for creditors

(1) If a known creditor does not register his claim, the amount owed, if the right to deposit exists, must be deposited for the creditor.

(2) If the discharge of an obligation is not possible at the time, or if an obligation is disputed, the property may be distributed to the persons entitled to receive it only if security is provided to the creditor.

### **Section 53**

Liability in damages of the liquidators

Liquidators who commit breaches of their duties under section 42 (2) and sections 50, 51 and 52 or who, before the satisfaction of the creditors, distribute assets to the persons entitled to receive are, if they are at fault, responsible to the creditors for the damage resulting from this; they are liable as joint and several debtors.

### **Section 54**

Associations without legal personality

Associations without legal personality are governed by the provisions on partnership. When a transaction is entered into with a third party in the name of such an association, the person acting is personally liable; if more than one person acts, they are liable as joint and several debtors.

Chapter 2

## **Registered associations**

### **Section 55**

Jurisdiction over entry in the register

The entry of an association of the kind specified in section 21 above in the register of associations must be made at the local court [Amtsgericht] for the district in which the association has its seat.

### **Section 55a**

Electronic register of associations

- (1) The Land governments may provide by statutory order that and to what extent the register of associations is maintained in electronic form as a computerised data file. It must be guaranteed that
1. the principles of proper data processing are observed, in particular that precautions against a loss of data are taken, the necessary copies of the databases are kept current at least on a daily basis and the original databases and copies of them are kept in safe custody.
  2. the entries to be made are immediately entered into a memory and it remains permanently possible to reproduce their contents unchanged in readable form.
  3. the measures required by the schedule to section 126 (1) sentence 2 no. 3 of the Land Register Act [Grundbuchordnung] are taken.

The Land governments may by statutory order transfer the authorisation under sentence 1 to the Land justice administration authorities.

- (2) Maintaining the register of associations in electronic as well as paper form includes creating and maintaining a list of the associations and other lists that are necessary to maintain the register of associations.

(3) The electronic register of associations takes the place of one page of the previous register as soon as the entries on this page have been entered in the memory intended for the entries in the register of associations and made available as the register of associations. A note of closure must be added to the corresponding pages of the previous register of associations.

(4) An entry comes into effect as soon as it is entered in the memory intended for the register entries and its contents can be permanently reproduced unchanged and in readable form. There must be a verification, by a confirmation message or in another appropriate way, that these requirements are satisfied. Each entry should show the date on which it came into effect.

(5) The documents filed with the register of associations may, in place of the original, also be preserved as reproductions on an image recording medium or on other data media, if it is guaranteed that the reproductions or the data can be made readable within a reasonable time. When the image recording or data medium is created, a written note is to be made confirming that its contents correspond to the original.

(6) (repealed)

(7) (repealed)

#### **Section 56**

Minimum number of members of the association

The entry in the register should be made only if the number of members is at least seven.

#### **Section 57**

Minimum requirements of the articles of association

(1) The articles of association must contain the objects, the name and the seat of the association and indicate that the association is to be registered.

(2) The name should differ appreciably from the names of the registered associations in existence in the same place or in the same municipality.

#### **Section 58**

Recommended contents of the articles of association

The articles of association should contain provisions:

1. on becoming a member of the association and leaving it,
2. on whether the members are to make contributions, and if so, in what amount,
3. on the composition of the board,
4. on the conditions under which the general meeting is to be convened, on the form of the convening and on the notarial recording of the resolutions.

### **Section 59**

Application for registration

- (1) The board must apply for the association to be registered.
- (2) The following must be attached to the application:
  1. the original articles of association and a copy,
  2. copies of the documents on the appointment of the board.
- (3) The articles of association should be signed by at least seven members and should state the date of their execution.

### **Section 60**

Rejection of the application

- (1) If the requirements of sections 56 to 59 above have not been met, the application must be rejected by the local court [Amtsgericht], stating the reasons.
- (2) (repealed)

### **Sections 61 - 63**

(repealed)

### **Section 64**

Contents of the entry in the register of associations

On entry in the register, the name and seat of the association, the date of the execution of the articles, the members of the board and their powers of representation are to be stated.

### **Section 65**

Addition to name

When the association is entered in the register, the name of the association is given the additional element "eingetragener Verein" ["registered association"].

### **Section 66**

Public notice

- (1) The local court [Amtsgericht] must publish the entry in the newspaper intended for its public notices.
- (2) The original articles of association must be marked with the certification of entry in the register and be returned. The copy is certified by the local court [Amtsgericht] and kept together with the other documents.

### **Section 67**

Changes to the board

- (1) Every change to the board must be notified by the board for registration. A copy of the document about the change is to be attached to the notification.
- (2) Board members appointed by the court are entered in the register by the court at its own motion.

### **Section 68**

Protection of public confidence by the register of associations

If a transaction is entered into between the previous members of the board and a third party, the change of the board can be used as a defence against the third party only if at the time when the legal transaction is entered into the change has been recorded in the register of associations or is known to the third party. If the change has been entered, the third party need not allow it to apply against him if he does not know of it and his lack of knowledge does not result from negligence.

### **Section 69**

Evidence of composition of the board

Evidence that the board consists of the persons entered in the register is furnished to public authorities in the form of a local court [Amtsgericht] certificate confirming the entry.

### **Section 70**

Restriction of power of agency; passing resolutions

The provisions of section 68 above also apply to provisions that restrict the scope of the power of agency of the board or that lay down different arrangements for the passing of resolutions by the board than the provision in section 28 (1) above.

### **Section 71**

Amendments of the articles of association

(1) Amendments of the articles of association are effective only when entered in the register of associations. The board must make notification of the amendment for entry in the register. The original resolution containing the amendment and a copy is to be attached to the notification of the amendment.

(2) The provisions of sections 60, 64 and section 66 (2) apply with the necessary modifications.

### **Section 72**

Certificate on number of members

At the request of the local court [Amtsgericht] at any time, the board shall file a written confirmation completed by itself on the number of members of the association.

### **Section 73**

Decrease in numbers of members

(1) If the number of members of the association falls below three, the local court [Amtsgericht] shall, on an application by the board and, if the application is not made within three months, of its own motion, after hearing the board, deprive the association of legal personality.

(2) (repealed)

## **Section 74**

### Dissolution

- (1) The dissolution of the association and the deprivation of legal personality must be entered in the register of associations. If insolvency proceedings are commenced, no entry is made in the register.
- (2) If the association is dissolved by resolution of the general meeting or by the expiry of the time determined for the duration of the association, the board must notify the dissolution to be registered. In the former case, a copy of the resolution for dissolution must be attached to the notification.
- (3) If the association is deprived of legal personality under section 43 above, the entry must be made on a notice from the competent authority.

## **Section 75**

### Commencement of insolvency proceedings

The commencement of insolvency proceedings is to be registered by the court of its own motion. The same applies to

1. the reversal of the order opening the insolvency proceedings,
2. the appointment of a provisional insolvency administrator, if in addition the debtor is generally enjoined from transferring assets or it is ordered that disposals by the debtor are effective only with the approval of the provisional administrator in insolvency proceedings, and the termination of such a protective measure,
3. an order of self-management by the debtor and the reversal of this order, and an order that specific legal transactions of the debtor require approval,
4. the discontinuance and termination of the proceedings and
5. the monitoring of compliance with an insolvency plan and the termination of the monitoring.

## **Section 76**

### Entry of the liquidators in the register

- (1) The liquidators must be entered in the register of associations. The same applies to provisions that deviate from the provision in section 48 (3) in providing for the passing of resolutions by the liquidators.
- (2) The notification for registration must be made by the board, and in the case of later amendments by the liquidators. The notification for registration must state the extent of the power of agency of the liquidators. The notification for registration of the liquidators appointed by resolution of the general meeting must have attached to it a copy of the resolution, and the notification for registration of a provision on the passing of resolutions by the liquidators must have attached to it a copy of the document containing the provision.
- (3) Liquidators appointed by the court are entered in the register by the court of its own motion.

## **Section 77**

### Form of notification

The notifications for entry in the register of associations are to be made by the members of the board and by the liquidators by way of notarially certified statement.

## **Section 78**

### Assessment of coercive fines

(1) The local court [Amtsgericht] may enjoin the members of the board to comply with the provisions of section 67 (1), section 71 (1), section 72, section 74 (2) and section 76 by imposing coercive fines.

(2) In the same way, the liquidators may be enjoined to comply with the provisions of section 76.

## **Section 79**

### Inspection of the register of associations

(1) Everyone is permitted to inspect the register of associations and the documents filed with the local court [Amtsgericht] by the association. A copy of the entries may be requested; on request, the copy must be certified. If the documents are kept in safe custody under section 55a (5), only a copy of the reproduction may be requested. The copy must be certified on request. Inspection of the original is permitted only if the applicant shows a justified interest in inspecting it.

(2) The introduction of a computerised procedure enabling the data to be transmitted from electronic registers of associations by retrieval is admissible if it is guaranteed that

1. the retrieval of data does not exceed the inspection permitted under subsection (1) above and
2. the admissibility of the retrievals can be monitored on the basis of a log.

The Länder may specify a nationwide electronic information and communication system for the proceedings.

(3) The user must be informed that he can use the data transmitted only for information purposes. The competent agency must verify (e.g. by spot checks) whether there is evidence that the inspection permitted under sentence 1 above has been exceeded or transmitted data are being misused.

(4) The competent agency may exclude a user from taking part in the computerised retrieval procedure if he endangers the functional reliability of the retrieval equipment, exceeds the inspection permitted under subsection 3 sentence 1 above or abuses transmitted data; the same applies in the case of imminent exceeding of the permissible inspection or imminent abuse.

(5) The competent agency is the Land justice administration authority. The agency with local jurisdiction is the public authority in whose district the competent local court [Amtsgericht] is situated. This provision on jurisdiction may be varied by statutory order of the Land government. The Land government may transfer this authorisation to the Land justice administration authority by statutory order. The Länder may also agree to the jurisdiction being transferred to the competent agency of another Land.



## Subtitle 2

### **Foundations**

#### **Section 80**

Formation of a foundation having legal personality

(1) The creation of a foundation with legal personality requires an endowment transaction and the recognition of this by the competent public authority of the Land in which the foundation is to have its seat.

(2) A foundation is to be recognised as having legal personality if the endowment transaction satisfies the requirements of section 81 (1) below, if the long-term and sustained achievement of the object of the foundation appears guaranteed and if the object of the foundation does not endanger the common good.

(3) Provisions of the Land legislation on church foundations are unaffected. The same applies with the necessary modifications to foundations which Land legislation treats as equivalent to church foundations.

#### **Section 81**

Endowment transaction

(1) A lifetime endowment transaction must be in writing. It must contain the binding declaration by the founder that he will dedicate assets to achieve an object specified by himself. The endowment transaction must give the foundation a charter with provisions on

1. the name of the foundation,
2. the seat of the foundation,
3. the objects of the foundation,
4. the assets of the foundation,
5. the composition of the foundation board.

If the endowment transaction does not satisfy the requirements of sentence 3 above and if the founder is dead, section 83 sentences 2 to 4 apply with the necessary modifications.

(2) Until the foundation is recognised as having legal personality, the founder has a right to revoke the endowment transaction. If an application has been made for recognition by the competent public authority, the revocation may be declared only to that public authority. The heir of the founder is not entitled to revoke the endowment transaction if the founder made the application to the competent public authority, or, if the endowment transaction was notarially recorded, the founder, at or after the notarial recording, instructed the notary to make the application.

## **Section 82**

### Duty of founder to make transfers

If the foundation is recognised as having legal personality, the founder has a duty to transfer to the foundation the assets promised in the endowment transaction. Rights that can be transferred by contract of transfer pass to the foundation on recognition, unless the endowment transaction indicates that the founder intended otherwise.

## **Section 83**

### Testamentary foundation

If the endowment transaction is a testamentary disposition, the probate court must inform the competent public authority of this for the purpose of recognition, unless application is made by the heir or the executor. If the endowment transaction does not satisfy the requirements of section 81 (1) sentence 3, the foundation shall be given a charter or additions shall be made to an incomplete charter by the competent public authority before recognition; when this is done, the will of the founder is to be taken into account. The seat of a foundation, unless otherwise provided, is the place where the management is carried out. In case of doubt, the last residence of the founder within the country is deemed the seat.

## **Section 84**

### Recognition after the death of the founder

If the foundation is recognised as having legal personality only after the death of the founder, then for the purpose of the endowment payments made by the founder it is deemed to have come into existence before his death.

## **Section 85**

### Constitution of foundation

The constitution of a foundation, to the extent that it is not based on federal or Land legislation, is determined by the endowment transaction.

## **Section 86**

### Application of law on associations

The provisions of sections 23 and 26 of section 27 (3) and of sections 28 to 31 and section 42 apply with the necessary modifications to foundations; but the provisions of section 27 (3) and of section 28 (1) apply only to the extent that the constitution, in particular the administration of the foundation by a public authority, does not lead to a different conclusion. The provisions of section 28 (2) and of section 29 do not apply to foundations whose administration is conducted by a public authority.

## **Section 87**

Change of objects; termination

(1) If the objects of the foundation have become impossible to fulfil, or if they endanger the common good, the competent public authority may give the foundation another intended purpose or terminate it.

(2) When the objects are altered, the intention of the founder should be taken into account, and in particular, it should be ensured that the income of the foundation assets is maintained for the group of persons that it was meant to benefit, as intended by the founder. The public authority may amend the constitution of the foundation to the extent that the alteration of the objects requires this.

(3) Before the objects are altered and the constitution is changed, the board of the foundation should be heard.

## **Section 88**

Devolution of property

When the foundation ceases to exist, the property devolves on the persons specified in the constitution. If no persons entitled are specified, the property devolves on the treasury of the Land in which the foundation had its seat, or on another person entitled to receive under the law of this Land. The provisions of sections 46 to 53 apply with the necessary modifications.

Subtitle 3

## **Legal persons under public law**

### **Section 89**

Liability for organs; insolvency

(1) The provision of section 31 applies with the necessary modifications to the treasury and to corporations, foundations and institutions under public law.

(2) The same applies, to the extent that insolvency proceedings are admissible with regard to corporations, foundations and institutions under public law, to the provision of section 42 (2).

Division 2

## **Things and animals**

### **Section 90**

Concept of the thing

Only corporeal objects are things as defined by law.

### **Section 90a**

Animals

Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.

### **Section 91**

Fungible things

Fungible things as defined by law are movable things that in business dealings are customarily specified by number, measure or weight.

### **Section 92**

Consumable things

(1) Consumable things as defined by law are movable things whose intended use consists in consumption or in disposal.

(2) Movable things are also regarded as consumable if they are part of a warehouse store or another aggregate of things whose intended use is the disposal of the individual things.

### **Section 93**

Essential parts of a thing

Parts of a thing that cannot be separated without one or the other being destroyed or undergoing a change of nature (essential parts) cannot be the subject of separate rights.

### **Section 94**

Essential parts of a plot of land or a building

(1) The essential parts of a plot of land include the things firmly attached to the land, in particular buildings, and the produce of the plot of land, as long as it is connected with the land. Seed becomes an essential part of the plot of land when it is sown, and a plant when it is planted.

(2) The essential parts of a building include the things inserted in order to construct the building.

### **Section 95**

Merely temporary purpose

(1) The parts of a plot of land do not include things that are connected with the land only for a temporary purpose. The same applies to a building or other structure that is connected with a plot of land belonging to another by a person exercising a right over that land.

(2) Things that are inserted into a building for a temporary purpose are not parts of the building.

### **Section 96**

Rights as parts of a plot of land

Rights that are connected with the ownership of a plot of land are regarded as parts of the plot of land.

### **Section 97**

#### Accessories

(1) Accessories are movable things that, without being parts of the main thing, are intended to serve the economic purpose of the main thing and are in a spatial relationship to it that corresponds to this intention. A thing is not an accessory if it is not regarded as an accessory in business dealings.

(2) The temporary use of a thing for the economic purpose of another thing does not give it the quality of an accessory. The temporary separation of an accessory from the main thing does not deprive it of the quality of an accessory.

### **Section 98**

#### Commercial and agricultural inventory

The following are intended to serve the economic purpose of the main thing:

1. in the case of a building that is permanently equipped for commercial operations, in particular a mill, a smithy, a brewery or a factory, the machinery and other equipment intended for the business,
2. in the case of a farm, the equipment and livestock intended for the commercial operations, the agricultural produce, to the extent that it is necessary to continue the farming until the time when it is expected that the same or similar produce will be obtained, and manure produced on the farm.

### **Section 99**

#### Fruits

(1) Fruits of a thing are the products of the thing and the other yield obtained from the thing in accordance with its intended use.

(2) Fruits of a right are the proceeds that the right produces in accordance with its intended use, in particular, in the case of a right to extract component parts of the soil, the parts extracted.

(3) Fruits are also the proceeds supplied by a thing or a right by virtue of a legal relationship.

### **Section 100**

#### Emoluments

Emoluments are the fruits of a thing or of a right and the benefits that the use of the thing or the right affords.

## **Section 101**

### Division of fruits

If a person is entitled to receive the fruits of a thing or of a right until a particular time or from a particular time on, he is entitled to the following, unless otherwise provided:

1. the products and parts stated in section 99 (1), even if he is to receive them as the fruits of a right, to the extent that they are separated from the thing during the period of entitlement,
2. other fruits to the extent that they are due during the period of entitlement; however, if the fruits consist in remuneration for permission of use or of enjoyment of fruits and benefits, in interest, in profit shares or other periodically paid income, the person entitled has a right to a share corresponding to the duration of his entitlement.

## **Section 102**

### Reimbursement of costs of production

A person who has a duty to hand over fruits may claim reimbursement of the costs of producing the fruits to the extent that they reflect proper business practices and do not exceed the value of the fruits.

## **Section 103**

### Allocation of charges

A person who has a duty to bear the charges on a thing or a right until a specified time or from a specified time on must, unless otherwise provided, bear the periodically recurring charges in the proportion of the period of time of his duty, and bear other charges to the extent that they are payable during the period of time in which he has the duty.

### Division 3

## **Legal transactions**

### Title 1

## **Capacity to contract**

### **Section 104**

#### Incapacity to contract

A person is incapable of contracting if

1. he is not yet seven years old,
  2. he is in a state of pathological mental disturbance, which prevents the free exercise of will,
- unless the state by its nature is a temporary one.

### **Section 105**

#### Voidness of declaration of intent

(1) The declaration of intent of a person incapable of contracting is void.

(2) Also void is a declaration of intent that is made in a state of unconsciousness or temporary mental disturbance.

### **Section 105a**

#### Everyday transactions

If a person of full age incapable of contracting enters into an everyday transaction that can be effected with funds of low value, the contract he enters into is regarded as effective with regard to performance and, if agreed, consideration, as soon as performance has been effected and consideration rendered. Sentence 1 above does not apply in the case of considerable danger to the person or the property of the person incapable of contracting.

### **Section 106**

#### Limited capacity for minors to contract

A minor who has reached the age of seven has limited capacity to contract under sections 107 to 113.

### **Section 107**

#### Consent of legal representative

For a declaration of intent as a result of which he does not receive only a legal benefit, a minor requires the consent of his legal representative.

### **Section 108**

#### Entry into a contract without consent

- (1) If the minor enters into a contract without the necessary consent of the legal representative, the effectiveness of the contract is subject to the ratification of the legal representative.
- (2) If the other party requests the representative to declare his ratification, the declaration can only be made to the other party; a declaration or refusal of ratification made to the minor before the request of the other party is ineffective. The ratification may only be declared before the expiry of two weeks after receipt of the demand; if ratification is not declared, it is considered to have been refused.
- (3) If the minor has become fully capable of contracting, the ratification of the minor takes the place of the ratification of the representative.

### **Section 109**

#### Right of revocation of the other party

- (1) Until the contract is ratified, the other party is entitled to revoke it. Declaration of revocation may also be made to the minor.
- (2) If the other party realised that he was dealing with a minor, he may revoke the contract only if the minor untruthfully stated that the legal representative had given consent; he may not revoke in this case either if, when the contract was entered into, he had notice of the lack of consent.

### **Section 110**

Payment by minor with own means

A contract entered into by the minor without the approval of the legal representative is deemed effective from the beginning if the minor effects performance under the contract with means that were given to him for this purpose or for free disposal by the legal representative or by a third party with the ratification of the representative.

### **Section 111**

Unilateral legal transactions

A unilateral legal transaction that a minor undertakes without the necessary consent of the legal representative is ineffective. If the minor undertakes such a legal transaction with regard to another person with this consent, the legal transaction is ineffective if the minor does not present the consent in writing and the other person rejects the legal transaction for this reason without undue delay.

Rejection is not possible if the representative had given the other person notice of the consent.

### **Section 112**

Independent operation of a trade or business

(1) If the legal representative, with the ratification of the family court, authorises the minor to operate a trade or business independently, the minor has unlimited capacity to contract for such transactions as the business operations entail. Legal transactions are excluded for which the representative needs the ratification of the family court.

(2) The authorisation may be withdrawn by the legal representative only with the ratification of the family court.

### **Section 113**

Service or employment relationship

(1) If the legal representative authorises the minor to enter service or employment, the minor has unlimited capacity to enter into transactions that relate to entering or leaving service or employment of the permitted nature or performing the duties arising from such a relationship. Contracts are excluded for which the legal representative needs the ratification of the family court.

(2) The authorisation may be withdrawn or restricted by the legal representative.

(3) If the legal representative is a guardian, the authorisation, if he refuses it, may, on the application of the minor, be replaced by the family court. The family court must give substitute authorisation if it is in the interest of the ward.

(4) The authorisation given for an individual case is in the case of doubt deemed to be general authorisation to enter into relationships of the same kind.

### **Sections 114, 115**

(repealed)



## Title 2

### **Declaration of intent**

#### **Section 116**

##### Mental reservation

A declaration of intent is not void by virtue of the fact that the person declaring has made a mental reservation that he does not want the declaration made. The declaration is void if it is to be made to another person who knows of the reservation.

#### **Section 117**

##### Sham transaction

(1) If a declaration of intent that is to be made to another person is, with his consent, only made for the sake of appearance, it is void.

(2) If a sham transaction hides another legal transaction, the provisions applicable to the hidden transaction apply.

#### **Section 118**

##### Lack of seriousness

A declaration of intent not seriously intended which is made in the expectation that its lack of serious intention will not be misunderstood is void.

#### **Section 119**

##### Voidability for mistake

(1) A person who, when making a declaration of intent, was mistaken about its contents or had no intention whatsoever of making a declaration with this content, may avoid the declaration if it is to be assumed that he would not have made the declaration with knowledge of the factual position and with a sensible understanding of the case.

(2) A mistake about such characteristics of a person or a thing as are customarily regarded as essential is also regarded as a mistake about the content of the declaration.

#### **Section 120**

##### Voidability for incorrect transmission

A declaration of intent that has been incorrectly transmitted by the person or facilities used for its transmission may be avoided subject to the same condition as a declaration of intent made by mistake may be avoided under section 119.

#### **Section 121**

##### Period for avoidance

(1) Avoidance must be effected, in the cases set out in sections 119 and 120, without culpable delay (without undue delay) after the person entitled to avoid obtains knowledge of the ground for avoidance. Avoidance made to an absent person is regarded as effected in good time if the declaration of avoidance is forwarded without undue delay.

(2) Avoidance is excluded if ten years have passed since the declaration of intent was made.

### **Section 122**

Liability in damages of the person declaring avoidance

(1) If a declaration of intent is void under section 118, or avoided under sections 119 and 120, the person declaring must, if the declaration was to be made to another person, pay damages to this person, or failing this to any third party, for the damage that the other or the third party suffers as a result of his relying on the validity of the declaration; but not in excess of the total amount of the interest which the other or the third party has in the validity of the declaration.

(2) A duty to pay damages does not arise if the injured person knew the reason for the voidness or the voidability or did not know it as a result of his negligence (ought to have known it).

### **Section 123**

Voidability on the grounds of deceit or duress

(1) A person who has been induced to make a declaration of intent by deceit or unlawfully by duress may avoid his declaration.

(2) If a third party committed this deceit, a declaration that had to be made to another may be avoided only if the latter knew of the deceit or ought to have known it. If a person other than the person to whom the declaration was to be made acquired a right as a direct result of the declaration, the declaration made to him may be avoided if he knew or ought to have known of the deceit.

### **Section 124**

Period for avoidance

(1) The avoidance of a declaration of intent voidable under section 123 may be effected only within one year.

(2) In the case of deceit, the period commences at the time when the person entitled to avoid discovers the deceit, and in case of duress, from the time when the duress stops. The provisions in sections 206, 210 and 211 applicable to limitation apply with the necessary modifications to the running of the period.

(3) Avoidance is barred, if ten years have passed since the declaration of intent was made.

### **Section 125**

Voidness resulting from a defect of form

A legal transaction that lacks the form prescribed by statute is void. In case of doubt, lack of the form specified by legal transaction also results in voidness.

## **Section 126**

### Written form

- (1) If written form is prescribed by statute, the document must be signed by the issuer with his name in his own hand, or by his notarially certified initials.
- (2) In the case of a contract, the signature of the parties must be made on the same document. If more than one counterpart of the contract is drawn up, it suffices if each party signs the document intended for the other party.
- (3) Written form may be replaced by electronic form, unless the statute leads to a different conclusion.
- (4) Notarial recording replaces the written form.

## **Section 126a**

### Electronic form

- (1) If electronic form is to replace the written form prescribed by law, the issuer of the declaration must add his name to it and provide the electronic document with a qualified electronic signature in accordance with the Electronic Signature Act [Signaturgesetz].
- (2) In the case of a contract, the parties must each provide a counterpart with an electronic signature as described in subsection (1).

## **Section 126b**

### Text form

If text form is prescribed by law, the declaration must be made in a document or in another manner suitable for its permanent reproduction in writing, the person making the declaration must be named and the completion of the declaration must be shown through the reproduction of a signature of the name or otherwise.

## **Section 127**

### Agreed form

- (1) The provisions under sections 126, 126a or 126b also apply, in case of doubt, to the form specified by legal transaction.
- (2) For compliance with the written form required by legal transaction, unless a different intention is to be assumed, it suffices if the message is transmitted by way of telecommunications and, in the case of a contract, by the exchange of letters. If such a form is chosen, notarial recording in accordance with section 126 may be demanded subsequently.

(3) For compliance with the electronic form required by legal transaction, unless a different intention is to be assumed, an electronic signature other than provided for in section 126a also suffices and, in the case of a contract, the exchange of a declaration of an offer and of acceptance which are each provided with an electronic signature. If such a form is chosen, an electronic signature in accordance with section 126a may be demanded subsequently, or if this is not possible for one of the parties, notarial recording in compliance with section 126.

#### **Section 127a**

##### Court settlement

In the event of a court settlement, the recording of declarations in a court record drawn up in accordance with the provisions under the Code of Civil Procedure [Zivilprozessordnung] replaces notarial recording.

#### **Section 128**

##### Notarial recording

If the notarial recording of a contract is prescribed by statute, it suffices if first the offer and then the acceptance of the offer is recorded by a notary.

#### **Section 129**

##### Official certification

(1) If the official certification of a declaration is prescribed by law, the declaration must be put in writing and the signature of the person declaring be certified by a notary. If the declaration is signed by the issuer making his mark, the certification of the initials provided for in section 126 (1) is necessary and sufficient.

(2) The notarial recording of the declaration replaces the official certification.

#### **Section 130**

##### Effectiveness of a declaration of intent to absent parties

(1) A declaration of intent that is to be made to another becomes effective, if made in his absence, at the point of time when this declaration reaches him. It does not become effective if a revocation reaches the other previously or at the same time.

(2) The effectiveness of a declaration of intent is not affected if the person declaring dies or loses capacity to contract after making a declaration.

(3) These provisions apply even if the declaration of intent is to be made to a public authority.

### **Section 131**

Effectiveness in relation to persons without full capacity to contract

(1) If a declaration of intent is made to a person incapable of contracting, it does not become effective until it has reached his legal representative.

(2) The same applies if the declaration of intent is made to a person with limited capacity to contract.

If, however, the declaration merely provides a legal advantage to the person with limited capacity to contract, or if the legal representative has given his consent, the declaration becomes effective at the time when it reaches the person with limited capacity.

### **Section 132**

Substitution of service for receipt

(1) A declaration of intent is also deemed to have been received if it is served through a bailiff as intermediary. The service is effected in accordance with the provisions of the Code of Civil Procedure [Zivilprozessordnung].

(2) If the person declaring is unaware, through no negligence on his part, of the identity of the person to whom the declaration is to be made, or if the whereabouts of this person are unknown, service may be effected in accordance with the provisions of the Code of Civil Procedure [Zivilprozessordnung] relating to service by publication. In the former case, the local court [Amtsgericht] competent for the approval is the one in whose district the person declaring has his residence, or in the absence of a residence within the country, his abode; in the latter case, the local court [Amtsgericht] competent for the approval is the one in the district of which the person to whom service is required to be effected had his last residence, or, in the absence of a residence within the country, his last abode.

### **Section 133**

Interpretation of a declaration of intent

When a declaration of intent is interpreted, it is necessary to ascertain the true intention rather than adhering to the literal meaning of the declaration.

### **Section 134**

Statutory prohibition

A legal transaction that violates a statutory prohibition is void, unless the statute leads to a different conclusion.

### **Section 135**

#### Statutory prohibition of disposal

(1) If the disposition of a thing violates a statutory prohibition against disposal intended solely for the protection of particular persons, the disposition is ineffective only in relation to these persons. A disposition by legal transaction is equivalent to a disposition which is effected by means of execution or attachment.

(2) The provisions in favour of those who derive rights from an unauthorised person apply with the necessary modifications.

### **Section 136**

#### Official prohibition of disposal

A prohibition of disposal which is issued by a court or by any other public authority within the limits of its competence is equivalent to a statutory prohibition of disposal of the kind described in section 135.

### **Section 137**

#### Prohibition of dispositions in a legal transaction

The power to dispose of an alienable right may not be excluded or restricted by a legal transaction.

This effectiveness of an obligation not to dispose of such a right is not affected by this provision.

### **Section 138**

#### Legal transaction contrary to public policy; usury

(1) A legal transaction which is contrary to public policy is void.

(2) In particular, a legal transaction is void by which a person, by exploiting the predicament, inexperience, lack of sound judgement or considerable weakness of will of another, causes himself or a third party, in exchange for an act of performance, to be promised or granted pecuniary advantages which are clearly disproportionate to the performance.

### **Section 139**

#### Partial invalidity

If a part of a legal transaction is void, then the entire legal transaction is void, unless it is to be assumed that it would have been undertaken even without the void part.

### **Section 140**

#### Re-interpretation

If a void legal transaction fulfils the requirements of another legal transaction, then the latter is deemed to have been entered into, if it may be assumed that its validity would be intended if there were knowledge of the invalidity.

### **Section 141**

#### Confirmation of a void legal transaction

- (1) If a void legal transaction is confirmed by the person who undertook it, the confirmation is to be seen as a renewed undertaking.
- (2) If a void contract is confirmed by the parties, then in case of doubt they are obliged to grant to each other what they would have granted if the contract had been valid from the beginning.

### **Section 142**

#### Effect of avoidance

- (1) If a voidable legal transaction is avoided, it is to be regarded as having been void from the outset.
- (2) A person who knew or ought to have known of the possibility of avoidance is treated, in case of avoidance, as if he had known or ought to have known of the invalidity of the legal transaction.

### **Section 143**

#### Declaration of avoidance

- (1) Avoidance is effected by declaration to the opponent.
- (2) The opponent is, in the case of a contract, the other party to the contract and, in the case of section 123 (2) sentence 2, the person who has acquired a right directly under the contract.
- (3) In the case of a unilateral legal transaction which was to be undertaken in relation to another person, the other person is the opponent. The same applies to a legal transaction that is required to be undertaken in relation to another person or to a public authority, even if the legal transaction has already been undertaken in relation to the authority.
- (4) In the case of any other kind of unilateral legal transaction, the person who has received a legal advantage directly on the basis of the legal transaction is the opponent. The avoidance may, however, if the declaration of intent was to be made to a public authority, be made by declaration to the authority; the authority should inform the person who was directly affected by the legal transaction of the avoidance.

### **Section 144**

#### Confirmation of a voidable legal transaction

- (1) Avoidance is excluded, if the voidable legal transaction is confirmed by the person entitled to avoid.
- (2) The confirmation does not require the form prescribed for the legal transaction.

### Title 3

#### **Contract**

##### **Section 145**

###### Binding effect of an offer

Any person who offers to another to enter into a contract is bound by the offer, unless he has excluded being bound by it.

##### **Section 146**

###### Expiry of an offer

An offer expires if a refusal is made to the offeror, or if no acceptance is made to this person in good time in accordance with sections 147 to 149.

##### **Section 147**

###### Period for acceptance

(1) An offer made to a person who is present may only be accepted immediately. This also applies to an offer made by one person to another using a telephone or another technical facility.

(2) An offer made to a person who is absent may be accepted only until the time when the offeror may expect to receive the answer under ordinary circumstances.

##### **Section 148**

###### Fixing a period for acceptance

If the offeror has determined a period of time for the acceptance of an offer, the acceptance may only take place within this period.

##### **Section 149**

###### Late receipt of a declaration of acceptance

If a declaration of acceptance received late by the offeror was sent in such a way that it would have reached him in time if it had been forwarded in the usual way, and if the offeror ought to have recognised this, he must notify the acceptor of the delay after receipt of the declaration without undue delay, unless this has already been done. If he delays the sending of the notification, the acceptance is deemed not to be late.

##### **Section 150**

###### Late and altered acceptance

(1) The late acceptance of an offer is considered to be a new offer.

(2) An acceptance with expansions, restrictions or other alterations is deemed to be a rejection combined with a new offer.



### **Section 151**

Acceptance without declaration to the offeror

A contract comes into existence through the acceptance of the offer without the offeror needing to be notified of acceptance, if such a declaration is not to be expected according to customary practice, or if the offeror has waived it. The point of time when the offer expires is determined in accordance with the intention of the offeror, which is to be inferred from the offer or the circumstances.

### **Section 152**

Acceptance by notarial recording

If a contract is notarially recorded without both parties being present at the same time, the contract comes into existence, unless otherwise provided, on the recording of acceptance effected in accordance with section 128. The provision of section 151 sentence 2 applies.

### **Section 153**

Death or incapacity to contract of the offeror

The coming into existence of the contract is not prevented by the offeror dying or losing capacity to contract before acceptance, unless a different intention of the offeror is to be presumed.

### **Section 154**

Overt lack of agreement; lack of notarial recording

(1) As long as the parties have not yet agreed on all points of a contract on which an agreement was required to be reached according to the declaration even of only one party, the contract is, in case of doubt, not entered into. An agreement on individual points is not legally binding even if they have been recorded.

(2) If notarial recording of the contract contemplated has been arranged, the contract is, in case of doubt, not entered into until the recording has taken place.

### **Section 155**

Hidden lack of agreement

If the parties to a contract which they consider to have been entered into have, in fact, not agreed on a point on which an agreement was required to be reached, whatever is agreed is applicable if it is to be assumed that the contract would have been entered into even without a provision concerning this point.

### **Section 156**

Entry into contracts at auctions

At an auction, a contract is not entered into until the fall of the hammer. A bid lapses if a higher bid is made, or if the auction is closed without the fall of the hammer.

### **Section 157**

Interpretation of contracts

Contracts are to be interpreted as required by good faith, taking customary practice into consideration.

## Title 4

### Conditions and specification of time

#### Section 158

Conditions precedent and subsequent

- (1) If a legal transaction is entered into subject to a condition precedent, the legal transaction that is subject to the condition comes into effect when the condition is satisfied.
- (2) If a legal transaction is entered into subject to a condition subsequent, the effect of the legal transaction ends when the condition is satisfied; at this moment the previous legal situation is restored.

#### Section 159

Retroactive effect

If, under the terms of a legal transaction, the consequences linked to the satisfaction of the condition are to become effective from an earlier time, then when the condition is satisfied the parties are under a duty to render each other the performance that they would have rendered if the consequences had occurred at the earlier time.

#### Section 160

Liability in the period of suspense

- (1) Any person who has a right subject to a condition precedent may, in the case of the satisfaction of the condition, demand damages from the other party if the latter, during the period of suspense, is at fault for defeating or adversely affecting the right dependent on the condition.
- (2) In the case of a legal transaction entered into subject to a condition subsequent, the person to whose advantage the former legal situation is restored has the same claim on the same conditions.

#### Section 161

Ineffectiveness of dispositions in the period of suspense

- (1) If a person has disposed of a thing, and the disposition is subject to a condition precedent, any further disposition which he makes as regards the thing in the period of suspense is ineffective on the satisfaction of the condition to the extent that it would defeat or adversely affect the effect subject to the condition. Such a disposition is equivalent to a disposition which is effected during the period of suspense by execution or attachment or by the administrator in insolvency proceedings.
- (2) In the case of a condition subsequent, the same applies to the dispositions of a person whose right expires on the fulfilment of the condition.
- (3) The provisions in favour of those who derive rights from an unauthorised person apply with the necessary modifications.

## **Section 162**

Prevention of or bringing about the satisfaction of the condition

(1) If the satisfaction of a condition is prevented in bad faith by the party to whose disadvantage it would be, the condition is deemed to have been satisfied.

(2) If the satisfaction of a condition is brought about in bad faith by the party to whose advantage it would be, the condition is deemed not to have been satisfied.

## **Section 163**

Specification of time

If, when a legal transaction is undertaken, a time has been specified for the beginning or the end of its effect, then in the former case the provisions in sections 158, 160 and 161 applicable to conditions precedent and in the latter case the conditions in sections 158, 160 and 161 applicable to conditions subsequent apply with the necessary modifications.

Title 5

## **Agency and authority**

### **Section 164**

Effect of a declaration made by the agent

(1) A declaration of intent which a person makes within the scope of his own power of agency in the name of a principal takes effect directly in favour of and against the principal. It is irrelevant whether the declaration is made explicitly in the name of the principal, or whether it may be gathered from the circumstances that it is to be made in his name.

(2) If the intent to act on behalf of another is not evident, the lack of intent on the part of the agent to act on his own behalf is not taken into consideration.

(3) The provisions of subsection (1) apply with the necessary modifications if a declaration of intent to be made to another is made to his agent.

### **Section 165**

Agent with limited capacity to contract

The effectiveness of a declaration of intent made by or to an agent is not adversely affected by the agent having limited capacity to contract.

### **Section 166**

Absence of intent; imputed knowledge

(1) Insofar as the legal consequences of a declaration of intent are influenced by an absence of intent or by knowledge or by constructive notice of certain circumstances, it is not the person of the principal, but that of the agent, that is taken into account.

(2) If, in the case of a power of agency granted by a legal transaction (authority), the agent has acted in compliance with certain instructions given by the principal, then the latter may not invoke the lack of knowledge of the agent with regard to circumstances of which the principal himself knew. The same rule applies to circumstances which the principal ought to have known, insofar as constructive notice is equivalent to knowledge.

### **Section 167**

Conferment of authority

(1) Authority is conferred by declaration to the person to be granted authority, or to the third party in relation to whom the authority is to have effect.

(2) The declaration is not required to be in the form laid down for the legal transaction to which the authority relates.

### **Section 168**

Expiry of authority

The expiry of the authority depends on the legal relationship on which its conferment is based. The authority is also revocable if the legal relationship is continued, unless this relationship leads to a different conclusion. The provision under section 167 (1) applies with the necessary modifications to the declaration of revocation.

### **Section 169**

Authority of the authorised representative and the managing partner

To the extent that the expired authority of an authorised representative or a managing partner is deemed to continue in accordance with sections 674 and 729, it is not effective in favour of a third party who, when a legal transaction is undertaken, knows or ought to know of the expiry.

### **Section 170**

Period of effectiveness of the authority

If authority is granted by declaration to a third party, it remains in force in relation to this third party until he is notified by the principal of the expiry thereof.

### **Section 171**

Period of effectiveness in the case of announcement

(1) If a person has announced by separate notice to a third party or by public notice that he has granted authority to another, the latter, on the basis of the announcement, is authorised to represent the person to that third party in the former case, and to any third party in the latter case.

(2) The authority remains effective until the notice is revoked in the same manner in which it was made.

### **Section 172**

Letter of authorisation

(1) If the principal has delivered a letter of authorisation to the agent and the agent presents it to a third party, this is equivalent to a separate notification of authorisation by the principal.

(2) The power of agency remains effective until the letter of authorisation is returned to the principal or declared to be invalid.

### **Section 173**

Period of effectiveness in the case of knowledge and negligent lack of knowledge

The provisions of section 170, section 171 (2) and section 172 (2) do not apply if the third party knows or ought to know of the termination of the authority when the legal transaction is entered into.

### **Section 174**

Unilateral legal transaction by an authorised representative

A unilateral legal transaction that an authorised representative undertakes in relation to another is ineffective if the authorised representative does not present a letter of authorisation and the other rejects the legal transaction without undue delay for this reason. Rejection is excluded if the principal notified the other of the authorisation.

### **Section 175**

Return of the letter of authorisation

After the expiry of the authority, the authorised representative must return the letter of authorisation to the principal; he has no right of retention.

### **Section 176**

Declaration of invalidity of the letter of authorisation

(1) The principal may, by public notice, declare the letter of authorisation; the declaration of invalidity must be published in compliance with the provisions of the Code of Civil Procedure

[Zivilprozessordnung] that govern the service of a summons by publication. The declaration of invalidity becomes effective at the end of one month after its last appearance in the official newspapers.

(2) The local court [Amtsgericht] in whose district the principal is subject to general jurisdiction and the local court [Amtsgericht] which would have jurisdiction over the action for the return of the letter of authorisation are equally competent to authorise the publication, irrespective of the value of the matter in dispute.

(3) The declaration of invalidity is ineffective if the principal may not revoke the authority.

### **Section 177**

Entry into contract by an unauthorised agent

(1) If a person enters into a contract in the name of another without power of agency, then the effectiveness of the contract to the benefit or detriment of the principal requires the ratification of the principal.

(2) If the other party requires the principal to make a declaration as to whether or not he ratifies the contract, the declaration may only be made to that other party; a ratification or a refusal of ratification declared to the agent before the demand is without effect. The ratification may only be declared before the expiry of two weeks after receipt of the demand; if it is not declared, it is considered to have been refused.

### **Section 178**

Right of revocation of the other party

Until the ratification of the contract, the other party is entitled to revoke it, unless he knew of the lack of power of agency when he entered into the contract. The revocation may also be declared to the agent.

### **Section 179**

Liability of an unauthorised agent

(1) A person who has entered into a contract as an agent is, if he does not furnish proof of his power of agency, obliged to the other party at the other party's choice either to perform the contract or to pay damages to him, if the principal refuses to ratify the contract.

(2) If the agent was not aware of his lack of power of agency, he is obliged to make compensation only for the damage which the other party suffers as a result of relying on the power of agency; but not in excess of the total amount of the interest which the other or the third party has in the effectiveness of the contract.

(3) The agent is not liable, if the other party knew or ought to have known of the lack of power of agency. The agent is also not liable if he had limited capacity to contract, unless he acted with the consent of his legal representative.

### **Section 180**

#### Unilateral legal transactions

Agency without authority is not permitted for a unilateral legal transaction. However, if the person in relation to whom such a legal transaction was to be undertaken did not, when the legal transaction was undertaken, question the power of agency the agent claimed to have, or if he was in agreement that the agent might act without authority, the provisions on contracts apply with the necessary modifications. The same applies if a unilateral legal transaction is undertaken in relation to an unauthorised agent with his consent.

### **Section 181**

#### Contracting with oneself

An agent may not, unless otherwise permitted, enter into a legal transaction in the name of the principal with himself in his own name or as an agent of a third party, unless the legal transaction consists solely in the performance of an obligation.

## Title 6

### **Consent and ratification**

### **Section 182**

#### Approval

(1) If the effectiveness of a contract, or of a unilateral legal transaction to be undertaken in relation to another, depends on the approval of a third party, the grant and refusal of approval may be declared either to one party or to the other.

(2) The approval is not required to have the form provided for the legal transaction.

(3) If a unilateral legal transaction whose effectiveness depends on the approval of a third party is undertaken with the consent of the third party, then the provisions of section 111 sentences 2 and 3 apply with the necessary modifications.

### **Section 183**

#### Revocability of consent

Prior approval (consent) may be revoked until the legal transaction is undertaken, unless the legal relationship on which this consent is based leads to a different conclusion. Revocation may either be declared to one party or to the other.

## **Section 184**

### Retroactive effect of ratification

- (1) Subsequent approval (ratification) operates retroactively from the point of time when the legal transaction was undertaken, unless otherwise provided.
- (2) The retroactive effect does not cancel the effectiveness of dispositions made by the ratifying person before the ratification of the subject matter of the legal transaction, or made by execution or attachment or by the administrator in insolvency proceedings.

## **Section 185**

### Disposition by an unauthorised person

- (1) A disposition of a thing made by a person without the authority to do so is effective if made with the consent of the person entitled.
- (2) The disposition becomes effective if the person entitled ratifies it, or if the person disposing acquires the thing or if the person entitled has succeeded to the estate of the disposer and has unlimited liability for the obligations of the estate. In the last two cases, if more than one conflicting disposition has been made in respect of the thing, then only the first disposition is effective.

### Division 4

## **Periods of time and fixed dates**

### **Section 186**

#### Scope of applicability

The interpretation provisions of sections 187 to 193 apply to the fixing of periods of time and dates contained in statutes, court orders and legal transactions.

### **Section 187**

#### Beginning of a period of time

- (1) If a period commences on the occurrence of an event or at a point of time falling in the course of a day, then the day on which the event or point of time occurs is not included in the calculation of the period.
- (2) If the beginning of a day is the determining point of time for the commencement of a period, then this day is included in the calculation of the period. The same applies to the date of birth when the age of a person is calculated.



### **Section 188**

End of a period of time

- (1) A period of time specified by days ends on the expiry of the last day of the period.
- (2) A period of time specified by weeks, by months or by a duration of time comprising more than one month - year, half-year, quarter - ends, in the case of section 187 (1), on the expiry of the day of the last week or of the last month which, in its designation or its number, corresponds to the day on which the event or the point of time occurs, or in the case of section 187 (2), on the expiry of the day of the last week or of the last month that precedes the day which corresponds in designation or number to the first day of the period of time.
- (3) If, in the case of a period of time determined by months, the day on which it is due to expire does not occur in the last month, the period ends on the expiry of the last day of this month.

### **Section 189**

Calculation of individual periods of time

- (1) A half-year is understood to mean a period of six months, a quarter is understood to mean a period of three months, and half a month is understood to mean a period of fifteen days.
- (2) If a period of time is specified as one or more than one whole month and a half-month, then the fifteen days shall be counted last of all.

### **Section 190**

Extension of period

If a period of time is extended, the new period is calculated from the expiry of the previous period.

### **Section 191**

Calculation of periods of time

If a period of time is determined by months or by years with the meaning that they are not required to run consecutively, a month is counted as thirty days and a year as 365 days.

### **Section 192**

Beginning, middle and end of a month

The beginning of the month is understood to be the first day, the middle of the month the fifteenth day, and the end of month the last day.

### **Section 193**

Sundays and holidays; Saturdays

If a declaration of intent is to be made or an act of performance to be done on a particular day or within a period, and if the particular day or the last day of the period falls on a Sunday, a general holiday officially recognised at the place of the declaration or performance, or on a Saturday, the next working day takes the place of this day.

Division 5

## **Limitation**

Title 1

### **Subject-matter and duration of limitation**

#### **Section 194**

Subject-matter of limitation

(1) The right to demand that another person does or refrains from an act (claim) is subject to limitation.

(2) Claims based on a family-law relationship are not subject to limitation to the extent that they are directed towards creating a situation appropriate for the relationship for the future or towards consent to a genetic test to clarify biological descent.

#### **Section 195**

Standard limitation period

The standard limitation period is three years.

#### **Section 196**

Limitation period for rights to a plot of land

Claims to the transfer of ownership of land and to the creation, transfer or cancellation of a right to a plot of land or to a change of the subject-matter of such a right and entitlements to consideration are subject to a ten-year limitation period.

#### **Section 197**

Thirty-year limitation period

(1) Unless otherwise provided, the following claims are statute-barred after thirty years:

1. claims for return based on ownership or other real rights,
2. claims governed by family law or the law of succession,
3. claims that have been declared final and absolute,
4. claims under enforceable settlements or enforceable documents,
5. claims that have become enforceable upon being recognised in insolvency proceedings, and
6. claims to reimbursement of the costs of execution.

(2) To the extent that claims under subsection (1), no. 2 are for periodically recurring acts of performance or maintenance payments and to the extent that claims under subsection (1), nos. 3 to 5 are concerned with periodically recurring acts of performance that will fall due in the future, the standard limitation period takes the place of the period of thirty years.

#### **Section 198**

Limitation in the case of a successor in title

If a thing in respect of which a real claim exists comes into the possession of a third party by succession in title, the part of the limitation period that passed while possession was held by his predecessor in title is deemed to benefit the successor in title.

## **Section 199**

Commencement of the standard limitation period and maximum periods

(1) The standard limitation period commences at the end of the year in which:

1. the claim arose and
2. the obligee obtains knowledge of the circumstances giving rise to the claim and of the identity of the obligor, or would have obtained such knowledge if he had not shown gross negligence.

(2) Claims for damages based on injury to life, body, health or liberty, notwithstanding the manner in which they arose and notwithstanding knowledge or a grossly negligent lack of knowledge, are statute-barred thirty years from the date on which the act, breach of duty or other event that caused the damage occurred.

(3) Other claims for damages become statute-barred

1. notwithstanding knowledge or a grossly negligent lack of knowledge, ten years after they arise and
2. regardless of how they arose and of knowledge or a grossly negligent lack of knowledge, thirty years from the date on which the act, breach of duty or other event that caused the damage occurred.

The period that ends first is applicable.

(4) Notwithstanding knowledge or a grossly negligent lack of knowledge, claims other than claims for damages become statute-barred ten years after the date upon which they arise.

(5) If the claim is for forbearance, the date of the breach of such an obligation takes the place of the date on which the claim arose.

## **Section 200**

Commencement of other limitation periods

Unless another date for the commencement of limitation is specified, the limitation period of claims not subject to the standard limitation period commences when the claim arises. Section 199 (5) applies with the necessary modifications.

## **Section 201**

Commencement of the limitation period for recognised claims

The limitation period for claims of the kind referred to in section 197 (1), nos. 3 to 6, commences on the date when the decision becomes final and absolute, the enforceable instrument is executed or the claim is recognised in insolvency proceedings, but not before the claim arises. Section 199 (5) applies with the necessary modifications.

## **Section 202**

Inadmissibility of agreements on limitation

- (1) In the case of liability for intention, the limitation period may not be relaxed in advance by legal transaction.
- (2) The limitation period may not be extended by legal transaction beyond a period of thirty years from the beginning of the statutory limitation period.

Title 2

## **Suspension, suspension of expiry and recommencement of the limitation period**

### **Section 203**

Suspension of limitation in the case of negotiations

If negotiations between the obligor and the obligee are in progress in respect of the claim or the circumstances giving rise to the claim, the limitation period is suspended until one party or the other refuses to continue the negotiations. The claim is statute-barred at the earliest three months after the end of the suspension.

### **Section 204**

Suspension of limitation as a result of prosecution of rights

- (1) The limitation period is suspended by:
  1. the bringing of an action for performance or for a declaration of the existence of a claim, for the grant of an execution clause or for the issue of an order for execution,
  2. the service of an application in the simplified procedure for the maintenance of minors,
  3. the service of a demand for payment in summary proceedings for recovery of debt or of the European order for payment in the European order for payment procedure in accordance with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ EU L 399 p. 1),
  4. arranging for notice to be given of an application for conciliation filed with a conciliation body established or recognised by the Land justice administration authority or, if the parties seek conciliation in mutual agreement, with any other conciliation body which settles disputes; if notice is arranged to be given shortly after the filing of the application, the limitation period is suspended immediately once the application is filed,
  5. the assertion of a set-off of a claim in a legal action,
  6. the service of a third-party notice,
  7. the service of an application for evidence to be taken in independent proceedings,
  8. the beginning of agreed expert opinion proceedings,
  9. the service of an application for an attachment order, an interim injunction or an interim order, or, if the application is not served, the filing of the application if the order for attachment, the

interim injunction or the interim order is served on the obligor within one month of its being pronounced or of its service on the obligee,

10. the filing of a claim in insolvency proceedings or in proceedings for the distribution of assets under maritime law,
11. the beginning of arbitration proceedings,
12. the filing of an application with a public authority, if the admissibility of the action depends on a has been disposed of; this applies with the necessary modifications to applications required to be preliminary decision by this authority and the action is brought within three months after the application made to a court or a conciliation body referred to in no. 4 above, whose admissibility is subject to a preliminary decision by an authority,
13. the filing of an application with the higher court, if the higher court must decide upon the court with jurisdiction over the claim and the action is brought within three months after the application has been disposed of, or the application for which a decision on jurisdiction is necessary is filed, and
14. arranging for notice to be given of the first application for the grant of legal aid or procedural costs assistance; if notice is arranged shortly after the filing of the application, the suspension of the limitation period takes effect immediately when the application is filed.

(2) Suspension under subsection (1) above ends six months after the final and absolute decision in the proceedings commenced, or after they end in another way. If the proceedings come to a standstill because the parties do not prosecute them, the date of the last act in the proceedings by the parties, the court or other body responsible for the proceedings takes the place of the date when the proceedings end. Suspension commences again if one of the parties continues the proceedings.

(3) Sections 206, 210 and 211 apply with the necessary modifications to subsection (1), nos. 9, 12 and 13 above.

### **Section 205**

Suspension of limitation in the case of a right to refuse performance

Limitation is suspended for as long as the obligor, under an agreement with the obligee, is temporarily entitled to refuse performance.

### **Section 206**

Suspension of limitation in case of force majeure

Limitation is suspended for as long as, within the last six months of the limitation period, the obligee is prevented by force majeure from prosecuting his rights.

### **Section 207**

Suspension of limitation for family and other reasons

(1) The limitation of claims between spouses is suspended for as long as the marriage continues. The same applies to claims between

1. civil partners for as long as a civil partnership exists,
2. parents and children and the spouse of one parent and the children of that spouse while the children are under age,
3. a guardian and his ward for the duration of the guardianship,
4. a person placed under the care of a custodian and his custodian for the duration of a care relationship, and
5. a person subject to curatorship and his curator for the duration of the curatorship.

The limitation of claims of a child against a legal adviser in litigation proceedings is suspended during the period when the latter is acting as a legal adviser.

(2) Section 208 remains unaffected.

### **Section 208**

Suspension of limitation in the case of claims for infringement of the right to sexual self-determination

The limitation period of claims for infringement of the right to sexual self-determination is suspended until the obligee reaches the age of twenty-one. If, when the limitation period commences, the obligee in respect of claims for infringement of the right to sexual self-determination is living with the obligor in a common household, limitation is suspended until this common household ends.

### **Section 209**

Effect of suspension

A period in which limitation is suspended is not included in the calculation of the limitation period.

### **Section 210**

Suspension of expiry of the limitation period in the case of persons without full capacity to contract

(1) If a person incapable of contracting or with limited capacity to contract has no legal representative, a limitation period to his benefit or detriment does not end until the expiry of six months after the time when the person acquires unlimited capacity to contract or the lack of representation is remedied. If the limitation period is shorter than six months, the period specified for limitation takes the place of the period of six months.

(2) Subsection (1) does not apply to the extent that a person with limited capacity to contract is capable of suing and being sued.

### **Section 211**

Suspension of expiry in matters relating to estates

A claim that is part of or directed against an estate does not become statute-barred until at least six months have passed from the time when the inheritance is accepted by the heir or when insolvency proceedings in respect of the estate are commenced or when the claim can be asserted by or against an agent. If the limitation period is shorter than six months, the period specified for limitation takes the place of the period of six months.

### **Section 212**

Recommencement of the limitation period

(1) The limitation period recommences if

1. the obligor acknowledges the claim towards the obligee by part payment, the payment of interest, the provision of security or in another way, or
2. a judicial or official act of execution is undertaken or applied for.

(2) The recommencement of the limitation period as a result of an act of execution is considered not to have occurred if the act of execution is cancelled on the application of the obligee or as the result of a failure to comply with the statutory requirements.

(3) The recommencement of the limitation period as a result of an application for an act of execution is considered not to have occurred if the application is not granted or is withdrawn before the act or the act of execution obtained is cancelled under subsection (2) above.

### **Section 213**

Suspension, suspension of expiry and recommencement of limitation in the case of other claims

The suspension, suspension of expiry and recommencement of the limitation period also apply to claims which are available, for the same reason, either in addition to the claim or instead of the claim.

Title 3

## **Legal consequences of limitation**

### **Section 214**

Effect of limitation

(1) After limitation occurs, the obligor is entitled to refuse performance.

(2) Performance rendered in satisfaction of a claim that is now statute-barred may not be claimed back even if performance was rendered without knowledge of the limitation. The same applies to an acknowledgement made in accordance with a contract and to a security provided by the obligor.

### **Section 215**

Set-off and right of retention after a claim is statute-barred

Limitation of actions does not exclude set-off and the assertion of a right of retention if the claim was not yet statute-barred at the time when the set-off could first have been made or performance first refused.

## **Section 216**

Effect of limitation in the case of secured claims

- (1) The limitation of a claim for which a mortgage, ship mortgage or security right exists does not prevent the obligee from seeking satisfaction of his claim from the object encumbered.
- (2) If a right has been procured for the purpose of securing a claim, the retransfer of the right may not be demanded on the basis of the limitation of the claim. If title has been retained, the right to withdraw from the contract may be exercised even if the secured claim is statute-barred.
- (3) Subsections (1) and (2) above do not apply to the limitation of claims for interest and other recurring obligations.

## **Section 217**

Limitation of collateral performance

A claim for collateral performance dependent on the main claim becomes statute-barred at the same time as the main claim, even if the specific limitation period applying to the claim for collateral performance has not ended.

## **Section 218**

Ineffectiveness of withdrawal

- (1) Withdrawal for non-performance or for the failure to perform in conformity with the contract is ineffective if the claim for performance or the claim for cure is now statute-barred and the obligor invokes this. This applies even if, in accordance with section 275 (1) to (3), section 439 (3) or section 635 (3), the obligor is not required to perform and the claim for performance or cure would be statute-barred. Section 216 (2), sentence 2, remains unaffected.
- (2) Section 214 (2) applies with the necessary modifications.

## **Sections 219 - 225**

(repealed)



Division 6

**Exercise of rights, self-defence, self-help**

**Section 226**

Prohibition of chicanery

The exercise of a right is not permitted if its only possible purpose consists in causing damage to another.

**Section 227**

Self-defence against persons

- (1) An act required for self-defence is not unlawful.
- (2) Self-defence is the defence required to ward off a present unlawful assault on oneself or another.

**Section 228**

Necessity

A person who damages or destroys a thing belonging to another in order to ward off from himself or from another a danger threatened by the thing does not act unlawfully if the damage or destruction is necessary to ward off the danger and the damage is not out of proportion to the danger. If the person acting in this manner caused the danger, he is obliged to pay damages.

**Section 229**

Self-help

A person who, for the purpose of self-help, removes, destroys or damages a thing, or a person who, for the purpose of self-help, arrests an obliged person who is suspected of flight, or overcomes the resistance to an act of an obliged person who has a duty to tolerate that act, does not act unlawfully if help cannot be obtained from the authorities in good time and there is a danger, without immediate intervention, that the realisation of the claim will be prevented or be considerably more difficult.

**Section 230**

Limits of self-help

- (1) Self-help may not extend further than is necessary to ward off the danger.
- (2) In the case where things are removed, then, unless execution of judgment is being effected, a writ of attachment is to be sought.
- (3) In the case of the arrest of the person obliged, unless he is set free again, an application for his preventive custody is to be filed with the local court [Amtsgericht] in whose district the arrest took place; the person obliged is to be presented to the court without undue delay.
- (4) If the application for arrest is delayed or rejected, the things seized must be returned and the person arrested released without undue delay.

### **Section 231**

#### Self-help by mistake

If a person does any of the acts described in section 229 in the mistaken assumption that the requirements necessary to exclude unlawfulness are satisfied, he is obliged to pay damages to the other party, even if the mistake does not result from negligence.

#### Division 7

### **Provision of security**

#### **Section 232**

##### Types

(1) A person who is required to provide security may do so: by the deposit of money or securities, by the pledge of claims that are registered in the Federal Debt Register [Bundesschuldbuch] or the Land Debt Register [Landesschuldbuch] of a Land, by the pledge of movable things, by the creation of ship mortgages on ships or ships under construction which are recorded in a German ship register or a ship construction register, by the creation of mortgages on land within the country, by the pledge of claims for which there is a mortgage on land within the country, or by the pledge of land charges or annuity land charges on land within the country.

(2) If security cannot be provided in this manner, it is admissible to furnish a reasonable surety.

#### **Section 233**

##### Effect of deposit

When the deposit is made, the person entitled acquires a security right over the money deposited or the securities deposited and, if the money or the securities pass into the ownership of the treasury or the institution designated as the depository office, a security right over the claim for reimbursement.

#### **Section 234**

##### Suitable securities

(1) Securities are only suitable for the provision of security if they are made out to the bearer, have a market value and are of a kind in which money held in trust for a ward may be invested. Instruments made out to order and endorsed in blank are equivalent to bearer instruments.

(2) The interest coupons, annuity coupons, dividend coupons and renewal coupons are to be deposited with the securities.

(3) Securities may be provided as security only up to the amount of three quarters of their market value.

#### **Section 235**

##### Right to exchange

A person who has provided security by depositing money or securities is entitled to exchange the money deposited for suitable securities and the securities deposited for other suitable securities or for money.

### **Section 236**

#### Registered claims

A registered claim against the Federal Government or a Land may be provided as security only up to the amount of three quarters of the market value of the securities the delivery of which the creditor may demand in return for cancellation of his claim.

### **Section 237**

#### Movable things

A movable thing may be provided as security only up to the amount of two thirds of its estimated value. Things may be rejected as security if their spoilage is to be feared or if their safekeeping involves special difficulties.

### **Section 238**

#### Mortgages, land charges and annuity land charges

(1) A mortgage claim, a land charge or an annuity land charge is suitable as security only if it complies with the requirements for the investment of money held in trust for a ward in mortgage claims, land charges or annuity land charges at the place where security is provided.

(2) A claim secured by a debt-securing mortgage is not suitable as security.

### **Section 239**

#### Surety

(1) A surety is qualified if he possesses property appropriate for the amount of security to be provided and is subject to general jurisdiction within the country.

(2) The declaration of suretyship must contain a waiver of the defence of unexhausted remedies.

### **Section 240**

#### Duty to supplement security

If the security provided becomes insufficient without this being the fault of the person entitled, it is to be supplemented or another security is to be provided.

Book 2

## **Law of Obligations**

Division 1

### **Subject matter of obligations**

Title 1

#### **Duty of performance**

##### **Section 241**

Duties arising from an obligation

(1) By virtue of an obligation an obligee is entitled to claim performance from the obligor. The performance may also consist in forbearance.

(2) An obligation may also, depending on its contents, oblige each party to take account of the rights, legal interests and other interests of the other party.

##### **Section 241a**

Unsolicited performance<sup>\*)</sup>

(1) The supply of unsolicited things or the provision of other unsolicited services to a consumer by an entrepreneur does not create a claim against the consumer.

(2) Statutory claims are not excluded if the performance was not intended for the receiver or was made in the mistaken belief that there had been an order, and the receiver was aware of this or could have been aware of this if he had taken reasonable care.

(3) Performance is not unsolicited if the consumer, instead of the performance ordered, is offered performance of equal value in quality and price, and it is pointed out to him that he is not obliged to accept it and does not have to bear the costs of return shipment.

\*) Official note: This provision serves to implement Article 9 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, p. 19).

##### **Section 242**

Performance in good faith

An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.

##### **Section 243**

Obligation in kind

(1) A person who owes a thing defined only by class must supply a thing of average kind and quality.

(2) If the obligor has done what is necessary on his part to supply such a thing, the obligation is restricted to that thing.

## **Section 244**

### Foreign currency obligation

- (1) If a money debt stated in a currency other than the euro is payable within the country, then payment may be made in euros unless payment in the other currency has been expressly agreed.
- (2) Conversion occurs at the rate of exchange in effect in the place of payment at the time of payment.

## **Section 245**

### Obligation payable in a specific denomination of money

If a money debt is payable in a specific denomination of coin which is no longer in circulation at the time of payment, payment is to be made in the same way as if the denomination of coin were not specified.

## **Section 246**

### Statutory interest rate

If interest is payable on a debt by law or under a legal transaction, the rate of interest is four per cent per year, unless otherwise provided.

## **Section 247<sup>\*)</sup>**

### Basic rate of interest

- (1) The basic rate of interest is 3.62%.<sup>\*\*)</sup> It changes on 1 January and 1 July each year by the percentage points by which the reference rate has risen or fallen since the last change in the basic rate of interest. The reference rate is the rate of interest for the most recent main refinancing operation of the European Central Bank before the first calendar day of the relevant six-month period.
- (2) The Deutsche Bundesbank announces the effective basic rate of interest in the Federal Gazette without undue delay after the dates referred to in subsection (1) sentence 2 above.

<sup>\*)</sup> Official note: This provision serves to implement Article 3 of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200, p. 35).

<sup>\*\*) Since the following dates the basic rate of interest has been 1.1.2002 2.57% (public notice of 28.12.2001, Fed. Gazette 2002 no. 3 p. 98); 1.7.2002 2.47% (public notice of 25.6.2002, Fed. Gazette no. 118 p. 14537); 1.1.2003 1.97% (public notice of 30.12.2002, Fed. Gazette 2003 no. 2 p. 76); 1.7.2003 1.22% (public notice of 24.6.2003, Fed. Gazette no. 117 p. 13744); 1.1.2004 1.14% (public notice of 30.12.2003, Fed. Gazette 2004 no. 2 p. 69); 1.7.2004 1.13% (public notice of 3.7.2004, Fed. Gazette no. 122 p. 14246); 1.1.2005 1.21% (public notice of 30.12.2004, Fed. Gazette 2005 no. 1 p. 6); 1.7.2005 1.17% (public notice of 28.6.2005, Fed. Gazette no. 122 p. 10042); 1.1.2006 1.37% (public notice of 29.12.2005, Fed. Gazette 2006 no. 1 p. 2); 1.7.2006 1.95% (public notice of 27.6.2006, Fed. Gazette no. 119 p. 4754); 1.1.2007 2.70% (public notice of 28.12.2006, Fed. Gazette no. 245 p. 7463).</sup>

### **Section 248**

#### Compound interest

- (1) An agreement reached in advance that interest due should in turn bear interest is void.
- (2) Savings banks, credit institutions and owners of banking businesses may agree in advance that interest not collected on deposits should be held to be fresh interest-bearing deposits. Credit institutions entitled to issue interest-bearing bonds for the amount of the loans granted by them may, for such loans, have commitments made to them in advance to pay interest on interest in arrears.

### **Section 249**

#### Nature and extent of damages

- (1) A person who is liable in damages must restore the position that would exist if the circumstance obliging him to pay damages had not occurred.
- (2) Where damages are payable for injury to a person or damage to a thing, the obligee may demand the required monetary amount in lieu of restoration. When a thing is damaged, the monetary amount required under sentence 1 only includes value-added tax if and to the extent that it is actually incurred.

### **Section 250**

#### Damages in money after the specification of a period of time

The obligee may specify a reasonable period of time for the person liable in damages to undertake restoration and declare that he will reject restoration after the period of time ends. After the end of the period of time the obligee may demand damages in money, if restoration does not occur in good time; the claim to restoration is excluded.

### **Section 251**

#### Damages in money without the specification of a period of time

- (1) To the extent that restoration is not possible or is not sufficient to compensate the obligee, the person liable in damages must compensate the obligee in money.
- (2) The person liable in damages may compensate the obligee in money if restoration is only possible with disproportionate expenses. Expenses incurred as a result of the curative treatment of an injured animal are not disproportionate merely because they significantly exceed the value of the animal.

### **Section 252**

#### Lost profits

The damage to be compensated for also comprises the lost profits. Those profits are considered lost that in the normal course of events or in the special circumstances, particularly due to the measures and precautions taken, could probably be expected.

### **Section 253**

#### Intangible damage

(1) Money may be demanded in compensation for any damage that is not pecuniary loss only in the cases stipulated by law.

(2) If damages are to be paid for an injury to body, health, freedom or sexual self-determination, reasonable compensation in money may also be demanded for any damage that is not pecuniary loss.

### **Section 254**

#### Contributory negligence

(1) Where fault on the part of the injured person contributes to the occurrence of the damage, liability in damages as well as the extent of compensation to be paid depend on the circumstances, in particular to what extent the damage is caused mainly by one or the other party.

(2) This also applies if the fault of the injured person is limited to failing to draw the attention of the obligor to the danger of unusually extensive damage, where the obligor neither was nor ought to have been aware of the danger, or to failing to avert or reduce the damage. The provision of section 278 applies with the necessary modifications.

### **Section 255**

#### Assignment of claims to compensation

A person who must pay damages for the loss of a thing or a right is only obliged to compensate in return for the assignment of the claims which the person entitled to damages holds against third parties on the basis of ownership of the thing or on the basis of the right.

### **Section 256**

#### Payment of interest on expenses

A person who is obliged to reimburse expenses must pay interest from the date of the expense onwards on the amount expended or, if other objects than money have been expended, on the amount payable as compensation for their value. Where expenses have been incurred on an object that must be returned to the person liable in damages, interest need not be paid for the period of time for which the person entitled to damages is unremunerated for the emoluments or fruits of the object.

### **Section 257**

#### Claim for release

A person who is entitled to demand reimbursement of expenses he incurs for a specific purpose may, if he assumes an obligation for this purpose, demand release from the obligation. If the obligation is not yet due, the person liable in damages may provide security to him instead of releasing him from the obligation.

### **Section 258**

#### Right of removal

Anyone entitled to remove an installation from a thing that he must return to another person must in the event of removal restore the thing to its previous condition at his own expense. If the other person obtains possession of the thing, he is obliged to permit the installation to be removed; he may refuse permission until he is provided with security for the damage connected with the removal.

### **Section 259**

#### Extent of duty to render account

(1) A person who is obliged to render account for management related to earnings or expenses must provide the person entitled with an account containing an orderly compilation of earnings or expenses and, where receipts are customarily given, must submit receipts.

(2) Where there is reason to assume that the information on earnings contained in the account has not been provided with the requisite care the person obliged must, upon demand, declare for the record in lieu of an oath that he has indicated the earnings as completely as he is able to.

(3) In matters of minor importance there is no duty to make a declaration in lieu of an oath.

### **Section 260**

#### Duties when returning or providing information on an aggregate of objects

(1) A person who is obliged to return an aggregate of objects or to provide information on the inventory of such an aggregate must submit to the person entitled a list of the inventory.

(2) Where there is reason to assume that the list has not been prepared with the requisite care, the person obliged must upon demand declare for the record in lieu of an oath that to the best of his knowledge he has indicated the inventory as completely as he is able to.

(3) The provision of section 259 (3) applies.

### **Section 261**

#### Modifying a declaration in lieu of an oath; costs

(1) The court may resolve to modify the declaration in lieu of an oath according to the circumstances.

(2) The costs of making the declaration in lieu of an oath must be borne by the person demanding the making of the declaration.

### **Section 262**

#### Alternative obligation; right of choice

Where more than one act of performance is owed in such a manner that only the one or the other is to be effected, then in case of doubt, the obligor has the right of choice.

### **Section 263**

#### Exercise of the right of choice; effect

(1) The right of choice is exercised by declaration to the other party.

(2) The performance chosen is deemed to have been the only performance owed from the beginning.



#### **Section 264**

Default by the person entitled to the right of choice

(1) If the obligor entitled to the right of choice does not exercise that right prior to the beginning of execution, the obligee, at his choice, may direct execution to one performance or the other; however, as long as the obligee has not received the performance chosen, completely or in part, the obligor may release himself from his obligation through one of the other acts of performance.

(2) If the obligee entitled to the right of choice is in default, the obligor may demand that he exercises that right, specifying a reasonable period of time. At the end of the period of time the right of choice passes to the obligor, if the obligee does not undertake the choice in good time.

#### **Section 265**

Impossibility in case of alternative obligations

If one of the acts of performance is impossible from the beginning or if it later becomes impossible, the obligation is restricted to the other acts of performance. There is no restriction if performance becomes impossible due to a circumstance for which the party who is not entitled to the right of choice is responsible.

#### **Section 266**

Part performance

The obligor is not entitled to render part performance.

#### **Section 267**

Performance by third parties

(1) If the obligor need not perform in person, then a third party may also render performance. The consent of the obligor is not required.

(2) The obligee may reject the performance if the obligor objects.

#### **Section 268**

Right of redemption of a third party

(1) If the obligee effects execution which is levied on an object belonging to the obligor, anyone who risks losing a right in the object due to execution is entitled to satisfy the obligee. The possessor of a thing is entitled to the same right if he risks losing possession due to execution.

(2) The satisfaction may also take place by deposit or by set-off.

(3) To the extent that the third party satisfies the obligee the claim passes to him. The passing of ownership may not be asserted to the disadvantage of the creditor.

### **Section 269**

#### Place of performance

(1) Where no place of performance has been specified or is evident from the circumstances, in particular from the nature of the obligation, performance must be made in the place where the obligor had his residence at the time when the obligation arose.

(2) If the obligation arose in the commercial undertaking of the obligor, the place of the commercial undertaking takes the place of the residence if the obligor maintained his commercial undertaking at another place.

(3) From the circumstance that the obligor has assumed the costs of shipping it may not be concluded that the place to which shipment is to be made is to be the place of performance.

### **Section 270**

#### Place of payment

(1) In case of doubt the obligor must transfer money at his own risk and his own expense to the obligee at the residence of the latter.

(2) If the obligation came about in the commercial undertaking of the obligee, then, if the obligee has his business establishment in another place, the place of the commercial undertaking takes the place of the residence.

(3) If, as the result of a change in the obligee's residence or business establishment occurring after the obligation arises, the costs or risk of transmission increase, the obligee must in the former case bear the extra costs and in the latter case the risk.

(4) The provisions on the place of performance are unaffected.

### **Section 271**

#### Time of performance

(1) Where no time for performance has been specified or is evident from the circumstances, the obligee may demand performance immediately, and the obligor may effect it immediately.

(2) Where a time has been specified, then in case of doubt it must be assumed that the obligee may not demand performance, but the obligor may effect it prior to that time.

### **Section 272**

#### Interim interest

If the obligor pays an interest-free debt prior to its falling due, he is not entitled to any deduction for interim interest.

### **Section 273**

#### Right of retention

- (1) If the obligor has a claim that is due against the obligee under the same legal relationship as that on which the obligation is based, he may, unless the obligation leads to a different conclusion, refuse the performance owed by him, until the performance owed to him is rendered (right of retention).
- (2) A person who is obliged to return an object has the same right, if he is entitled to a claim that is due on account of outlays for the object or on account of damage caused to him by the object, unless he obtained the object by means of an intentionally committed tort.
- (3) The obligee may avert the exercise of the right of retention by providing security. The providing of security by guarantors is excluded.

### **Section 274**

#### Effects of the right of retention

- (1) In comparison to a legal action by the obligee, assertion of the right of retention only has the effect that the obligor is to be ordered to render performance in return for receiving the performance owed to him (concurrent performance).
- (2) On the basis of such an order the obligee may pursue his claim by way of execution, without effecting the performance he owes, if the obligor is in default of acceptance.

### **Section 275**

#### Exclusion of the duty of performance<sup>\*)</sup>

- (1) A claim for performance is excluded to the extent that performance is impossible for the obligor or for any other person.
- (2) The obligor may refuse performance to the extent that performance requires expense and effort which, taking into account the subject matter of the obligation and the requirements of good faith, is grossly disproportionate to the interest in performance of the obligee. When it is determined what efforts may reasonably be required of the obligor, it must also be taken into account whether he is responsible for the obstacle to performance.
- (3) In addition, the obligor may refuse performance if he is to render the performance in person and, when the obstacle to the performance of the obligor is weighed against the interest of the obligee in performance, performance cannot be reasonably required of the obligor.
- (4) The rights of the obligee are governed by sections 280, 283 to 285, 311a and 326.

<sup>\*)</sup> Official note: This provision also serves in part to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

### **Section 276**

#### Responsibility of the obligor

(1) The obligor is responsible for intention and negligence, if a higher or lower degree of liability is neither laid down nor to be inferred from the other subject matter of the obligation, including but not limited to the giving of a guarantee or the assumption of a procurement risk. The provisions of sections 827 and 828 apply with the necessary modifications.

(2) A person acts negligently if he fails to exercise reasonable care.

(3) The obligor may not be released in advance from liability for intention.

### **Section 277**

#### Standard of care in ones own affairs

A person who owes only the care that he customarily exercises in his own affairs is not released from liability for gross negligence.

### **Section 278**

#### Responsibility of the obligor for third parties

The obligor is responsible for fault on the part of his legal representative, and of persons whom he uses to perform his obligation, to the same extent as for fault on his own part. The provision of section 276 (3) does not apply.

### **Section 279**

(repealed)

### **Section 280**

#### Damages for breach of duty

(1) If the obligor breaches a duty arising from the obligation, the obligee may demand damages for the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.

(2) Damages for delay in performance may be demanded by the obligee only subject to the additional requirement of section 286.

(3) Damages in lieu of performance may be demanded by the obligee only subject to the additional requirements of sections 281, 282 or 283.

### **Section 281**

Damages in lieu of performance for nonperformance or failure to render performance as owed

- (1) To the extent that the obligor does not render performance when it is due or does not render performance as owed, the obligee may, subject to the requirements of section 280 (1), demand damages in lieu of performance, if he has without result set a reasonable period for the obligor for performance or cure. If the obligor has performed only in part, the obligee may demand damages in lieu of complete performance only if he has no interest in the part performance. If the obligor has not rendered performance as owed, the obligee may not demand damages in lieu of performance if the breach of duty is immaterial.
- (2) Setting a period for performance may be dispensed with if the obligor seriously and definitively refuses performance or if there are special circumstances which, after the interests of both parties are weighed, justify the immediate assertion of a claim for damages.
- (3) If the nature of the breach of duty is such that setting a period of time is out of the question, a warning notice is given instead.
- (4) The claim for performance is excluded as soon as the obligee has demanded damages in lieu of performance.
- (5) If the obligee demands damages in lieu of complete performance, the obligor is entitled to claim the return of his performance under sections 346 to 348.

### **Section 282**

Damages in lieu of performance for breach of a duty under section 241 (2) If the obligor breaches a duty under section 241 (2), the obligee may, if the requirements of section 280 (1) are satisfied, demand damages in lieu of performance, if he can no longer reasonably be expected to accept performance by the obligor.

### **Section 283**

Damages in lieu of performance where the duty of performance is excluded

If, under section 275 (1) to (3), the obligor is not obliged to perform, the obligee may, if the requirements of section 280 (1) are satisfied, demand damages in lieu of performance. Section 281 (1) sentences 2 and 3 and (5) apply with the necessary modifications.

### **Section 284**

Reimbursement of futile expenses

In place of damages in lieu of performance, the obligee may demand reimbursement of the expenses which he has made and in all fairness was entitled to make in reliance on receiving performance, unless the purpose of the expenses would not have been achieved, even if the obligor had not breached his duty.

### **Section 285**

Return of reimbursement

(1) If the obligor, as a result of the circumstance by reason of which, under section 275 (1) to (3), he has no duty of performance, obtains reimbursement or a claim to reimbursement for the object owed, the obligee may demand return of what has been received in reimbursement or an assignment of the claim to reimbursement.

(2) If the obligee may demand damages in lieu of performance, then, if he exercises the right stipulated in subsection (1) above, the damages are reduced by the value of the reimbursement or the claim to reimbursement he has obtained.

## **Section 286**

### Default of the obligor<sup>\*)</sup>

(1) If the obligor, following a warning notice from the obligee that is made after performance is due, fails to perform, he is in default as a result of the warning notice. Bringing an action for performance and serving a demand for payment in summary debt proceedings for recovery of debt have the same effect as a warning notice.

(2) There is no need for a warning notice if

1. a period of time according to the calendar has been specified,
2. performance must be preceded by an event and a reasonable period of time for performance has been specified in such a way that it can be calculated, starting from the event, according to the calendar,
3. the obligor seriously and definitively refuses performance,
4. for special reasons, weighing the interests of both parties, the immediate commencement of default is justified.

(3) The obligor of a claim for payment is in default at the latest if he does not perform within thirty days after the due date and receipt of an invoice or equivalent statement of payment; this applies to an obligor who is a consumer only if these consequences are specifically referred to in the invoice or statement of payment. If the time at which the invoice or payment statement is received by the obligor is uncertain, an obligor who is not a consumer is in default at the latest thirty days after the due date and receipt of the consideration.

(4) The obligor is not in default for as long as performance is not made as the result of a circumstance for which he is not responsible.

<sup>\*) Official note: This provision also serves in part to implement Directive 2000/35/EC of the European Parliament and of the Council of 29 June</sup>

<sup>2000 on combating late payment in commercial transactions (OJ L 200, p. 35).</sup>

## **Section 287**

### Liability during default

While he is in default, the obligor is responsible for all negligence. He is liable for performance in the case of chance as well, unless the damage would have occurred even if performance had been made in good time.

## **Section 288**

### Default interest<sup>\*)</sup>

- (1) Any money debt must bear interest during the time of default. The default rate of interest per year is five percentage points above the basic rate of interest.
- (2) In the case of legal transactions to which a consumer is not a party the rate of interest for claims for payment is eight percentage points above the basic rate of interest.
- (3) The obligee may demand higher interest on a different legal basis.
- (4) The assertion of further damage is not excluded.

\*) Official note: This provision also serves in part to implement Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200, p. 35).

## **Section 289**

### Prohibition of compound interest

Default interest is not to be paid on interest. The right of the obligee to compensation for damage caused by the default remains unaffected.

## **Section 290**

### Interest on compensation for value

If the obligor is obliged to compensate for the value of an object that has been destroyed during a period of default or cannot be returned for a reason occurring during a period of default, the obligee may demand interest on the amount to be paid as compensation from the point of time onwards on which the determination of the value is based. The same applies if the obligor is obliged to compensate for the reduction in value of an object that deteriorates during the period of default.

## **Section 291**

### Interest during legal proceedings

The obligor must pay interest on a money debt from the date when litigation is pending onwards, even if he is not in default; if the debt only falls due later, interest must be paid from its due date onwards. The provisions of section 288 (1) sentence 2, (2) and (3) and section 289 sentence 1 apply with the necessary modifications.

## **Section 292**

### Liability in the case of a duty to return

- (1) If the obligor must return a specific object, then, from the date when litigation is pending, the claim to damages of the obligee for deterioration, destruction or for impossibility of return for another reason is determined under the provisions that apply to the relationship between an owner and a possessor from the date when litigation on a claim to ownership is pending, except where the obligation or the default of the obligor leads to a different conclusion in favour of the obligee.
- (2) The same applies to the claim of the obligee to the return or payment of emoluments and to the claim of the obligor to compensation for outlays.



## Title 2

### **Default by the obligee**

#### **Section 293**

##### Default in acceptance

The obligee is in default if he does not accept the performance offered to him.

#### **Section 294**

##### Actual offer

The obligee must actually be offered performance exactly as it is to be rendered.

#### **Section 295**

##### Verbal offer

A verbal offer by the obligor suffices if the obligee has declared to him that he will not accept the performance, or if effecting the performance requires an act by the obligee, in particular if the obligee must collect the thing owed. Equivalent to an offer of performance is a demand to the obligee to undertake the action required.

#### **Section 296**

##### Dispensability of the offer

If a period of time has been specified according to the calendar for the act that the obligee is to undertake, the offer is only necessary if the obligee undertakes the act in good time. The same applies if the act must be preceded by an event and a reasonable period of time is specified for the act in such a way that it can be calculated from the event onwards according to the calendar.

#### **Section 297**

##### Inability of the obligor

The obligee is not in default if the obligor at the time of the offer or, in the case of section 296, at the time determined for the action of the obligee, is not in a position to effect performance.

#### **Section 298**

##### Concurrent performance

If the obligor is only obliged to perform in return for an act of performance by the obligee, the obligee is in default if, although he is willing to accept the performance offered, he does not offer the consideration demanded.

#### **Section 299**

##### Temporary prevention of acceptance

If the time of performance is not specified or if the obligor is entitled to provide performance before the specified time, the obligee is not in default merely because he is temporarily prevented from accepting the performance offered, unless the obligor notifies him of the performance a reasonable time in advance.

### **Section 300**

Effects of default by the obligee

(1) The obligor is, during the period of the default of the obligee, only responsible for intent and gross negligence.

(2) If a thing designated only by class is owed, the risk passes to the obligee at the time when he is in default by not accepting the thing offered.

### **Section 301**

Cessation of interest

During the period of default by the obligee, the obligor need not pay interest on an interest-bearing money debt.

### **Section 302**

Emoluments

If the obligor must return or reimburse the emoluments of an object, his obligation is limited, for the period of default by the obligee, to the emoluments he takes.

### **Section 303**

Right to abandon possession

If the obligor is obliged to surrender a plot of land or a registered ship or ship under construction, he may abandon possession after the obligee is in default. The obligee must be threatened with abandonment beforehand, unless the threat is impracticable.

### **Section 304**

Compensation for extra expenses

If the obligee is in default, the obligor may demand reimbursement of extra expenses he was obliged to incur for the futile offer as well as for safekeeping and preservation of the object owed.

## Division 2

### **Drafting contractual obligations by means of standard business terms<sup>\*)</sup>**

<sup>\*)</sup> Official note: This provision also serves to implement Directive 93/13/EEC of the Council of 5 April 1993 on unfair terms in consumer contracts

(OJ L 95, p. 29).

#### **Section 305**

Incorporation of standard business terms into the contract

(1) Standard business terms are all contract terms pre-formulated for more than two contracts which one party to the contract (the user) presents to the other party upon the entering into of the contract. It is irrelevant whether the provisions take the form of a physically separate part of a contract or are made part of the contractual document itself, what their volume is, what typeface or font is used for them and what form the contract takes. Contract terms do not become standard business terms to the extent that they have been negotiated in detail between the parties.

(2) Standard business terms only become a part of a contract if the user, when entering into the contract,

1. refers the other party to the contract to them explicitly or, where explicit reference, due to the way in which the contract is entered into, is possible only with disproportionate difficulty, by posting a clearly visible notice at the place where the contract is entered into, and
2. gives the other party to the contract, in an acceptable manner, which also takes into reasonable account any physical handicap of the other party to the contract that is discernible to the user, the opportunity to take notice of their contents,

and if the other party to the contract agrees to their applying.

(3) The parties to the contract may, while complying with the requirements set out in subsection (2) above, agree in advance that specific standard business terms are to govern a specific type of legal transaction.

### **Section 305a**

Incorporation in special cases

Even without compliance with the requirements cited in section 305 (2) nos. 1 and 2, if the other party to the contract agrees to their applying the following are incorporated,

1. the tariffs and regulations of the railways issued with the approval of the competent transport authority or on the basis of international conventions, and the terms of transport approved under the Passenger Transport Act [Personenbeförderungsgesetz], of trams, trolley buses and motor vehicles in regular public transport services,
2. the standard business terms published in the gazette of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway [Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen] and kept available on the business premises of the user,
  - a) into transport contracts entered into off business premises by the posting of items in postboxes,
  - b) into contracts on telecommunications, information services and other services that are provided direct by the use of distance communication and at one time and without interruption during the supply of a telecommunications service, if it is disproportionately difficult to make the standard business terms available to the other party before the contract is entered into.

### **Section 305b**

Priority of individually agreed terms

Individually agreed terms take priority over standard business terms.

### **Section 305c**

Surprising and ambiguous clauses

- (1) Provisions in standard business terms which in the circumstances, in particular with regard to the outward appearance of the contract, are so unusual that the other party to the contract with the user need not expect to encounter them, do not form part of the contract.
- (2) Any doubts in the interpretation of standard business terms are resolved against the user.

### **Section 306**

Legal consequences of non-incorporation and ineffectiveness

- (1) If standard business terms in whole or in part have not become part of the contract or are ineffective, the remainder of the contract remains in effect.
- (2) To the extent that the terms have not become part of the contract or are ineffective, the contents of the contract are determined by the statutory provisions.
- (3) The contract is ineffective if upholding it, even taking into account the alteration provided in subsection (2) above, would be an unreasonable hardship for one party.

### **Section 306a**

Prohibition of circumvention

The rules in this division apply even if they are circumvented by other constructions.

### **Section 307**

Test of reasonableness of contents

(1) Provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the other party to the contract with the user. An unreasonable disadvantage may also arise from the provision not being clear and comprehensible.

(2) An unreasonable disadvantage is, in case of doubt, to be assumed to exist if a provision

1. is not compatible with essential principles of the statutory provision from which it deviates, or
2. limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised.

(3) Subsections (1) and (2) above, and sections 308 and 309 apply only to provisions in standard business terms on the basis of which arrangements derogating from legal provisions, or arrangements supplementing those legal provisions, are agreed. Other provisions may be ineffective under subsection (1) sentence 2 above, in conjunction with subsection (1) sentence 1 above.

### **Section 308**

Prohibited clauses with the possibility of evaluation

In standard business terms the following are in particular ineffective

1. (Period of time for acceptance and performance) a provision by which the user reserves to himself the right to unreasonably long or insufficiently specific periods of time for acceptance or rejection of an offer or for rendering performance; this does not include the reservation of the right not to perform until after the end of the period of time for revocation or return under sections 355 (1) and (2) and 356;
2. (Additional period of time) a provision by which the user, contrary to legal provisions, reserves to himself the right to an unreasonably long or insufficiently specific additional period of time for the performance he is to render;
3. (Reservation of the right to withdraw) the agreement of a right of the user to free himself from his obligation to perform without any objectively justified reason indicated in the contract; this does not apply to continuing obligations;
4. (Reservation of the right to modify) the agreement of a right of the user to modify the performance promised or deviate from it, unless the agreement of the modification or deviation can reasonably be expected of the other party to the contract when the interests of the user are taken into account;

5. (Fictitious declarations) a provision by which a declaration by the other party to the contract with the user, made when undertaking or omitting a specific act, is deemed to have been made or not made by the user unless

a) the other party to the contract is granted a reasonable period of time to make an express declaration, and

b) the user agrees to especially draw the attention of the other party to the contract to the intended significance of his behaviour at the beginning of the period of time;

6. (Fictitious receipt) a provision providing that a declaration by the user that is of special importance is deemed to have been received by the other party to the contract;

7. (Reversal of contracts) a provision by which the user, to provide for the event that a party to the contract withdraws from the contract or gives notice of termination of the contract, may demand

a) unreasonably high remuneration for enjoyment or use of a thing or a right or for performance rendered, or

b) unreasonably high reimbursement of expenses;

8. (Unavailability of performance) the agreement, admissible under no. 3, of the reservation by the user of a right to free himself from the duty to perform the contract in the absence of availability of performance, if the user does not agree to

a) inform the other party to the contract without undue delay, of the unavailability, and

b) reimburse the other party to the contract for consideration, without undue delay.

### **Section 309**

Prohibited clauses without the possibility of evaluation

Even to the extent that a deviation from the statutory provisions is permissible, the following are ineffective in standard business terms:

1. (Price increases at short notice) a provision providing for an increase in payment for goods or services that are to be delivered or rendered within four months of the entering into of the contract; this does not apply to goods or services delivered or rendered in connection with continuing obligations;

2. (Right to refuse performance) a provision by which

a) the right to refuse performance to which the other party to the contract with the user is entitled under section 320, is excluded or restricted, or

b) a right of retention to which the other party to the contract with the user is entitled to the extent that it is based on the same contractual relationship, is excluded or restricted, in particular made dependent upon acknowledgement of defects by the user;

3. (Prohibition of set-off) a provision by which the other party to the contract with the user is deprived of the right to set off a claim that is uncontested or has been finally and non-appealably established;
4. (Warning notice, setting of a period of time) a provision by which the user is exempted from the statutory requirement of giving the other party to the contract a warning notice or setting a period of time for the latter to perform or cure;
5. (Lump-sum claims for damages) the agreement of a lump-sum claim by the user for damages or for compensation of a decrease in value if
  - a) the lump sum, in the cases covered, exceeds the damage expected under normal circumstances or the customarily occurring decrease in value, or
  - b) the other party to the contract is not expressly permitted to show that damage or decrease in value has either not occurred or is substantially less than the lump sum;
6. (Contractual penalty) a provision by which the user is promised the payment of a contractual penalty in the event of non-acceptance or late acceptance of the performance, payment default or in the event that the other party to the contract frees himself from the contract;
7. (Exclusion of liability for injury to life, body or health and in case of gross fault)
  - a) (Injury to life, body or health) any exclusion or limitation of liability for damage from injury to life, body or health due to negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or a person used to perform an obligation of the user;
  - b) (Gross fault) any exclusion or limitation of liability for other damage arising from a grossly negligent breach of duty by the user or from an intentional or grossly negligent breach of duty by a legal representative of the user or a person used to perform an obligation of the user;letters (a) and (b) do not apply to limitations of liability in terms of transport and tariff rules, authorised in accordance with the Passenger Transport Act [Personenbeförderungsgesetz], of trams, trolley buses and motor vehicles in regular public transport services, to the extent that they do not deviate to the disadvantage of the passenger from the Order on Standard Transport Terms for Tram and Trolley Bus Transport and Regular Public Transport Services with Motor Vehicles [Verordnung über die Allgemeinen Beförderungsbedingungen für den Straßenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen] of 27 February 1970; letter (b) does not apply to limitations on liability for state-approved lotteries and gaming contracts;
8. (Other exclusions of liability for breaches of duty)

a) (Exclusion of the right to free oneself from the contract) a provision which, where there is a breach of duty for which the user is responsible and which does not consist in a defect of the thing sold or the work, excludes or restricts the right of the other party to free himself from the contract; this does not apply to the terms of transport and tariff rules referred to in No. 7 under the conditions set out there;

b) (Defects) a provision by which in contracts relating to the supply of newly produced things and relating to the performance of work

aa) (Exclusion and referral to third parties) the claims against the user due to defects in their entirety or in regard to individual parts are excluded, limited to the granting of claims against third parties or made dependent upon prior court action taken against third parties;

bb) (Limitation to cure) the claims against the user are limited in whole or in regard to individual parts to a right to cure, to the extent that the right is not expressly reserved for the other party to the contract to reduce the purchase price, if the cure should fail or, except where building work is the object of liability for defects, at its option to withdraw from the contract;

cc) (Expenses for cure) the duty of the user to bear the expenses necessary for the purpose of cure, in particular to bear transport, workmen's travel, work and materials costs, is excluded or limited;

dd) (Withholding cure) the user makes cure dependent upon prior payment of the entire fee or a portion of the fee that is disproportionate taking the defect into account;

ee) (Cut-off period for notice of defects) the user sets a cut-off period for the other party to the contract to give notice of non-obvious defects which is shorter than the permissible period of time under double letter (ff) below;

ff) (Making limitation easier) the limitation of claims against the user due to defects in the cases cited in section 438 (1) no. 2 and section 634a (1) no. 2 is made easier, or in other cases a limitation period of less than one year reckoned from the beginning of the statutory limitation period is attained;

9. (Duration of continuing obligations) in a contractual relationship the subject matter of which is the regular supply of goods or the regular rendering of services or work performance by the user,

a) a duration of the contract binding the other party to the contract for more than two years,

b) a tacit extension of the contractual relationship by more than one year in each case that is binding on the other party to the contract, or

c) a notice period longer than three months prior to the expiry of the duration of the contract as originally agreed or tacitly extended at the expense of the other party to the contract;

this does not apply to contracts relating to the supply of things sold as belonging together, to

insurance contracts or to contracts between the holders of copyright rights and claims and copyright



collecting societies within the meaning of the Act on the Administration of Copyright and Neighbouring Rights [Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten];

10. (Change of other party to contract) a provision according to which in the case of purchase, loan or service agreements or agreements to produce a result a third party enters into, or may enter into, the rights and duties under the contract in place of the user, unless, in that provision,

- a) the third party is identified by name, or
- b) the other party to the contract is granted the right to free himself from the contract;

11. (Liability of an agent with power to enter into a contract) a provision by which the user imposes on an agent who enters into a contract for the other party to the contract

- a) a liability or duty of responsibility for the principal on the part of the agent himself, without any explicit and separate declaration to this effect, or
- b) in the case of agency without authority, liability going beyond section 179;

12. (Burden of proof) a provision by which the user modifies the burden of proof to the disadvantage of the other party to the contract, in particular by

- a) imposing on the latter the burden of proof for circumstances lying in the sphere of responsibility of the user, or
- b) having the other party to the contract confirm certain facts;

letter (b) does not apply to acknowledgements of receipt that are signed separately or provided with a separate qualified electronic signature;

13. (Form of notices and declarations) a provision by which notices or declarations that are to be made to the user or a third party are tied to a more stringent form than written form or tied to special receipt requirements.

## **Section 310**

### Scope of application

(1) Section 305 (2) and (3) and sections 308 and 309 do not apply to standard business terms which are used in contracts with an entrepreneur, a legal person under public law or a special fund under public law. Section 307 (1) and (2) nevertheless apply to these cases in sentence 1 to the extent that this leads to the ineffectiveness of the contract provisions set out in sections 308 and 309; reasonable account must be taken of the practices and customs that apply in business dealings. In cases coming under sentence 1, section 307 (1) and (2) do not apply to contracts in which the entire Award Rules for Building Works, Part B [Vergabe- und Vertragsordnung für Bauleistungen Teil B - VOB/B] in the version applicable at the time of conclusion of the contract are included without deviation as to their content, relating to an examination of the content of individual provisions.

(2) Sections 308 and 309 do not apply to contracts of electricity, gas, district heating or water suppliers for the supply of electricity, gas, district heating or water from the supply grid to special customers to the extent that the conditions of supply do not derogate, to the disadvantage of the customer, from orders on general conditions for the supply of standard-rate customers with electricity, gas, district heating and water. Sentence 1 applies with the necessary modifications to contracts for the disposal of sewage.

(3) In the case of contracts between an entrepreneur and a consumer (consumer contracts) the rules in this division apply with the following provisos:

1. Standard business terms are deemed to have been presented by the entrepreneur, unless they were introduced into the contract by the consumer;
2. Section 305c (2) and sections 306 and 307 to 309 of this Code and Article 29a of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch] apply to preformulated contract terms even if the latter are intended only for non-recurrent use on one occasion, and to the extent that the consumer, by reason of the preformulation, had no influence on their contents;
3. in judging an unreasonable disadvantage under section 307 (1) and (2), the other circumstances attending the entering into of the contract must also be taken into account.

(4) This division does not apply to contracts in the field of the law of succession, family law and company law or to collective agreements and private-sector works agreements or public-sector establishment agreements. When it is applied to employment contracts, reasonable account must be taken of the special features that apply in labour law; section 305 (2) and (3) must not be applied. Collective agreements and private-sector works agreements or public-sector establishment agreements are equivalent to legal provisions within the meaning of section 307 (3).

Division 3

**Contractual obligations**

Title 1

**Creation, subject matter and termination**

Subtitle 1

**Creation**

**Section 311**

Obligations created by legal transaction and obligations similar to legal transactions

(1) In order to create an obligation by legal transaction and to alter the contents of an obligation, a contract between the parties is necessary, unless otherwise provided by statute.

(2) An obligation with duties under section 241 (2) also comes into existence by

1. the commencement of contract negotiations
2. the initiation of a contract where one party, with regard to a potential contractual relationship, gives the other party the possibility of affecting his rights, legal interests and other interests, or entrusts these to him, or
3. similar business contacts.

(3) An obligation with duties under section 241 (2) may also come into existence in relation to persons who are not themselves intended to be parties to the contract. Such an obligation comes into existence in particular if the third party, by laying claim to being given a particularly high degree of trust, substantially influences the pre-contract negotiations or the entering into of the contract.

**Section 311a**

Obstacle to performance when contract is entered into

(1) A contract is not prevented from being effective by the fact that under section 275 (1) to (3) the obligor does not need to perform and the obstacle to performance already exists when the contract is entered into.

(2) The obligee may, at his option, demand damages in lieu of performance or reimbursement of his expenses in the extent specified in section 284. This does not apply if the obligor was not aware of the obstacle to performance when entering into the contract and is also not responsible for his lack of awareness. Section 281 (1) sentences 2 and 3 and (5) apply with the necessary modifications.

### **Section 311b**

Contracts on plots of land, assets and an estate

(1) A contract by which one party agrees to transfer or acquire ownership of a plot of land must be recorded by a notary. A contract not entered into in this form becomes valid with all its contents if a declaration of conveyance and registration in the Land Register are effected.

(2) A contract by which one party agrees to transfer his future property or a fraction of his future property or to charge it with a usufruct is void.

(3) A contract by which one party agrees to transfer his present property or a fraction of his present property or to charge it with a usufruct must be recorded by a notary.

(4) A contract relating to the estate of a third party who is still living is void. The same applies to a contract relating to a compulsory portion or a legacy from the estate of a third party who is still living.

(5) Subsection (4) above does not apply to a contract entered into between future heirs on intestacy relating to the hereditary share on intestacy or the compulsory portion of one of them. Such a contract must be recorded by a notary.

### **Section 311c**

Application to accessories

If a person agrees to dispose of or charge a thing, that duty, in case of doubt, also applies to accessories of the thing.

Subtitle 2

#### **Particular types of sale<sup>\*)</sup>**

\*) Official note: This subtitle serves to implement 1. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 of 31 December 1985, p. 31), 2. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, p. 19), 3. and Articles 10, 11 and 18 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce" OJ L 178, p. 1).

## **Section 312**

Right of revocation in the case of doorstep transactions

(1) In a contract between an entrepreneur and a consumer the subject matter of which is performance for remuneration and which the consumer has been induced to enter into

1. by oral negotiations at his place of employment or in the area of a private home,
2. on the occasion of a leisure event carried out by the entrepreneur or by a third party at least in part in the interest of the entrepreneur, or
3. following an impromptu approach in means of transport or in publicly accessible circulation areas

(doorstep transaction) the consumer has a right of revocation under section 355. In lieu of a right of revocation the consumer may be granted a right of return under section 356, if, in connection with this or a later transaction, a permanent connection is also to be maintained between the consumer and the entrepreneur.

(2) The necessary instruction on the right of revocation or right of return must refer to the legal consequences of section 357 (1) and (3).

(3) The right of revocation or right of return, notwithstanding other provisions, does not exist in the case of insurance contracts or if

1. in the case of subsection (1) no. 1, the oral negotiations on the basis of which the contract was entered into were conducted in response to a previous order placed by the consumer, or
2. the performance is immediately rendered and paid for at the conclusion of the negotiations and remuneration does not exceed forty euros, or
3. the declaration of intention of the consumer has been recorded by a notary.

### **Section 312a**

Relationship to other provisions

If the consumer is at the same time entitled under other provisions to a right of revocation or a right of return under section 355 or section 356 of this Code, or under section 126 of the Investment Act [Investmentgesetz], the right of revocation or return under section 312 is excluded.

### **Section 312b**

Distance contracts

(1) Distance contracts are contracts for the supply of goods or the rendering of services, including financial services, which are entered into between an entrepreneur and a consumer solely by the use of means of distance communication, except where the entering into of the contract does not take place in the context of a sales or service system organised for distance sales. Financial services in the meaning of sentence 1 are banking services and services in connection with the granting of a credit, insurance, provision for old age for individuals, investment or payment.

(2) Means of distance communication are means of communication which can be used to initiate or to enter into a contract between a consumer and an entrepreneur without the simultaneous physical presence of the parties to the contract, including without limitation letters, catalogues, telephone calls, faxes, emails, and radio, teleservices and media services.

(3) The provisions on distance contracts do not apply to contracts

1. relating to correspondence courses (section 1 of the Correspondence Course Act [Fernunterrichtsschutzgesetz]),
2. relating to time sharing of residential buildings (section 481),
3. relating to insurance policies and their brokerage,
4. relating to the disposal of plots of land and rights equivalent to real property, the creation, disposal and cancellation of real rights in plots of land and rights equivalent to real property and the erection of buildings,
5. relating to the supply of food products, beverages or other household objects of everyday use which are supplied to the residence, place of abode or place of employment of a consumer by entrepreneurs in the course of frequent and regular rounds,
6. relating to the rendering of services in the fields of lodging, transport, delivery of food and beverages as well as leisure activities, if the entrepreneur, when the contract is entered into, agrees to render the services at a specific time or within a precisely indicated period of time,
7. that are entered into
  - a) with the use of automatic vending machines or automated business premises, or
  - b) with operators of means of telecommunications on the basis of the use of public telephones, to the extent that they have the use of the latter as their subject matter.

(4) In the case of contractual relationships that consist of an initial agreement with transactions following upon it or a series of separate transactions following upon it of the same type that have a temporal connection, the provisions on distance contracts only apply to the first agreement. If such transactions follow one another without such an agreement, the provisions on the duties of an entrepreneur to provide information apply only to the first transaction. However, if no transaction of the same type occurs for longer than one year, the next transaction is deemed to be the first transaction of a new series within the meaning of sentence 2.

(5) More extensive provisions regarding consumer protection remain unaffected.

### **Section 312c**

#### Giving information to a consumer in distance contracts

(1) The entrepreneur must, in good time before the consumer makes his contract declaration, in a manner appropriate to the means of distance communication used, clearly and comprehensibly and stating the business purpose, provide the information with regard to which this is specified in the statutory order under Article 240 of the Introductory Act to the German Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch]. In telephone calls arranged by himself, the entrepreneur must at the beginning of every conversation expressly disclose his identity and the business purpose of the contact.

(2) The entrepreneur must, in addition, provide the consumer in text form with the terms of the contract, including the standard business terms, and the information specified in the statutory order under Article 240 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch] to the extent specified there and in the manner specified there, as follows:

1. in the case of financial services, in good time before the consumer makes his contract declaration or, if, at the request of the consumer the contract is entered into by telephone or using another means of distance communication which does not permit communication in text form before the contract is entered into, without undue delay after the distance contract is entered into;
2. in the case of other services and in the case of the supply of goods immediately, at the latest before the contract is performed in full, in the case of goods at the latest before supply to the consumer.

A notice under sentence 1 no. 2 may be dispensed with in the case of services that are rendered directly by the use of means of distance communication, insofar as these services are rendered at one time and without interruption and are settled through the operator of the means of distance communication. In this case, however, the consumer must be able to inform himself of the address of the place of business of the entrepreneur to which he may address complaints.

(3) In the case of financial services, the consumer may demand at any time in the duration of the contract that the entrepreneur provides him with the terms of the contract, including the standard business terms, in a document.

(4) More extensive restrictions in the use of means of distance communication and more extensive duties to provide information under other provisions are unaffected.

## **Section 312d**

### Right of revocation and right of return in distance contracts

(1) In a distance contract the consumer has a right of revocation under section 355. In lieu of the right of revocation, the consumer may, in contracts for the supply of goods, be granted a right of return under section 356.

(2) Notwithstanding section 355 (2) sentence 1, the revocation period does not commence before the duties to provide information under section 312c (2) have been performed; in the case of the supply of goods, not before the day on which they reach the receiver; in the case of recurring deliveries of goods of the same kind, not before the day on which the first part delivery reaches the receiver; and in the case of services, not before the day on which the contract is entered into.

(3) In the case of a service, the right of revocation is also extinguished in the following cases:

1. in the case of a financial service, if the contract was performed in full by both parties at the express wish of the consumer before the consumer exercised his right of revocation,
2. in the case of another service, if the entrepreneur has begun the provision of the service with the express approval of the consumer before the end of the revocation period or if the consumer himself occasioned the provision.

(4) Unless otherwise specified, the right of revocation does not exist for distance contracts

1. for the supply of goods produced according to customer specifications or clearly tailored to personal needs or which, by reason of their quality, are not suitable for return or may spoil quickly or whose expiration date would be exceeded,
2. for the delivery of audio or video recordings or of software where the seal on the data carriers has been broken by the consumer,
3. for the delivery of newspapers, periodicals and magazines,
4. for the rendering of betting and lottery services,
5. which are entered into in the form of auctions (section 156), or
6. the subject matter of which is the supply of good or the rendering of financial services whose price is subject to fluctuations on the financial market over which the entrepreneur has no influence and which may occur within the revocation period, including without limitation services in connection with shares, dividend coupons which are issued by an investment management company or a foreign investment company, and other tradeable securities, foreign currency, derivatives or money market instruments.

(5) In addition, the right of revocation does not exist for distance contracts for which the consumer, under sections 495 or 499 to 507, already has a right of revocation or right of return under section 355 or section 356. In the case of such contracts, subsection (2) applies with the necessary modifications.



(6) In the case of distance contracts for financial services, the consumer, notwithstanding section 357 (1), must only make compensation for the value of the service performance under the provisions on statutory withdrawal from an agreement if, before he made his contract declaration, his attention was directed to this legal consequence and if he expressly agreed to the entrepreneur beginning to perform the service before the end of the revocation period.

### **Section 312e**

Duties in electronic business dealings

(1) If an entrepreneur uses a teleservice or media service in order to enter into a contract for the supply of goods or the rendering of services (e-commerce contract), he must

1. provide the customer with reasonable, effective and accessible technical means with the aid of which the customer may identify and correct input errors prior to making his order,
2. notify the customer clearly and comprehensibly of information specified in the statutory order under Article 241 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch] in good time prior to sending his order,
3. confirm receipt of the order without undue delay by electronic means for the customer, and
4. make it possible for the customer to retrieve the contract terms including the standard business terms when the contract is entered into and save them in a form that allows for their reproduction.

The order and the acknowledgement of receipt in the meaning of sentence 1 no. 3 are deemed to have been received if the parties for whom they are intended are able to retrieve them in normal circumstances.

(2) Subsection (1) sentence 1 nos. 1 to 3 does not apply if the contract is entered into exclusively by personal communication. Subsection (1) sentence 1 nos. 1 to 3 and sentence 2 does not apply if otherwise agreed in a contract between parties who are not consumers.

(3) More extensive duties to provide information under other provisions are unaffected. If the customer has a right of revocation under section 355, the revocation period does not begin, notwithstanding section 355 (2) sentence 1, until the duties laid down in subsection (1) sentence 1 have been performed.

### **Section 312f**

Deviating agreements

There may be no derogation from the provisions of this subtitle, unless otherwise provided, to the disadvantage of the consumer or the customer. Unless otherwise provided, the provisions of this subtitle apply even if they are circumvented by other constructions.

### Subtitle 3

#### **Adaptation and ending of contracts**

##### **Section 313**

Interference with the basis of the transaction

(1) If circumstances which became the basis of a contract have significantly changed since the contract was entered into and if the parties would not have entered into the contract or would have entered into it with different contents if they had foreseen this change, adaptation of the contract may be demanded to the extent that, taking account of all the circumstances of the specific case, in particular the contractual or statutory distribution of risk, one of the parties cannot reasonably be expected to uphold the contract without alteration.

(2) It is equivalent to a change of circumstances if material conceptions that have become the basis of the contract are found to be incorrect.

(3) If adaptation of the contract is not possible or one party cannot reasonably be expected to accept it, the disadvantaged party may withdraw from the contract. In the case of continuing obligations, the right to terminate takes the place of the right to withdraw.

##### **Section 314**

Termination, for a compelling reason, of contracts for the performance of a continuing obligation

(1) Each party may terminate a contract for the performance of a continuing obligation for a compelling reason without a notice period. There is a compelling reason if the terminating party, taking into account all the circumstances of the specific case and weighing the interests of both parties, cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period.

(2) If the compelling reason consists in the breach of a duty under the contract, the contract may be terminated only after the expiry without result of a period specified for relief or after a warning notice without result. Section 323 (2) applies with the necessary modifications.

(3) The person entitled may give notice only within a reasonable period after obtaining knowledge of the reason for termination.

(4) The right to demand damages is not excluded by the termination.

#### Subtitle 4

### **Unilateral rights to specify performance**

#### **Section 315**

##### Specification of performance by one party

(1) Where performance is to be specified by one of the parties to the contract, then in case of doubt it is to be assumed that the specification is to be made at the reasonably exercised discretion of the party making it.

(2) The specification is made by declaration to the other party.

(3) Where the specification is to be made at the reasonably exercised discretion of a party, the specification made is binding on the other party only if it is equitable. If it is not equitable, the specification is made by judicial decision; the same applies if the specification is delayed.

#### **Section 316**

##### Specification of consideration

If the extent of the consideration promised for an act of performance is not specified, then in case of doubt the party that is owed the consideration is entitled to make the specification.

#### **Section 317**

##### Specification of performance by a third party

(1) Where specification of performance is left to a third party, then in case of doubt it is to be assumed that the specification is to be made at the reasonably exercised discretion of the third party.

(2) If the specification is made by more than one third party, then in case of doubt, the agreement of all parties is necessary; where an amount is to be specified and several amounts are specified, then in case of doubt, the average amount applies.

#### **Section 318**

##### Avoidance of specification

(1) The specification of performance made by a third party is effected by declaration to one of the parties to the contract.

(2) Only the parties to the contract are entitled to avoid the specification made for mistake, duress or deceit; the opponent is the other party. Avoidance must occur without undue delay after the opponent has obtained knowledge of the grounds for avoidance. Avoidance is excluded if thirty years have passed since the specification was made.

### **Section 319**

Ineffectiveness of the specification; substitution

(1) If the third party is to specify performance at its reasonably exercised discretion, the specification made is not binding on the parties to the contract if it is evidently inequitable. The specification is made in this case by judicial decision; the same applies if the third party cannot or does not want to make the specification or if it delays it.

(2) If the third party is to make the specification at its free discretion, the contract is ineffective if the third party cannot or does not want to make the specification or if it delays it.

Title 2

### **Reciprocal contracts**

#### **Section 320**

Defence of unperformed contract

(1) A person who is a party to a reciprocal contract may refuse his part of the performance until the other party renders consideration, unless he is obliged to perform in advance. If performance is to be made to more than one person, an individual person may be refused the part performance due to him until the complete consideration has been rendered. The provision of section 273 (3) does not apply.

(2) If one party has performed in part, consideration may not be refused to the extent that refusal, in the circumstances, in particular because the part in arrears is relatively trivial, would be bad faith.

#### **Section 321**

Defence of uncertainty

(1) A person who is obliged to perform in advance under a reciprocal contract may refuse to render his performance if, after the contract is entered into, it becomes apparent that his entitlement to consideration is jeopardised by the inability to perform of the other party. The right to refuse performance is not applicable if consideration is rendered or security is given for it.

(2) The person required to perform in advance may specify a reasonable period in which the other party must, at his choice, render consideration or provide security reciprocally and simultaneously against performance. If the period ends without result, the person required to perform in advance may withdraw from the contract. Section 323 applies with the necessary modifications.

#### **Section 322**

Order to perform reciprocally and simultaneously

(1) If a party brings an action for performance due to him on the basis of a reciprocal contract, the assertion by the other party of his right to refuse performance until consideration is rendered merely has the effect that the latter party is to be ordered to perform reciprocally and simultaneously.

(2) If the party bringing the action must perform in advance, then, if the other party is in default of acceptance, he may bring an action for performance after receiving consideration.

(3) The provision in section 274 (2) applies to the execution of judgment.

### **Section 323**

Withdrawal for nonperformance or for performance not in conformity with the contract<sup>\*)</sup>

(1) If, in the case of a reciprocal contract, the obligor does not render an act of performance which is due, or does not render it in conformity with the contract, then the obligee may withdraw from the contract, if he has specified, without result, an additional period for performance or cure.

(2) The specification of a period of time can be dispensed with if

1. the obligor seriously and definitively refuses performance,
2. the obligor does not render performance by a date specified in the contract or within a specific period and the obligee, in the contract, has made the continuation of his interest in performance subject to performance being rendered in good time, or
3. there are special circumstances which, when the interests of both parties are weighed, justify immediate withdrawal.

(3) If the nature of the breach of duty is such that setting a period of time is out of the question, a warning notice is given instead.

(4) The obligee may withdraw from the contract before performance is due if it is obvious that the requirements for withdrawal will be met.

(5) If the obligor has performed in part, the obligee may withdraw from the whole contract only if he has no interest in part performance. If the obligor has not performed in conformity with the contract, the obligee may not withdraw from the contract if the breach of duty is trivial.

(6) Withdrawal is excluded if the obligee is solely or very predominantly responsible for the circumstance that would entitle him to withdraw from the contract or if the circumstance for which the obligor is not responsible occurs at a time when the obligee is in default of acceptance.

<sup>\*)</sup> Official note: This provision also serves in part to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

### **Section 324**

Withdrawal for breach of a duty under section 241 (2) If the obligor, in the case of a reciprocal contract, breaches a duty under section 241 (2), the obligee may withdraw from the contract if he can no longer reasonably be expected to uphold the contract.

### **Section 325**

Damages and withdrawal

The right to demand damages in the case of a reciprocal contract is not excluded by withdrawal.

### **Section 326**

Release from consideration and withdrawal where the duty of performance is excluded<sup>\*)</sup>

(1) If, under section 275 (1) to (3), the obligor is not obliged to perform, there is no entitlement to consideration; in the case of part performance, section 441 (3) applies with the necessary modifications. Sentence 1 does not apply if the obligor, in the case of failure to perform in conformity with the contract, does not, under section 275 (1) to (3), have to effect cure.

(2) If the obligee is solely or very predominantly responsible for the circumstance due to which the obligor does not, under section 275 (1) to (3), have to effect cure, or if this circumstance for which the obligor is not responsible occurs at a time when the obligee is in default of acceptance, the obligor retains the entitlement to consideration. However, he must allow to be credited against him what he saves due to release from performance or acquires or wilfully fails to acquire from other use of his labour.

(3) If the obligee demands, under section 285, return of reimbursement obtained for the object owed or assignment of the claim to reimbursement, he remains obliged to render consideration. However, the latter is reduced under section 441 (3) to the extent that the value of the reimbursement or of the claim to reimbursement falls short of the value of the performance owed.

(4) To the extent that the consideration that is not owed under this provision is effected, what is performed may be claimed back under sections 346 to 348.

(5) If, under section 275 (1) to (3), the obligor does not have to perform, the obligee may withdraw; section 323 applies with the necessary modifications to the withdrawal, subject to the proviso that it is not necessary to specify a period of time.

<sup>\*)</sup> Official note: This provision also serves in part to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

### **Section 327**

(repealed)

### Title 3

#### **Promise of performance to a third party**

##### **Section 328**

Contract for the benefit of third parties

(1) Performance to a third party may be agreed by contract with the effect that the third party acquires the right to demand the performance directly.

(2) In the absence of a specific provision it is to be inferred from the circumstances, in particular from the purpose of the contract, whether the third party is to acquire the right, whether the right of the third party is to come into existence immediately or only under certain conditions, and whether the power is to be reserved for the parties to the contract to terminate or alter the right of the third party without his approval.

##### **Section 329**

Interpretation rule where there is an assumption of the duty to perform

Where one party to a contract agrees to satisfy an obligee of the other party without assuming the obligation, then in case of doubt it may not be assumed that the obligee is to acquire the right to demand satisfaction from him directly.

##### **Section 330**

Interpretation rule in the case of life annuity contracts

Where in a life annuity contract the payment of the life annuity to a third party is agreed, in case of doubt it must be assumed that the third party is to acquire the right to demand performance directly. The same applies if, in the case of a gratuitous disposition, a duty of performance is imposed on the person provided for, or, in the case of assumption of property or a landed estate, performance for a third party is promised by the assuming party for the purpose of providing satisfaction.

##### **Section 331**

Performance after death

(1) If the performance for the third party is to occur after the death of the person to whom it is promised, the third party acquires the right to the performance, in case of doubt, upon the death of the promisee.

(2) If the promisee dies prior to the birth of the third party, the promise to perform to the third party may only be cancelled or modified if the power to do so was reserved.

##### **Section 332**

Modification by disposition mortis causa in case of reservation

If the promisee reserves the power to place another in the place of the third party designated in the contract, then in case of doubt this may also be accomplished in a disposition mortis causa.

### **Section 333**

Rejection of the right by the third party

If the third party rejects the right under the contract towards the promisor, the right is deemed to not have been acquired.

### **Section 334**

Objections of the obligor in relation to the third party

The promisor is entitled to raise objections under the contract in relation to the third party too.

### **Section 335**

Right of the promisee to make demands

The promisee may, where a different intention of the parties to the contract may not be assumed, demand performance for the third party even if the latter is entitled to the right to performance.

Title 4

## **Earnest, contractual penalty**

### **Section 336**

Interpretation of earnest

(1) Where something is given as an earnest when a contract is entered into, this is deemed to be a sign that the contract has been entered into.

(2) The earnest is not deemed, in case of doubt, to be forfeit money.

### **Section 337**

Crediting or return of the earnest

(1) The earnest is, in case of doubt, to be credited against the performance owed by the giver of the earnest, or, where this cannot occur, is to be returned when the contract is performed.

(2) If the contract is cancelled, the earnest must be returned.

### **Section 338**

Earnest in case of impossibility of performance for which giver of earnest is responsible

If the performance owed by the giver of the earnest becomes impossible due to a circumstance for which he is responsible, or if the giver of the earnest is responsible for the cancellation of the contract entered into, the receiver of the earnest may retain it. If the receiver demands damages for non-performance, the earnest must, in case of doubt, be credited against it, or if this cannot occur, must be returned when damages are paid.

### **Section 339**

Payability of contractual penalty

Where the obligor promises the obligee, in the event that he fails to perform his obligation or fails to do so properly, payment of an amount of money as a penalty, the penalty is payable if he is in default. If the performance owed consists in forbearance, the penalty is payable on breach.



### **Section 340**

Promise to pay a penalty for nonperformance

(1) If the obligor has promised the penalty in the event that he fails to perform his obligation, the obligee may demand the penalty that is payable in lieu of fulfilment. If the obligee declares to the obligor that he is demanding the penalty, the claim to performance is excluded.

(2) If the obligee is entitled to a claim to damages for nonperformance, he may demand the penalty payable as the minimum amount of the damage. Assertion of additional damage is not excluded.

### **Section 341**

Promise of a penalty for improper performance

(1) If the obligor has promised the penalty in the event that he fails to perform his obligation properly, including without limitation performance at the specified time, the obligee may demand the payable penalty in addition to performance.

(2) If the obligee has a claim to damages for the improper performance, the provisions of section 340

(2) apply.

(3) If the obligee accepts performance, he may demand the penalty only if he reserved the right to do so on acceptance.

### **Section 342**

Alternatives to monetary penalty

If, as penalty, performance other than the payment of a sum of money is promised, the provisions of sections 339 to 341 apply; the claim to damages is excluded if the obligee demands the penalty.

### **Section 343**

Reduction of the penalty

(1) If a payable penalty is disproportionately high, it may on the application of the obligor be reduced to a reasonable amount by judicial decision. In judging the appropriateness, every legitimate interest of the obligee, not merely his financial interest, must be taken into account. Once the penalty is paid, reduction is excluded.

(2) The same also applies, except in the cases of sections 339 and 342, if someone promises a penalty in the event that he undertakes or omits an action.

### **Section 344**

Ineffective promise of a penalty

If the law declares that the promise of an act of performance is ineffective, then the agreement of a penalty made for the event of failure to fulfil the promise is likewise ineffective, even if the parties knew of the ineffectiveness of the promise.

## **Section 345**

### Burden of proof

If the obligor contests the payability of the penalty because he has performed his obligation, he must prove performance, unless the performance owed consisted in forbearance.

### Title 5

## **Withdrawal; right of revocation and right of return in consumer contracts**

### Subtitle 1

## **Withdrawal<sup>\*)</sup>**

\*) Official note: This provision also serves in part to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

## **Section 346**

### Effects of withdrawal

(1) If one party to a contract has contractually reserved the right to withdraw or if he has a statutory right of withdrawal, then, in the case of withdrawal, performance received and emoluments taken are to be returned.

(2) In lieu of restitution or return, the obligor must provide compensation for value, to the extent that

1. restitution or return is excluded by the nature of what has been obtained,
2. he has used up, disposed of, encumbered, processed or redesigned the object received,
3. the object received has deteriorated or has been destroyed; but deterioration that is caused by the object being used in accordance with its intended use is not taken into account.

If consideration is specified in the contract, then this is to be used as a basis when the compensation for value is calculated; if compensation for value for the benefit of use of a loan is to be paid, it can be shown that the value of the benefit of use was lower.

(3) The duty to compensate for value does not apply

1. if the defect justifying withdrawal only became apparent during processing or transformation of the object,
2. to the extent that the obligee is responsible for the deterioration or destruction or that the damage would also have occurred if the object had remained with the obligee,
3. if in case of statutory withdrawal the deterioration or destruction occurred with the person entitled, although the latter showed the care that he customarily exercises in his own affairs.

Any remaining enrichment must be returned.

(4) The obligee may demand damages, in accordance with sections 280 to 283, for breach of a duty under subsection (1) above.

### **Section 347**

Emoluments and outlays after withdrawal

(1) If the obligor fails to take emoluments contrary to the rules of proper management although he could have done so, then he is obliged to compensate the obligee for the value. In the case of a statutory right of withdrawal, the person entitled must in regard to emoluments be responsible only for the care that he customarily exercises in his own affairs.

(2) If the obligor returns the object or gives compensation for the value or if his duty to compensate for value under section 346 (3) no. 1 or 2 is excluded, he must be reimbursed for his necessary outlays.

Other expenses are to be reimbursed to the extent that the obligee is enriched by them.

### **Section 348**

Reciprocal and simultaneous performance

The obligations of the parties arising from withdrawal are to be performed reciprocally and simultaneously. The provisions of sections 320 and 322 apply with the necessary modifications.

### **Section 349**

Declaration of withdrawal

Withdrawal is effected by declaration to the other party.

### **Section 350**

Extinction of the right of withdrawal after a period of time has been specified

If a period of time has not been agreed for the exercise of the contractual right of withdrawal, then the other party may specify a reasonable period of time within which the person entitled to withdraw must exercise that right. The right of withdrawal is extinguished if withdrawal is not declared before the end of that period.

### **Section 351**

Indivisibility of the right of withdrawal

If, in a contract, there is more than one person on one side or the other, the right of withdrawal may be exercised only by all and against all of them. If the right of withdrawal is extinguished for one of the persons entitled, it is also extinguished for the others.

### **Section 352**

Set-off after nonperformance

Withdrawal for failure to perform an obligation is ineffective if the obligor was able to release himself from the obligation by means of set-off and he declares set-off without undue delay after the withdrawal.

### **Section 353**

#### Withdrawal in return for forfeit money

If the right of withdrawal in return for payment of forfeit money has been reserved, the withdrawal is ineffective if the forfeit money is not paid before the declaration or when the declaration is made and the other party, for this reason, rejects the declaration without undue delay. However, the declaration is effective if the forfeit money is paid without undue delay after the rejection.

### **Section 354**

#### Forfeiture of rights

If a contract has been entered into subject to the reservation that the obligor will lose his rights under the contract if he does not perform his obligation, the obligee is entitled to withdraw from the contract if this circumstance occurs.

#### Subtitle 2

### **Right of revocation and right of return in consumer contracts<sup>\*)</sup>**

\*) Official note: This subtitle serves to implement 1. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 of 31 December 1985, p. 31), 2. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, p. 82), 3. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144 of 4 June 1997, p. 19).

### **Section 355**

#### Right of revocation in consumer contracts

(1) If a consumer is given, by statute, a right of revocation under this provision, then he is no longer obliged by his declaration of intention to enter into the contract if he revoked it in good time. The revocation does not have to contain any grounds and must be declared to the entrepreneur within two weeks in text form or by return of the thing; to comply with the time limit, dispatch in good time is sufficient.

(2) The period of time begins at the point of time when the consumer has been informed in text form by a clearly drafted instruction on his right of revocation which makes his rights clear to him, satisfying the requirements of the means of communication employed; this must also state the name and address of the person to whom revocation is to be declared and contain information on the beginning of the period of time and the rule in subsection (1) sentence 2 above. If the instruction is given after the contract is entered into, the period of time, notwithstanding subsection (1) sentence 2, is one month. If the contract is to be entered into in written form, the period of time does not commence before a contract document, the consumer's written application or a copy of the contract document or of the application has been supplied to the consumer. If the beginning of the period of time is in dispute, the burden of proof is on the entrepreneur.

(3) The right of revocation is extinguished at the latest six months after the contract is entered into. Where goods are supplied, the period of time does not commence prior to the date of receipt by the receiver. Notwithstanding sentence 1, the right of revocation is not extinguished if the consumer has not been properly instructed on his right of revocation, in the case of distance contracts for financial services in addition not if the entrepreneur has not properly complied with his duties to notify under section 312c (2) no. 1.

### **Section 356**

Right of return in consumer contracts

(1) The right of revocation under section 355 may, to the extent expressly permissible by statute, where the contract is entered into on the basis of a sales prospectus, be replaced in the contract by an unlimited right of return. The requirement is that

1. a clearly drafted instruction on the right of return is included in the sales prospectus,
2. the consumer was able to obtain detailed knowledge of the sales prospectus in the absence of the entrepreneur, and
3. the consumer is granted the right of return in text form.

(2) The right of return may be exercised within the revocation period; however, this period does not begin before the thing is received; and it may be exercised only by return shipment of the thing or, if it cannot be sent as a parcel, by a demand that it be taken back. Section 355 (1) sentence 2 applies with the necessary modifications.

### **Section 357**

Legal consequences of revocation and return

(1) Unless otherwise specified, the provisions on statutory withdrawal apply to the right of revocation and the right of return with the necessary modifications. Section 286 (3) applies with the necessary modifications to the duty to reimburse payments under this provision; the period specified there begins when the consumer makes a declaration of revocation or return. In this connection, the period with regard to a duty of reimbursement of the consumer begins when this declaration is made; the period with regard to a duty of reimbursement of the entrepreneur begins when it is received.

(2) When he exercises the right of revocation, the consumer is obliged to make return shipment of the thing, if it can be sent by parcel. Costs and risk of return shipment are borne by the entrepreneur in cases of revocation and return. If there is a right of revocation under section 312d (1) sentence 1, the regular costs of return shipment may be imposed by contract on the consumer if the price of the thing to be sent back does not exceed an amount of forty euros or if, where the price is higher, the consumer has at the date of the revocation not yet rendered consideration or given a part payment, unless the goods supplied do not correspond to those ordered.

(3) The consumer, notwithstanding section 346 (2) sentence 1 no. 3, must pay compensation for value for any deterioration caused by putting the thing to its intended use, if, at the latest when the contract was entered into, his attention was drawn in text form to this legal consequence and to a possibility of avoiding it. This does not apply if the deterioration is exclusively due to examining the thing. Section 346 (3) sentence 1 no. 3 does not apply if the consumer has been properly instructed on his right of revocation or he has obtained knowledge of it in another way.

(4) There are no more extensive claims.

### **Section 358**

#### Connected contracts

(1) If the consumer has effectively revoked his declaration of intention to enter into a contract for the supply of goods or for the provision of a service by an entrepreneur, he is also no longer obliged by his declaration of intention to enter into a consumer loan contract connected to this contract.

(2) If the consumer has effectively revoked his declaration of intention to enter into a consumer loan contract, he also ceases to be obliged by his declaration of intention to enter into a contract connected to that consumer loan contract for the supply of goods or for the provision of a service. If the consumer may revoke the declaration of intention to enter into the connected contract under this subtitle, only subsection (1) applies, and his right of revocation under section 495 (1) is excluded. If the consumer in the case of sentence 2 nevertheless declares revocation of the consumer loan contract, this is treated as revocation in relation to the entrepreneur of the connected contract under subsection (1).

(3) A contract for the supply of goods or for the provision of some other performance and a consumer loan contract are linked, if the loan fully or partially serves to finance the other contract and both contracts constitute an economic unit. An economic unit is to be assumed in particular if the entrepreneur himself finances the consideration of the consumer or, in the case of financing by a third party, if the lender in preparation for or for entering into the consumer loan contract uses the services of the entrepreneur. In the case of a financed acquisition of a plot of land or of an equivalent right, an economic unit is only to be assumed if the lender himself provides the plot of land or the equivalent right, or if he, beyond the provision of the loan, promotes acquisition of the plot of land or the equivalent right in cooperation with the entrepreneur, by making the interest of the entrepreneur in its disposal his own, in full or in part, by assuming functions of the disposing party in planning, advertising or carrying out the project, or by unilaterally favouring the disposing party.

(4) Section 357 applies to the connected contract with the necessary modifications. In the case of subsection (1), however, claims for payment of interest and costs arising from the reversal of the consumer loan contract are excluded against the consumer. With regard to the legal consequences of revocation or return, the lender assumes the rights and duties of the entrepreneur under the connected contract if the loan has already flowed to the entrepreneur when the revocation or return becomes effective.

(5) The necessary instruction on the right of revocation or the right of return must draw attention to the legal consequences under subsections (1) and (2) sentences 1 and 2 above.

### **Section 359**

Objections in the case of connected contracts

The consumer may refuse to repay the loan to the extent that objections under the connected contract would entitle him to refuse his performance to the entrepreneur with whom he has entered into the connected contract. This does not apply if the payment financed does not exceed 200 euros, nor in the case of objections based on a contract amendment agreed between this entrepreneur and the consumer after the consumer loan contract is entered into. If the consumer may demand a cure, he cannot refuse to repay the loan until the cure has failed.

### **Sections 360, 361**

(repealed)

Division 4

## **Extinction of obligations**

Title 1

### **Performance**

#### **Section 362**

Extinction by performance

(1) An obligation is extinguished if the performance owed is rendered to the obligee.

(2) If performance is rendered to a third party for the purpose of performing the contract, the provisions of section 185 apply.

#### **Section 363**

Burden of proof in the case of acceptance as performance of contract

If the obligee has accepted performance offered to him as performance of contract, he bears the burden of proof if he does not wish to have the performance considered as performance of contract because it was different from the performance owed or because it was incomplete.

#### **Section 364**

Acceptance in lieu of performance of contract

(1) The obligation expires if the obligee accepts, in lieu of performance of contract, performance other than that owed.

(2) If the obligor assumes a new obligation to the obligee for the purpose of satisfying the latter, it is not to be assumed, in case of doubt, that he is assuming the obligation in lieu of performance of contract.

#### **Section 365**

Warranty in the case of performance in lieu of performance of contract

If a thing, a claim against a third party or another right is given in lieu of performance of contract, the obligor must provide warranty for a legal defect or a material defect of the thing in the same manner as a seller.



### **Section 366**

Crediting of performance to more than one claim

(1) If the obligor owes performance of the same kind to the obligee under more than one obligation, and if what he pays does not suffice to redeem all debts, that debt is redeemed that he determines when he performs.

(2) If the obligor does not make a determination, then the first debt redeemed is the debt due for redemption; among more than one due debt, the one offering the obligee the least security; among more than one equally secure debts, the more onerous one; among more than one equally onerous debts, the oldest debt; and where all are equally old, each debt proportionally.

### **Section 367**

Crediting to interest and costs

(1) If the obligor must pay interest and costs in addition to the principal performance, an act of performance not sufficient to redeem the entire debt is first credited to the costs, then to the interest and finally to the principal performance.

(2) If the obligor determines another method of crediting, the obligee may refuse to accept the performance.

### **Section 368**

Receipt

Upon receiving performance, on demand, the obligee must issue a written acknowledgement of receipt (receipt). If the obligor has a legal interest in having the receipt issued in another form, he may demand issue in that form.

### **Section 369**

Costs of the receipt

(1) The costs of the receipt must be borne and advanced by the obligor, unless the legal relation existing between him and the obligee leads to a different conclusion.

(2) If more than one obligee steps into the shoes of the original obligee as the result of transfer of the claim or by way of inheritance, the extra costs are charged to the obligees.

### **Section 370**

Performance to the bringer of the receipt

The bringer of a receipt is deemed to be authorised to receive the performance to the extent that the circumstances of which the performing party is aware do not stand in the way of assuming such authorisation.

### **Section 371**

Return of the certificate of indebtedness

If a certificate of indebtedness has been issued relating to the claim, the obligor may, besides demanding the receipt, also demand return of the certificate of indebtedness. If the obligee claims to be unable to return it, the obligor may demand an officially certified acknowledgement that the debt is extinguished.

Title 2

### **Deposit**

#### **Section 372**

Requirements

Money, securities and other documents as well as valuables may be deposited by the obligor for the obligee with a public authority intended for this purpose if the obligee is in default of acceptance. The same applies if the obligor cannot fulfil his obligation or cannot do so with certainty for another reason that is in the person of the obligee or as the result of uncertainty, not due to negligence, as to the identity of the obligee.

#### **Section 373**

Reciprocal and simultaneous performance

If the obligor is obliged to perform only in return for performance by the obligee, he may make the right of the obligee to receive the deposited thing dependent upon the rendering of consideration.

#### **Section 374**

Place of deposit; duty to notify

(1) Deposit must be made at the depositary office of the place of performance; if the obligor deposits at any other place, he must compensate the obligee for the damage arising from this.

(2) The obligor must notify the obligee of the deposit without undue delay; in case of failure to do so he is liable in damages. The notice may be omitted if it is impracticable.

#### **Section 375**

Retroactive effect with dispatch by mail

If the deposited thing has been dispatched to the depositary office by mail, the deposit has retroactive effect to the date when the thing was put in the mail.

#### **Section 376**

Right to take back

(1) The obligor has the right to take back the deposited thing.

(2) Taking back is excluded

1. if the obligor declares to the depositary office that he waives the right to take back,
2. if the obligee declares his acceptance to the depositary office,
3. if the depositary office is presented with a final and absolute judgment handed down in a dispute between the obligee and the obligor which declares the deposit to be lawful.

### **Section 377**

Unpledgeability of the right to take back

- (1) The right to take back is not subject to pledge.
- (2) If insolvency proceedings are initiated against the assets of the obligor, the right to take back may, for the duration of the insolvency proceedings, not be exercised by the obligor either.

### **Section 378**

Effect of deposit where taking back is excluded

If taking back the deposited thing is excluded, the obligor is freed from his obligation by deposit in the same way as if he had rendered performance to the obligee at the time of deposit.

### **Section 379**

Effect of deposit where taking back is not excluded

- (1) If taking back the deposited thing is not excluded, the obligor may refer the obligee to the deposited thing.
- (2) As long as the thing is deposited, the obligee bears the risk and the obligor is not obliged to pay interest or provide compensation for emoluments not taken.
- (3) If the obligor takes back the deposited thing, the deposit is deemed not to have occurred.

### **Section 380**

Proof of entitlement to receive

To the extent that, according to the provisions applicable to the depositary office, a declaration by the obligor acknowledging this entitlement is required or sufficient for proof of the entitlement of the obligee to receive, the obligee may demand from the obligor the issue of the declaration under the same conditions as those under which he would be entitled to demand performance if the deposit had not occurred.

### **Section 381**

Costs of deposit

The costs of deposit are charged to the obligee to the extent that the obligor does not take back the deposited thing.

### **Section 382**

Extinction of the right of the obligee

The right of the obligee to the deposited amount is extinguished at the end of thirty years after receipt of the notice of deposit, if the obligee does not report to the depositary office before then; the obligor is entitled to take the thing back, even if he has waived the right to take back.

### **Section 383**

Auction of things not capable of deposit

(1) If the movable thing owed is not suitable for deposit, the obligor may in case of default by the obligee have it auctioned at the place of performance and deposit the proceeds. The same applies in the cases set out in section 372 sentence 2, if spoilage of the thing is to be feared or safekeeping is associated with disproportionate costs.

(2) If reasonable success is not expected from an auction at the place of performance, the thing is to be auctioned at another suitable place.

(3) The auction must be performed publicly by a bailiff appointed for the place of auction or other official authorised to conduct auctions or a publicly employed auctioneer (public auction). The time and place of the auction, with a general description of the thing, are to be publicly announced.

(4) The provisions of subsections (1) to (3) do not apply to registered ships and ships under construction.

### **Section 384**

Warning of auction

(1) The auction is permitted only after the obligee has been warned about it; the warning may be omitted if the thing is vulnerable to spoilage and postponement of the auction entails danger.

(2) The obligor must notify the obligee of the auction without undue delay; in the event of his failure to do so, he is liable in damages.

(3) The warning and the notice may be omitted if they are impracticable.

### **Section 385**

Sale by private agreement

If the thing has a stock exchange or market price, the obligor may effect the sale privately at the current price through a commercial broker officially authorised to effect such sales or through a person authorised to sell by public auction.

### **Section 386**

Costs of the auction

The costs of the auction or of the sale under section 385 are borne by the obligee if the obligor does not reclaim the deposited proceeds.

### Title 3

#### **Set-off**

##### **Section 387**

###### Requirements

If two persons owe each other performance that is substantially of the same nature, each party may set off his claim against the claim of the other party as soon as he can claim the performance owed to him and effect the performance owed by him.

##### **Section 388**

###### Declaration of set-off

Set-off is effected by declaration to the other party. The declaration is ineffective if it is made subject to a condition or a stipulation as to time.

##### **Section 389**

###### Effect of set-off

The effect of set-off is that the claims, to the extent that they correspond, are deemed to expire at the time when they are set against each other as being appropriate for set-off.

##### **Section 390**

###### No set-off against a claim subject to a defence

A claim subject to a defence may not be set off.

##### **Section 391**

###### Set-off with different places of performance

(1) Set-off is not excluded by the fact that the claims are for different places of performance or of delivery. However, the party setting off must compensate for the damage incurred by the other party due to the fact that he does not receive or cannot render performance at the specified place.

(2) If it is agreed that the performance is to take place at a specified time and in a specified place, then it is to be assumed, in case of doubt, that set-off against a claim for which there is another place of performance is to be excluded.

##### **Section 392**

###### Set-off against a seized claim

By the seizure of a claim, the set-off of a claim to which the obligor is entitled in relation to the obligee is only excluded if the obligor acquired his claim after the seizure, or if his claim only became due after the seizure and later than the seized claim.

##### **Section 393**

###### No set-off against a claim in tort

Set-off is not permissible for a claim on the basis of an intentionally committed tort.

### **Section 394**

No set-off against an unpledgeable claim

To the extent that a claim is not subject to pledge, no set-off occurs against the claim. However, contributions owed may be set off against withdrawals to be made from health insurance funds, assistance funds or burial funds, in particular from miners' provident funds and funds of miners' providential societies.

### **Section 395**

Set-off against claims of public-law corporations

Set-off is permissible against a claim of the Federal Government or of a Land or against a claim of a municipality or another association of municipalities only if the performance is to be rendered to the same fund from which the claim of the party setting off is to be discharged.

### **Section 396**

More than one claim

(1) If one or another party has more than one claim suitable for set-off, the party setting off may specify the claims that are to be set off against each other. If the set-off is declared without such a specification or if the other party objects without undue delay, the provision of section 366 (2) applies with the necessary modifications.

(2) If the party setting off owes the other party interest and costs in addition to the principal performance, the provision of section 367 applies with the necessary modifications.

Title 4

## **Forgiveness**

### **Section 397**

Contract of forgiveness, acknowledgement of non-indebtedness

(1) The obligation expires if the obligee forgives the obligor the debt by contract.

(2) The same applies if the obligee acknowledges by contract with the obligor that there is no obligation.

Division 5

## **Transfer of a claim**

### **Section 398**

Assignment

A claim may be transferred by the obligee to another person by contract with that person (assignment). When the contract is entered into, the new obligee steps into the shoes of the previous obligee.

### **Section 399**

Exclusion of assignment in case of change of contents or by agreement

A claim may not be assigned if the performance cannot be made to a person other than the original obligee without a change of its contents or if the assignment is excluded by agreement with the obligor.

### **Section 400**

Exclusion in case of unpledgeable claims

A claim may not be assigned to the extent that it is not subject to pledge.

### **Section 401**

Passing of accessory rights and preferential rights

(1) With the assigned claim the mortgages, ship mortgages or security rights attaching to them as well as the rights under a suretyship created for them pass to the new obligee.

(2) A preferential right linked to the claim to provide for the case of execution of judgment or insolvency proceedings may also be asserted by the new obligee.

### **Section 402**

Duty of information; provision of documents

The previous obligee is obliged to provide the new obligee with the information required to assert the claim and to provide him with documents serving as proof of the claim, to the extent that they are in his possession.

### **Section 403**

Duty of notarial recording

The previous obligee must, upon demand, issue the new obligee with a publicly certified document on the assignment. The new obligee must bear and advance the costs.

### **Section 404**

Objections of the obligor

The obligor may raise against the new obligee the objections that he was entitled to raise against the previous obligee at the time of assignment.

### **Section 405**

Assignment with presentation of documents

If the obligor has issued a document relating to the debt then, if the claim is assigned and the document is presented at the same time, he may not, in relation to the new obligee, invoke the fact that the entering into or acknowledgement of the obligation is only occurring for the sake of appearance or that the assignment is excluded by agreement with the original obligee, unless the new obligee was aware of or ought to have known of the circumstances on assignment.

### **Section 406**

Set-off in relation to the new obligee

The obligor may set off a claim against the previous obligee to which he is entitled against the new obligee as well, unless, when acquiring the claim, he was aware of the assignment or the claim only became due after he obtained knowledge of this and later than the assigned claim became due.

### **Section 407**

Legal acts in relation to the previous obligee

(1) The new obligee must allow performance that the obligor renders to the previous obligee after the assignment, as well as any legal transaction undertaken after assignment between the obligor and the previous obligee in respect of the claim, to be asserted against him, unless the obligor is aware of the assignment upon performance or upon undertaking the legal transaction.

(2) If, in a legal dispute that became pending at court between the obligor and the previous obligee after the assignment, a final and non-appealable judgment on the claim has been rendered, the new obligee must allow the judgment to be asserted against him, unless the obligor was aware of the assignment when legal proceedings became pending.

### **Section 408**

Multiple assignment

(1) If an assigned claim is once again assigned by the previous obligee to a third party, and if the obligor renders performance to the third party, or if, between the obligor and the third party, a legal transaction is undertaken or a legal dispute becomes pending, the provisions of section 407 will be applied with the necessary modifications for the benefit of the obligor in relation to the previous acquirer.

(2) The same applies if the claim already assigned is transferred to a third party by court decision or if the previous obligee acknowledges to the third party that the claim already assigned has passed to the third party by operation of law.

### **Section 409**

Notice of assignment

(1) If the obligee notifies the obligor that he has assigned the claim, he must allow the notified assignment to be asserted against him in relation to the obligor, even if it does not occur or is not effective. It is equivalent to notice if the obligee has issued a document relating to the assignment to the new obligee named in the document and the latter presents it to the obligor.

(2) The notice may only be retracted with the approval of the person who has been named as the new obligee.



#### **Section 410**

Delivery of the assignment document

(1) The obligor is only obliged to the new obligee to perform in return for the delivery of the document relating to the assignment issued by the previous obligee. Notice of termination or a warning by the new obligee is only ineffective if it occurs without presentation of such a document and if the obligor rejects it without undue delay for that reason.

(2) These provisions are not applicable if the previous obligee notified the obligor of the assignment in writing.

#### **Section 411**

Assignment of salary

If a military person, an official, a clergyman or a teacher at a public institution of education assigns the transferable portion of his official income, inactive status pay or retirement pay, the disbursing fund must be notified of the assignment by delivery of a publicly or officially certified document issued by the previous obligee. Pending notice, the fund is deemed to be unaware of the assignment.

#### **Section 412**

Statutory passing of claims

The provisions of sections 399 to 404 and 406 to 410 apply with the necessary modifications to the transfer of a claim by operation of law.

#### **Section 413**

Transfer of other rights

The provisions relating to transfer of claims are applied with the necessary modifications to the transfer of other rights unless otherwise provided by law.

Division 6

#### **Assumption of debt**

##### **Section 414**

Contract between obligee and transferee

A debt may be assumed by a third party by contract with the obligee in such a way that the third party steps into the shoes of the previous obligor.

### **Section 415**

#### Contract between obligor and transferee

(1) If the assumption of the debt is agreed between the third party and the obligor, its effectiveness is subject to ratification by the obligee. Ratification may only occur when the obligor or the third party has informed the obligee of the assumption of the debt. Until ratification, the parties may alter or cancel the contract.

(2) If ratification is refused, assumption of the debt is deemed not to have occurred. If the obligor or the third party requests the obligee, specifying a period of time, to make a declaration relating to the ratification, the ratification may only be declared before the end of the period of time; if it is not declared it is deemed to be refused.

(3) As long as the obligee has not granted ratification, then in case of doubt the transferee is obliged to the obligor to satisfy the obligee in good time. The same applies if the obligee refuses ratification.

### **Section 416**

#### Assumption of a mortgage debt

(1) If the acquirer of a plot of land assumes a debt of the alienor for which there is a mortgage on the land, by contract with the latter, the obligee may only ratify the assumption of the debt if the alienor notifies him of it. If six months have passed since receipt of the notice, the ratification is deemed to have been granted unless the obligee has previously refused it to the alienor; the provision of section 415 (2) sentence 2 does not apply.

(2) Notice by the alienor may only be made when the acquirer has been entered in the Land Register as owner. It must be made in writing and must include the statement that the transferee steps into the shoes of the previous obligor unless the obligee declares his refusal within that period of six months.

(3) The alienor must, on the demand of the acquirer, notify the obligee of the assumption of debt. As soon as the grant or refusal of the ratification is definite, the alienor must inform the acquirer.

### **Section 417**

#### Objections of the transferee

(1) The transferee may raise against the obligee the objections that arise from the legal relationship between the obligee and the previous obligor. He may not set off a claim to which the previous obligor is entitled.

(2) The transferee may not derive objections relating to the obligee from the legal relationship between the transferee and the previous obligor on which the assumption of debt is based.

### **Section 418**

Extinction of security rights and preferential rights

(1) As a result of the assumption of debt, the suretyships and security rights created for the claim are extinguished. If there is a mortgage or a ship mortgage for the claim the same thing occurs as if the obligee waives the mortgage or the ship mortgage. These provisions do not apply if the surety or the party that owns the mortgaged object at the time of the assumption of debt gives his consent.

(2) A preferential right linked to the claim in case of insolvency proceedings may not be asserted in the insolvency proceedings relating to the assets of the transferee.

### **Section 419**

(repealed)

Division 7

### **More than one obligor and obligee**

#### **Section 420**

Divisible performance

If more than one person owes divisible performance or if more than one person may demand divisible performance, then in case of doubt each obligor is only obliged to render an equal proportion and each obligee is only entitled to an equal proportion.

#### **Section 421**

Joint and several debtors

If more than one person owes performance in such a way that each is obliged to effect the entire performance, but the obligee is only entitled to demand the performance once (joint and several debtors), the obligee may at his discretion demand full or part performance from each of the obligors.

Until the entire performance has been effected all obligors remain obliged.

#### **Section 422**

Effect of performance

(1) Performance by a joint and several debtor is also effective for the other obligors. The same applies to performance in lieu of performance of contract, to deposit and to set-off.

(2) A claim to which a joint and several debtor is entitled may not be set off by the other obligors.

#### **Section 423**

Effect of forgiveness

Forgiveness agreed between the obligee and a joint and several debtor is also effective for the other obligors if the parties to the contract intended to terminate the whole obligation.

#### **Section 424**

Effect of default by the obligee

The default of the obligee in relation to a joint and several debtor is also effective for the other obligors.

### **Section 425**

#### Effect of other facts

(1) Facts other than those cited in sections 422 to 424 are only effective, unless the obligation leads to a different conclusion, for and against the joint and several debtor personally affected by them.

(2) This applies in particular, without limitation, to notice of termination, to default, to fault, to impossibility of performance in the person of a joint and several debtor, to limitation and to the new beginning, suspension and suspension of expiry of a period of limitation, to the merger of the claim with the debt and to a final and absolute judgment.

### **Section 426**

#### Duty to adjust advancements, passing of claim

(1) The joint and several debtors are obliged in equal proportions in relation to one another unless otherwise determined. If the contribution attributable to a joint and several debtor cannot be obtained from him, the shortfall is to be borne by the other obligors obliged to adjust advancements.

(2) To the extent that a joint and several debtor satisfies the obligee and may demand adjustment of advancements from the other obligors, the claim of the obligee against the other obligors passes to him. The passing of ownership may not be asserted to the disadvantage of the creditor.

### **Section 427**

#### Joint contractual duty

If more than one person jointly binds himself by contract to render divisible performance then, in case of doubt, they are liable as joint and several debtors.

### **Section 428**

#### Joint and several creditors

If more than one person is entitled to demand performance in such a way that each may demand the entire performance but the obligor is only obliged to effect the performance once (joint and several creditors), the obligor may at his discretion effect performance to each of the obligees. This also applies if one of the obligees has already sued for performance.

### **Section 429**

#### Effect of changes

(1) The default of a joint and several creditor is also effective against the other obligees.

(2) If claim and debt are combined in the person of a joint and several creditor, the rights of the other obligees against the obligor expire.

(3) Apart from this, the provisions of sections 422, 423 and 425 apply with the necessary modifications. In particular, without limitation, if a joint and several creditor transfers his claim to another party, the rights of the other obligees are unaffected.

**Section 430**

Duty of the joint and several creditors to adjust advancements

The joint and several creditors are entitled in equal proportions in relation to each other unless otherwise specified.

**Section 431**

More than one obligor of indivisible performance

If more than one person owes indivisible performance, they are liable as joint and several debtors.

**Section 432**

More than one obligee of indivisible performance

(1) If more than one person is to demand indivisible performance, then to the extent that they are not joint and several creditors, the obligor may only effect performance to all of them jointly and each obligee may only demand performance for all of them. Each obligee may demand that the obligor deposit the thing owed for all obligees or, if it is not suitable for deposit, that it be surrendered to a court-appointed depositary.

(2) Apart from this, a fact only relating to the person of one of the obligees has no effect for and against the other obligees.

## Division 8

### Particular types of obligations

#### Title 1

#### **Purchase, exchange<sup>\*)</sup>**

<sup>\*)</sup> Official note: This title serves to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 171, p. 12).

#### Subtitle 1

#### **General provisions**

#### **Section 433**

Typical contractual duties in a purchase agreement

(1) 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 must procure the thing for the buyer free from material and legal defects.

(2) The buyer is obliged to pay the seller the agreed purchase price and to accept delivery of the thing purchased.

#### **Section 434**

Material defects

(1) The thing is free from material defects if, upon the passing of the risk, the thing has the agreed quality. To the extent that the quality has not been agreed, the thing is free of material defects

1. if it is suitable for the use intended under the contract,
2. if it is suitable for the customary use and its quality is usual in things of the same kind and the buyer may expect this quality in view of the type of the thing.

Quality under sentence 2 no. 2 above includes characteristics which the buyer can expect from the public statements on specific characteristics of the thing that are made by the seller, the producer (section 4 (1) and (2) of the Product Liability Act [Produkthaftungsgesetz]) or his assistant, including without limitation in advertising or in identification, unless the seller was not aware of the statement and also had no duty to be aware of it, or at the time when the contract was entered into it had been corrected in a manner of equal value, or it did not influence the decision to purchase the thing.

(2) It is also a material defect if the agreed assembly by the seller or persons whom he used to perform his obligation has been carried out improperly. In addition, there is a material defect in a thing intended for assembly if the assembly instructions are defective, unless the thing has been assembled without any error.

(3) Supply by the seller of a different thing or of a lesser amount of the thing is equivalent to a material defect.

### **Section 435**

#### Legal defects

The thing is free of legal defects if third parties, in relation to the thing, can assert either no rights, or only the rights taken over in the purchase agreement, against the buyer. It is equivalent to a legal defect if a right that does not exist is registered in the Land Register.

### **Section 436**

#### Public charges on plots of land

(1) Unless otherwise agreed, the seller of a plot of land is obliged to bear public services development charges and other municipal development charges for measures the construction of which began before the contract was entered into, irrespective of the point of time when they became payable.

(2) The seller of a plot of land is not liable for the land being free from other public levies and other public charges that are not suitable to be entered in the Land Register.

### **Section 437**

#### Rights of buyer in the case of defects

If the thing is defective, the buyer may, provided the requirements of the following provisions are met and unless otherwise specified,

1. under section 439, demand cure,
2. withdraw from the agreement under sections 440, 323 and 326 (5) or reduce the purchase price under section 441, and
3. under sections 440, 280, 281, 283 and 311a, demand damages, or under section 284, demand reimbursement of futile expenditure.

### **Section 438**

#### Limitation of claims for defects

(1) The claims cited in section 437 nos. 1 and 3 become statute-barred

1. in thirty years, if the defect consists
  - a) a real right of a third party on the basis of which return of the purchased thing may be demanded, or
  - b) some other right registered in the Land Register,
2. in five years
  - a) in relation to a building, and
  - b) in relation to a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building, and
3. otherwise in two years.

(2) In the case of a plot of land the limitation period commences upon the delivery of possession, in other cases upon delivery of the thing.

(3) Notwithstanding subsection (1) nos. 2 and 3 and subsection (2), claims become statute-barred in the standard limitation period if the seller fraudulently concealed the defect. In the case of subsection (1) no. 2, however, claims are not statute-barred before the end of the period there specified.

(4) The right of withdrawal referred to in section 437 is subject to section 218. Notwithstanding the fact that a withdrawal is ineffective under section 218 (1), the buyer may refuse to pay the purchase price to the extent he would be so entitled on the basis of withdrawal. If he makes use of this right, the seller may withdraw from the agreement.

(5) Section 218 and subsection (4) sentence 2 above apply with the necessary modifications to the right to reduce the price set out in section 437.

### **Section 439**

#### Cure

(1) As cure the buyer may, at his choice, demand that the defect is remedied or a thing free of defects is supplied.

(2) The seller must bear all expenses required for the purpose of cure, in particular transport, workmen's travel, work and materials costs.

(3) Without prejudice to section 275 (2) and (3), the seller may refuse to provide the kind of cure chosen by the buyer, if this cure is possible only at disproportionate expense. In this connection, account must be taken in particular, without limitation, of the value of the thing when free of defects, the importance of the defect and the question as to whether recourse could be had to the alternative kind of cure without substantial detriment to the buyer. The claim of the buyer is restricted in this case to the alternative kind of cure; the right of the seller to refuse the alternative kind of cure too, subject to the requirements of sentence 1 above, is unaffected.

(4) If the seller supplies a thing free of defects for the purpose of cure, he may demand the return of the defective thing in accordance with sections 346 to 348.

### **Section 440**

#### Special provisions on withdrawal and damages

Except in the cases set out in section 281 (2) and section 323 (2), it is also not necessary to specify a period of time if the seller has refused to carry out both kinds of cure under section 439 (3) or if the kind of cure that the buyer is entitled to receive has failed or cannot reasonably be expected of him. A repair is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances leads to a different conclusion.



### **Section 441**

#### Reduction of price

(1) Instead of withdrawing from the agreement, the buyer may, by declaration to the seller, reduce the purchase price. The ground for exclusion under section 323 (5) sentence 2 does not apply.

(2) If more than one person comprises either the buyer or the seller, price reduction may be declared only by all or to all of them.

(3) In the case of a price reduction, the purchase price is to be reduced in the proportion in which the value of the thing free of defects would, at the time when the contract was entered into, have had to the actual value. To the extent necessary, the price reduction is to be established by appraisal.

(4) If the buyer has paid more than the reduced purchase price, the excess amount is to be reimbursed by the seller. Section 346 (1) and section 347 (1) apply with the necessary modifications.

### **Section 442**

#### Knowledge of the buyer

(1) The rights of the buyer due to a defect are excluded if he has knowledge of the defect at the time when the contract is entered into. If the buyer has no knowledge of a defect due to gross negligence, the buyer may assert rights in relation to this defect only if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

(2) A right registered in the Land Register must be removed by the seller even if the buyer is aware of it.

### **Section 443**

#### Guarantee of quality and durability

(1) If the seller or a third party gives a guarantee for the quality of the thing or that the thing will have a specified quality for a specified period (guarantee of durability), then, if there is a claim under the guarantee, the buyer, notwithstanding his statutory claims, has the rights given by the guarantee upon the terms set out in the declaration of guarantee and in the relevant advertising in relation to the person who granted the guarantee.

(2) To the extent that a guarantee of durability has been given, there is a presumption that a material defect which appears during the guarantee period triggers the rights under the guarantee.

### **Section 444**

#### Exclusion of liability

The seller may not invoke an agreement that excludes or restricts the rights of the buyer with regard to a defect insofar as the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

#### **Section 445**

Limitation of liability in the case of public auctions

If a thing is sold in exercise of a security right at a public auction in which it is described as a pledge, the buyer only has rights in respect of a defect if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

#### **Section 446**

Passing of risk and of charges

The risk of accidental destruction and accidental deterioration passes to the buyer upon delivery of the thing sold. From the time of delivery the emoluments of the thing accrue to the buyer and he bears the charges on it. If the buyer is in default of acceptance of delivery, this is equivalent to delivery.

#### **Section 447**

Passing of risk in the case of sales shipment

(1) If the seller, at the request of the buyer, ships the thing sold to another place than the place of performance, the risk passes to the buyer as soon as the seller has handed the thing over to the forwarder, carrier or other person or body specified to carry out the shipment.

(2) If the buyer has given a particular instruction on the method of shipping the thing and the seller, without a strong reason, does not adhere to this instruction, the seller is liable to the buyer for the damage arising from this.

#### **Section 448**

Costs of delivery and comparable costs

(1) The seller bears the costs of delivery of the thing, the buyer the costs of acceptance and of shipping the thing to a place other than the place of performance.

(2) The buyer of a plot of land bears the costs of the notarial recording of the purchase agreement and of the declaration of conveyance, the registration in the Land Register and the declarations necessary for registration.

#### **Section 449**

Retention of title

(1) If the seller of a movable thing has retained title until payment of the purchase price, then in case of doubt it is to be assumed that ownership is transferred subject to the condition precedent that the purchase price is paid in full (retention of title).

(2) Retention of title entitles the seller to demand the return of the thing only if he has withdrawn from the agreement.

(3) An agreement on retention of title is void to the extent that the passing of ownership is made subject to the satisfaction by the buyer of third-party claims, including, without limitation, those of an enterprise associated with the seller.

### **Section 450**

Excluded buyers in the case of certain sales

(1) When an object is sold by way of execution of judgment, the person instructed to carry out or manage the sale and the assistants used by him, including the recording clerk, may not purchase the object to be sold either for themselves in person or through another person or as the agents of another person.

(2) Subsection (1) above also applies to a sale other than by execution of judgment, if the order to sell the object has been given under a statutory provision authorising the principal to have the object sold for the account of another person, including, without limitation, sale of a pledge, sale authorised by sections 383 and 385, and sale from an insolvency estate.

### **Section 451**

Purchase by excluded buyer

(1) The effectiveness of a purchase made in violation of section 450 and of the transfer of the object purchased is subject to the approval of the person taking part in the sale as obligor, owner or obligee. If the buyer requests a person taking part to make a declaration of ratification, section 177 (2) applies with the necessary modifications.

(2) If, as a result of refusal of ratification, a new sale is undertaken, the earlier buyer is liable for the costs of the new sale and for an amount by which the proceeds of sale are reduced.

### **Section 452**

Purchase of a ship

The provisions in this subtitle on the sale of plots of land apply with the necessary modifications to the sale of registered ships and ships under construction.

### **Section 453**

Purchase of rights

(1) The provisions on the purchase of things apply with the necessary modifications to the purchase of rights and other objects.

(2) The seller bears the costs of creation and transfer of the right.

(3) If a right comprising the right to possession of a thing is sold, the seller is obliged to deliver the thing to the buyer free of material and legal defects.

Subtitle 2

## **Special types of purchase**

Chapter 1

### **Purchase on approval**

#### **Section 454**

Coming into existence of the purchase agreement

(1) In a purchase on approval or on examination, approval of the object purchased is at the discretion of the buyer. In case of doubt, the purchase agreement is entered into subject to the condition precedent of approval.

(2) The seller is obliged to permit the buyer to examine the object.

#### **Section 455**

Approval period

An object purchased on approval or on examination may be approved only within the agreed period or, if no period has been agreed, only before the end of a reasonable period specified by the seller for the buyer. If the thing was delivered to the buyer for the purpose of approval or examination, his silence is deemed to be approval.

Chapter 2

### **Repurchase**

#### **Section 456**

Coming into existence of the repurchase agreement

(1) If the seller has, in the purchase agreement, reserved the right of repurchase, the repurchase agreement comes into existence when the seller declares to the buyer that he is exercising the right of repurchase. The declaration is not subject to the formal requirements laid down for the purchase agreement.

(2) In case of doubt, the price at which the object was sold also applies to the repurchase.

#### **Section 457**

Liability of the reseller

(1) The reseller is obliged to return to the repurchaser the purchased object with its accessories.

(2) If the reseller, before exercising the right of repurchase, was at fault for the deterioration or destruction of the purchased object or an impossibility of returning it that resulted in another way, or if he materially altered the purchased object, he is liable for the damage resulting from this. If the object deteriorated without the fault of the reseller or if it is only trivially altered, the reseller may not require the purchase price to be reduced.

### **Section 458**

#### Removal of third-party rights

If the original purchaser disposed of the purchased object before exercising the right of repurchase, he is obliged to remove the third-party rights created by this. A disposition that is made by execution of judgment or attachment or by the administrator in insolvency proceedings is equivalent to a disposition by the reseller.

### **Section 459**

#### Reimbursement of outlays

The reseller may demand reimbursement for outlays that he made on the purchased object before the resale to the extent that the value of the object is enhanced by the expenses. He may remove an installation which he has attached to the returnable thing.

### **Section 460**

#### Repurchase at estimated value

If the estimated value of the object purchased at the time of repurchase is agreed as the repurchase price, the reseller is not responsible for the deterioration or destruction of the purchased object or an impossibility of returning it that resulted in another way, and the repurchaser is not obliged to reimburse the outlays made.

### **Section 461**

#### More than one person entitled to repurchase

If more than one person is jointly entitled to the right to repurchase, the right may only be exercised in its entirety. If it has expired for one of the persons entitled or if one of them does not exercise his right, then the others are entitled to exercise the right of repurchase in its entirety.

### **Section 462**

#### Cut-off period

The right of repurchase may be exercised, in the case of plots of land, only before the end of thirty years from the date of the agreement of the reservation, and in the case of other objects, only before the end of three years from that date. If a period of time is specified for exercise of the right, this period replaces the statutory period.

## Chapter 3

### **Preemption**

#### **Section 463**

##### Requirements for exercise

A person entitled to the right of preemption in respect of an object may exercise the right as soon as the person obliged by it has entered into a purchase agreement relating to the object with a third party.

#### **Section 464**

Exercise of the right of preemption

(1) Exercise of the right of preemption occurs by declaration to the person obliged. The declaration is not subject to the formal requirements laid down for the purchase agreement.

(2) When the right of preemption is exercised, the purchase takes effect between the person entitled and the person obliged, subject to the terms that the person obliged agreed with the third party.

#### **Section 465**

Ineffective agreements

An agreement made by the person obliged with the third party which provides that the purchase is subject to the non-exercise of the right of preemption or which reserves for the person obliged the right to withdraw from the agreement in the event that the right of preemption is exercised is ineffective in relation to the person entitled to preemption.

#### **Section 466**

Collateral performance

If the third party has agreed in the contract to render an act of collateral performance which the person entitled to preemption is unable to perform, the person entitled to preemption must pay the value of the collateral performance instead of rendering it. If the collateral performance cannot be assessed in money, the exercise of the right of preemption is excluded; the agreement to render collateral performance is, however, not performed if the contract with the third party would have been entered into even without it.

#### **Section 467**

Total price

If the third party purchased the object which is subject to the right of preemption together with other objects at a total price, then the person entitled to preemption must pay a proportionate part of the total price. The person obliged may demand that the preemption is extended to all things that cannot be separated without disadvantage to him.

#### **Section 468**

Deferral of the purchase price

(1) If the third party is granted deferral of payment of the purchase price in the contract, the person entitled to preemption may claim the deferral only if he gives security for the amount deferred.

(2) If a plot of land is the subject matter of the preemption, there is no need to provide security to the extent that there has been an agreement to create a mortgage on the plot of land for the deferred purchase price, or a debt for which a mortgage on the land exists has been assumed and credited towards the purchase price. This applies with the necessary modifications if a registered ship or ship under construction is the object of the right of preemption.

### **Section 469**

Duty to notify, exercise period

(1) The person obliged must inform the person entitled to preemption without undue delay of the contents of the contract entered into with the third party. Notice by the third party replaces notice by the person obliged.

(2) The right of preemption for plots of land may be exercised only before the end of a period of two months after notice is received, and the right of preemption for other objects only before the end of a period of one week after notice is received. If a period of time is specified for exercise of the right, this period replaces the statutory period.

### **Section 470**

Sale to heir on intestacy

The right of preemption, in case of doubt, does not apply to a sale that is made to an heir on intestacy with a view to a future right of succession.

### **Section 471**

Sale in case of execution of judgment or insolvency

The right of preemption is excluded if the sale occurs by way of execution of judgment or from an insolvency estate.

### **Section 472**

More than one person with a right of preemption

If the right of preemption is held by more than one person jointly, it may be exercised only in its entirety. If it has expired with regard to one of the entitled persons or if one of them does not exercise his right, then the others are entitled to exercise the right of preemption in its entirety.

### **Section 473**

Non-transferability

The right of preemption is not transferable and does not pass to the heirs of the person entitled to it unless otherwise provided. If the right is limited to a specific period, then, in case of doubt, it is inheritable.

Subtitle 3

## **Purchase of consumer goods**

### **Section 474**

The concept of purchase of consumer goods

(1) Where a consumer buys a movable thing from an entrepreneur (purchase of consumer goods), the following rules apply in addition. This does not apply to second-hand things that are sold at a public auction which the consumer may attend in person.

(2) Section 439 (4) applies to the purchase contracts regulated by this subtitle on proviso that benefits are not to be surrendered or substituted by their value. Sections 445 and 447 do not apply.

### **Section 475**

#### Deviating agreements

(1) If an agreement is entered into before a defect is notified to the entrepreneur and deviates, to the disadvantage of the consumer, from sections 433 to 435, 437, 439 to 443 and from the provisions of this subtitle, the entrepreneur may not invoke it. The provisions referred to in sentence 1 apply even if circumvented by other constructions.

(2) The limitation of the claims cited in section 437 may not be alleviated by an agreement reached before a defect is notified to an entrepreneur if the agreement means that there is a limitation period of less than two years from the statutory beginning of limitation or, in the case of second-hand things, of less than one year.

(3) Notwithstanding sections 307 to 309, subsections (1) and (2) above do not apply to the exclusion or restriction of the claim to damages.

### **Section 476**

#### Shifting the burden of proof

If, within six months after the date of the passing of the risk, a material defect manifests itself, it is presumed that the thing was already defective when risk passed, unless this presumption is incompatible with the nature of the thing or of the defect.

### **Section 477**

#### Special provisions for guarantees

(1) A declaration of guarantee (section 443) must be expressed simply and comprehensibly. It must contain

1. a reference to the statutory rights of the consumer and a statement that they are not restricted by the guarantee, and
2. the contents of the guarantee and all essential information required for asserting rights under the guarantee, including, without limitation, the duration and the area of territorial application of the guarantee protection as well as the name and address of the guarantor.

(2) The consumer may demand that the declaration of guarantee is given to him in text form.

(3) The effectiveness of the duty under the guarantee is not affected by the fact that one of the above requirements is not satisfied.



## **Section 478**

### Recourse of the entrepreneur

(1) If an entrepreneur has been obliged to take back a newly manufactured thing sold by him because it is defective, or if the consumer has reduced the purchase price, it is not necessary for the entrepreneur to fix the period of time which would otherwise be necessary in order to enforce the rights set out in section 437 with regard to the defect asserted by the consumer against the entrepreneur who sold the thing to him (supplier).

(2) Where a newly manufactured thing is sold, the entrepreneur may demand of his supplier reimbursement of the expenses which the entrepreneur had to bear in relation to the consumer under section 439 (2), if the defect asserted by the consumer already existed upon the passing of the risk to the entrepreneur.

(3) In the case of subsections (1) and (2) above, section 476 applies, subject to the proviso that the period begins when the risk passes to the consumer.

(4) The supplier may not rely on an agreement made before the defect was notified to the supplier which, to the disadvantage of the entrepreneur, deviates from sections 433 to 435, 437, 439 to 443 or from subsections (1) and (3) above or from section 479, if the obligee with the right of recourse is not given another form of compensation of equal value. Sentence 1, notwithstanding section 307, does not apply to an exclusion or restriction of the claim to damages. The provisions referred to in sentence 1 apply even if circumvented by other constructions.

(5) Subsections (1) to (4) above apply with the necessary modifications to claims of the supplier and of the other buyers in the supply chain against their sellers if the obligors are entrepreneurs.

(6) Section 377 of the Commercial Code [Handelsgesetzbuch] is unaffected.

## **Section 479**

### Limitation of recourse claims

(1) The claims to reimbursement of expenses specified in section 478 (2) are subject to a two-year limitation period after delivery of the thing.

(2) The claims specified in sections 437 and 478 (2) of the entrepreneur against his supplier for a defect in a newly manufactured thing sold to a consumer become statute-barred at the earliest two months after the date on which the entrepreneur satisfies the claims of the consumer. This suspension of expiry of limitation ends at the latest five years after the time when the supplier delivers the thing to the entrepreneur.

(3) The above subsections apply with the necessary modifications to claims of the supplier and the other buyers in the supply chain against their sellers if the obligors are entrepreneurs.

Subtitle 4

## **Exchange**

### **Section 480**

Exchange

The provisions relating to purchase apply with the necessary modifications to exchange.

Title 2

### **Time-share agreements<sup>\*)</sup>**

\*) Official note: This title serves to implement Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a time-share basis (OJ L 280, p. 82).

### **Section 481**

The concept of time-share agreement

(1) Time-share agreements are contracts by which an entrepreneur procures or promises to procure for a consumer the right, in return for the payment of a total price, to use a building for a period of the year that is specified or to be specified, for recreation or residential purposes, for the duration of at least three years. The right may be a real right or another right and may also in particular, without limitation, be granted through membership of an association or a share in a company or partnership.

(2) The right may also consist in opting to use one of a group of residential buildings.

(3) A part of a residential building is equivalent to a residential building.

### **Section 482**

Duty to provide a prospectus with regard to time-share agreements

(1) A person who, as an entrepreneur, offers time-share agreements to be entered into, must supply each consumer who indicates interest with a prospectus.

(2) The prospectus designated in subsection (1) must contain a general description of the residential building or the group of residential buildings as well as the information specified in the statutory order made under Article 242 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch].

(3) The entrepreneur may, before entering into the agreement, make an alteration to the information contained in the prospectus to the extent that this becomes necessary due to circumstances which he was unable to influence.

(4) Every advertisement for entering into time-share agreements must state that the prospectus is available and where it may be obtained.

### **Section 483**

Language of the contract and prospectus with regard to time-share agreements

(1) The agreement is to be drafted in the official language, or, where there is more than one official language, in the official language, selected by the consumer, of the Member State of the European Union or of the state which is a contracting party to the Agreement on the European Economic Area in which the consumer has his residence. If the consumer is a national of another Member State, then instead of the language of the state in which he has his residence he may alternatively choose the official language or one of the official languages of the state of which he is a national. Sentences 1 and 2 also apply to the prospectus.

(2) If the agreement must be notarially recorded before a German notary, sections 5 and 16 of the Notarial Recording Act [Beurkundungsgesetz] apply with the proviso that the consumer must be provided with a certified translation of the agreement in the language chosen by him under subsection (1).

(3) Time-share agreements that do not comply with subsections (1) sentences 1 and 2, or (2) above are void.

### **Section 484**

Written form with regard to time-share agreements

(1) The time-share agreement must be in writing, except to the extent that other provisions contain more stringent formal requirements. Entering into the agreement in electronic form is excluded. The information in the prospectus designated in section 482 that is supplied to the consumer is incorporated into the agreement except to the extent that the parties, expressly and indicating the deviation from the prospectus, agree otherwise. Such alterations must be notified to the consumer before the agreement is entered into. Notwithstanding the validity of the prospectus information under sentence 3, the contract document must contain the information specified in the statutory order designated in section 482 (2).

(2) The entrepreneur must provide the consumer with a contract document or a copy thereof. In addition, if the language of the agreement and the language of the state in which the residential building is situated are different, he must provide him with a certified translation of the agreement in the official language or one of the official languages of the European Union or of the Agreement on the European Economic Area of the state in which the residential building is situated. The duty to supply a certified translation does not apply if the right of use relates to a group of residential buildings which are situated in different states.

## **Section 485**

Right of revocation with regard to time-share agreements

- (1) In the case of a time-share agreement the consumer has a right of revocation under section 355.
- (2) The required instruction on the right of revocation must also state the costs which the consumer must reimburse if the contract is revoked under subsection (5) sentence 2.
- (3) If, before the agreement was entered into, the consumer was not supplied with the prospectus described in section 482, or it was not in the language stipulated in section 483 (1), then the period for exercising the right of revocation is one month, notwithstanding section 355 (1) sentence 2.
- (4) If one of the items of information stipulated by the statutory order designated in section 482 (2) is missing from the contract, the period for exercising the right of revocation does not commence until the consumer is notified in writing of this information.
- (5) Notwithstanding section 357 (1) and (3), remuneration for services rendered and for permitting the use of residential buildings is excluded. If the contract was required to be notarially recorded, then the consumer must pay the entrepreneur the costs of the notarial recording if this is expressly stipulated in the agreement. In the cases set out in subsections (3) and (4), there is no duty of reimbursement of costs; the consumer may demand that the entrepreneur reimburses the costs of the agreement.

## **Section 486**

Prohibition of down payment with regard to time-share agreements

The entrepreneur may not demand or accept payments by the consumer prior to the expiry of the revocation period. Provisions that are more favourable to the consumer are unaffected.

## **Section 487**

Deviating agreements

There may be no deviation from the provisions of this title to the disadvantage of the consumer. Unless otherwise provided, the provisions of this title apply even if they are circumvented by other constructions.

Title 3

## **Loan contract; financing assistance and contracts for delivery by instalments between an entrepreneur and a consumer<sup>\*)</sup>**

\*) Official note: This title serves to implement Directive 87/102/EEC of the Council for approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, p. 48) most recently amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 to amend Directive 87/102/EEC for approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 101, p. 17).

## Subtitle 1

### Loan contract

#### Section 488

Typical contractual duties in a loan contract

(1) The loan contract obliges the lender to make available to the borrower a sum of money in the agreed amount. The borrower is obliged to pay interest owed and, at the due date, to repay the loan made available to him.

(2) The agreed interest, unless otherwise provided, is to be paid at the end of each year and, if the loan is to be repaid before the end of one year, upon repayment.

(3) If a time is not specified for repayment of the loan, its due date is subject to the lender or the borrower giving notice of termination. The notice period is three months. If interest is not owed, the borrower is also entitled to repay without giving notice of termination.

#### Section 489

Right of the borrower to give notice of termination

(1) The borrower may terminate a loan contract, in whole or in part, where for a specific period of time a fixed rate of interest has been agreed

1. if the pegging of the rate of interest ends prior to the time determined for repayment and no new agreement is reached on the rate of interest, observing a notice period of one month to end at the earliest at the end of the day on which the pegging of the rate of interest ends; if an adjustment of the rate of interest is agreed at certain intervals of up to one year, the borrower may only give notice to end at the end of the day on which the pegging of the rate of interest ends;

2. if the loan is granted to a consumer and not secured by a security right in land or a maritime lien, at the end of six months after complete receipt, observing a notice period of three months;

3. in any case at the end of ten years after complete receipt, observing a notice period of six months; if, after the loan is received, a new agreement is reached on the repayment period or the rate of interest, the date of this agreement replaces the date of disbursement.

(2) The borrower may terminate a loan contract with a variable rate of interest at any time, giving three months' notice of termination.

(3) Termination by the borrower under subsections (1) or (2) is deemed not to have been given if the borrower does not repay the sum owed within two weeks after the notice of termination takes effect.

(4) The right of termination of the borrower under subsections (1) and (2) above may not be excluded or made more difficult by contract. This does not apply to loans to the Federal Government, to a special fund of the Federal Government, a Land, a municipality, an association of municipalities, the European Communities or foreign regional or local authorities.

## **Section 490**

### Right to terminate for cause

(1) If there is or threatens to be a substantial deterioration in the financial circumstances of the borrower or in the value of a security given for the loan as a result of which the repayment of the loan is jeopardised even if the security is realised, the lender may give notice of termination of the loan agreement with immediate effect; in case of doubt, extraordinary notice of termination is available before the loan is paid out, under all circumstances, but, after the loan has been paid out, only as a general rule.

(2) The borrower may give early notice of termination of a loan contract where for a specified period of time a fixed rate of interest is agreed and the loan is secured by a security right in land or a maritime lien, complying with the notice periods in section 489 (1) no. 2, if his justified interests require this. There is such an interest in particular, without limitation, if the borrower has the need to otherwise realise the thing pledged to secure the loan. The borrower must compensate the lender for the damage incurred by the lender as a result of this early termination (compensation for early termination).

(3) The provisions of sections 313 and 314 are unaffected.

## **Section 491**

### Consumer loan contract

(1) The following provisions apply as supplementary provisions, subject to subsections (2) and (3) below, to nongratuitous loan contracts between an entrepreneur as lender and a consumer as borrower (consumer loan contract).

(2) The following provisions do not apply to consumer loan contracts

1. in which the disbursable loan (net loan amount) does not exceed 200 euros,
2. which are entered into between an employer and an employee at rates of interest lying below the going market rates,
3. which, in connection with the subsidisation of housing and urban development, are entered into on the basis of public-law approvals or on the basis of grants from public authorities directly between the public law institution awarding the subsidies and the borrower at rates of interest lying below the going market rates.

(3) In addition, the following do not apply:

1. section 358 (2), (4) and (5) and sections 492 to 495 to consumer loan contracts incorporated in a court record drawn up in compliance with the provisions of the Code of Civil Procedure [Zivilprozessordnung] or notarially recorded, if the record or the notarial instrument contains the annual rate of interest, the costs invoiced when the contract was entered into, and the conditions under which the annual rate of interest or the costs may be changed;
2. section 358 (2), (4) and (5) and section 359 to consumer loan contracts serving the purpose of financing the purchase of securities, foreign currency, derivatives or precious metals.

#### **Section 492**

Written form, contents of the contract

(1) Consumer loan contracts are to be entered into in writing unless a more stringent form is provided for. Entering into the agreement in electronic form is excluded. The requirement of written form is satisfied if the offer and acceptance by the parties to the contract are declared in writing in separate documents. The statement of the lender need not be signed if it is made with the help of automatic equipment. The contract declaration must be signed by the borrower and must indicate:

1. the net loan amount, and where applicable the maximum limit of the loan,
2. the total amount of all instalments to be paid by the borrower in redemption of the loan as well as for payment of interest and other costs, if, at the date when the consumer loan contract is entered into, the total amount is certain for the entire duration of the loan; for loans with variable conditions that are redeemed in instalments, a total amount on the basis of the loan terms that apply at the time the contract is entered into,
3. the manner of repayment of the loan or, if an agreement on this is not envisaged, the arrangements for the termination of the contract,
4. the rate of interest and all other loan costs which, where their amount is known, are to be specified in detail, or else whose basis is to be indicated, including any brokerage fees to be borne by the borrower,
5. the effective annual rate of interest or, if the right is reserved to modify the rate of interest or other factors that determine the price, the initial effective annual rate of interest; together with the initial effective annual rate of interest there must also be information on the conditions under which the factors that determine the price can be modified and the periods of time to which charges resulting from an incomplete disbursement or from a loan surcharge are to be allocated when calculating the effective annual rate of interest,
6. the costs of any residual debt insurance or other insurance taken out in connection with the consumer loan contract,

7. security to be provided.

(1a) Notwithstanding subsection (1) sentence 5 no. 2, no total amount is to be indicated with regard to loans where drawing on the loan is left to the discretion of the borrower up to a maximum limit, or with regard to real estate loan contracts. Real estate loan contracts are consumer loan contracts in which placing the loan at the borrower's disposal is made dependent upon security by a security right in land and occurs on terms customary with regard to loan contracts secured by security rights in land and their interim financing; a waiver of a security under section 7 (3) to (5) of the Act on Building Societies [Gesetz über Bausparkassen] is equivalent to security by means of a security right in land. With regard to real estate loan contracts, the contractual declaration to be signed by the borrower must also contain a clear indication that the lender may assign claims from the loan contract without the consent of the borrower and may assign the contractual relationship to a third party unless assignment is ruled out in the contract or the borrower must consent to assignment.

(2) The effective annual rate of interest is the total charge per annum, to be expressed as a percentage of the net loan amount. The effective and the initial effective annual rate of interest are calculated in compliance with section 6 of the Statutory Order on Price Quotation [Verordnung zur Regelung der Preisangaben].

(3) The lender must supply to the borrower a copy of the contract declarations.

(4) Subsections (1) and (2) also apply to a power of attorney granted by a borrower to enable the attorney to enter into a consumer loan contract. Sentence 1 does not apply to a power of attorney for legal proceedings and a power of attorney notarially recorded.

#### **Section 492a**

Duties to notify during the contractual relationship

(1) If a fixed interest rate is agreed in the loan contract, and if the fixing of interest ends prior to the time determined for repayment, the lender shall inform the borrower at the latest three months prior to the end of the fixing of interest whether he is willing to reach a new agreement as regards interest. If the lender declares his willingness thereto, notification must contain the interest rate offered by the lender at the time of notification.

(2) The lender must notify the borrower at the latest three months prior to termination of a loan contract whether he is willing to continue the loan relationship. If the lender declares that he is willing to continue, notification must contain the obligatory information from section 492 (1) sentence 5 applicable at the time of notification.

(3) If claims were assigned from the loan contract, the obligations in accordance with subsections (1) and (2) also affect the new creditor unless the previous creditor has agreed with the new creditor that only the previous lender is identified in the relationship with the borrower.



### **Section 493**

#### Overdraft credit

(1) The provisions of section 492 do not apply to consumer loan contracts in which a banking institution gives a borrower the right to overdraw his current account by a specified amount, if, apart from interest, no other charges are made for the loan taken out and the interest is not charged in periods shorter than three months. The banking institution must advise the borrower prior to such a loan being drawn on of

1. the maximum limit of the loan,
2. the annual rate of interest applicable at the time of the advice,
3. the terms on which the rate of interest can be changed,
4. the provisions for termination of the contract.

The contract terms referred to in sentence 2 nos. 1 to 4 must be confirmed in writing to the borrower at the latest after the borrower has drawn on the loan for the first time. During the period in which he is drawing on the loan the borrower must also be given notice of any change in the annual rate of interest. The confirmation under sentence 3 and the notice under sentence 4 must be made in text form; it is sufficient if they are given on a bank statement.

(2) If the banking institution allows a current account to be overdrawn and if the account is overdrawn for more than three months, then the banking institution must inform the borrower of the annual rate of interest, the charges and any changes in this connection; this may be in the form of a printout on a bank statement.

### **Section 494**

#### Legal consequences of defects of form

(1) The consumer loan contract and the power of attorney given by the consumer to enter into such a contract are void if written form is not complied with at all or if any of the items of information specified in section 492 (1) sentence 5 nos. 1 to 6 is lacking.

(2) Irrespective of a defect under subsection (1), the consumer loan contract is valid to the extent that the borrower receives the loan or draws on it. However, the rate of interest agreed for the consumer loan contract (section 492 (1) sentence 5 no. 4) is reduced to the statutory rate of interest if there is no information on the rate of interest itself, on the effective annual rate of interest or on the initial effective annual rate of interest (section 492 (1) sentence 5 no. 5), or if there is no information on the total amount (section 492 (1) sentence 5 no. 2, (1a)). The borrower has no liability to pay any charges not stated. Agreed instalments must be recalculated, taking account of the reduced rate of interest or charges. If there is no information on the conditions under which the factors that determine the price may be changed, they may not be changed to the disadvantage of the borrower. If there is no information on security, it may not be called for; this does not apply if the net loan amount exceeds 50,000 euros.

(3) If the effective or the initial effective rate of interest is stated at a rate that is too low, the rate of interest on which the consumer loan contract is based is reduced by the percentage by which the effective or initial effective rate of interest is too low.

#### **Section 495**

Right of revocation

(1) In the case of a consumer loan contract, the borrower has a right of revocation under section 355.

(2) Subsection (1) does not apply to the consumer loan contracts referred to in section 493 (1) sentence 1 if, under the contract, the borrower may repay the loan at any time without complying with a notice period and without additional charges.

#### **Section 496**

Waiver of objections, prohibition of bills of exchange and cheques

(1) An agreement by which the borrower waives his right under section 404 to make against an assignee of the obligation objections to which he is entitled against the lender, or his right under section 406 to set off against an assignee of the obligation too a claim he has against the lender, is ineffective.

(2) If a claim of the lender from a loan contract is assigned to a third party, or if the identity of the lender is changed, the borrower must be notified of this without delay, as well as of the contact data of the new creditor in accordance with section 1 (1) Nos. 1 to 3 of the Civil Law Ordinance on Duties to Provide Information [BGB-Informationspflichten-Verordnung]. Notification shall be dispensable with assignments if the previous lender has agreed with the new creditor that only the previous lender is identified in the relationship with the borrower. If the preconditions of sentence 2 continue, notification must be subsequently carried out.

(3) The borrower may not be obliged to incur a bill of exchange commitment for the claims of the lender under the consumer loan contract. The lender may not accept a cheque from the borrower to secure his claims under the consumer loan contract. The borrower may require the lender at any time to return a bill of exchange or cheque that has been issued in violation of sentence 1 or 2 above. The lender is liable for all damage incurred by the borrower as a result of the issue of such a bill of exchange or cheque.

#### **Section 497**

Treatment of default interest, crediting part performance

(1) To the extent that the borrower is in default in making payments owed on the basis of the consumer loan contract he must pay interest under section 288 (1) on the amount owed; this does not apply to real estate loan contracts. With regard to these contracts, the default rate of interest per year amounts to two and a half percentage points above the base rate of interest. In an individual case, the lender may prove that the damage was greater or the borrower may prove that the damage was less.

(2) Interest incurred after default has occurred must be booked to a separate account and may not be paid into a current account together with the amount owed or other claims of the lender. In regard to such interest, section 289 sentence 2 applies, with the proviso that the lender may only demand damages up to the amount of the statutory rate of interest (section 246).

(3) Payments by the borrower which are insufficient to repay the entire debt due are credited, notwithstanding section 367 (1), first, towards costs of litigation, then towards the remainder of the amount owed (subsection 1) and finally towards interest (subsection 2). The lender may not reject instalments. Limitation of the claims for repayment of the loan and interest is suspended from the date when default begins under subsection (1) until they are determined in a manner described in section 197 (1) nos. 3 to 5, but not for more than ten years from the date when they come into existence.

Section 197 (2) does not apply to claims for interest. Sentences 1 to 4 do not apply to the extent that payments are made in response to judicially enforceable instruments whose main claim is for interest.

(4) Subsections (2) and (3) sentences 1, 2, 4 and 5 do not apply to real estate loan contracts.

## **Section 498**

Calling in entire loan in the case of loans repayable in instalments

(1) With regard to a loan that is to be repaid in instalments, the lender may only give notice of termination on account of the default in payment of the borrower if

1. the borrower is in default in the payment of at least two consecutive instalments in whole or in part and by at least ten per cent, in the case of a consumer loan contract running for more than three years by five per cent, of the nominal amount of the loan or of the instalment price, and
2. the lender has without result given the borrower a period of two weeks for payment of the amount in arrears and has declared that in the case of failure to pay within the period, the lender will demand the entire residual debt.

At the latest when the lender specifies a period of time, the lender is to offer to the borrower to discuss the possibility of an arrangement by mutual consent.

(2) If the lender terminates the consumer loan contract, the residual debt is reduced by the interest and other charges dependent on the duration of the loan which, if graduated calculation is used, apply to the period after the termination becomes effective.

(3) Subsection (1) applies to real estate loan contracts on proviso that the borrower must be completely or partly in arrears in respect of at least two consecutive instalments and of at least 2.5 percent of the nominal amount of the loan.

Subtitle 2

## **Financing assistance between an entrepreneur and a consumer**

### **Section 499**

Postponement of payment, other financing assistance

(1) Subject to subsections (2) and (3), the provisions of sections 358, 359, and 492 (1) to (3) and sections 494 to 498 apply with the necessary modifications to contracts by which an entrepreneur grants a consumer a nongratuitous postponement of payment of more than three months or grants him other nongratuitous financing assistance.

(2) Finance leasing contracts and contracts for the supply of a specified thing or the provision of a specified service in return for instalment payments (instalment payment transactions) are governed, subject to subsection (3), by the special provisions contained in sections 500 to 504.

(3) To the extent laid down in section 491 (2) and (3), the provisions of this subtitle do not apply. With regard to an instalment payment transaction, the cash payment price takes the place of the net loan amount referred to in section 491 (2) no. 1.

## **Section 500**

### Finance leasing contracts

Finance leasing contracts between an entrepreneur and a consumer are governed only by the provisions of sections 358, 359, 492 (1) sentences 1 to 4, section 492 (2) and (3) and section 495 (1) and sections 496 to 498, with the necessary modifications.

## **Section 501**

### Instalment payment transactions

Instalment payment transactions between an entrepreneur and a consumer are governed only by the provisions of sections 358, 359, 492 (1) sentences 1 to 4, section 492 (2) and (3), section 495 (1) and sections 496 to 498, with the necessary modifications. Apart from this, the following provisions apply.

## **Section 502**

### Required information, legal consequences of defects of form in instalment payment transactions

(1) The contract declaration to be signed by the consumer in the case of instalment payment transactions must show

1. the cash payment price,
2. the instalment payment price (total amount of down payment and all instalments to be paid by the consumer including interest and other costs),
3. amount, number and due date of the individual instalments,
4. the effective annual rate of interest,
5. the costs of an insurance policy taken out in connection with the instalment payment transaction,
6. the agreement of a retention of title or another form of security to be given.

The indication of a cash price and an effective annual rate of interest is not required if the entrepreneur only supplies things or performs services in return for instalment payments.

(2) The requirements of subsection (1), of section 492 (1) sentences 1 to 4, and of section 492 (3) do not apply to instalment payment transactions in distance sales if the information described in subsection (1) sentence 1 nos. 1 to 5, with the exception of the amount of the individual instalments, is provided to the consumer in text form in such good time that he is in a position to obtain full knowledge of the information before the contract is entered into.

(3) An instalment payment transaction is void if the requirement of written form in section 492 (1) sentences 1 to 4 is not observed or if one of the items of information required by subsection (1) sentence 1 nos. 1 to 5 is omitted. Notwithstanding a defect under sentence 1, the instalment payment transaction is valid if the thing is delivered to the consumer or the service performed for him. However, the maximum rate of interest on the cash payment price is the statutory rate of interest if the information on the instalment payment price or the effective annual rate of interest is missing. If a cash

payment price is not stated, then in case of doubt the market price is deemed to be the cash payment price. The provision of security may not be required if no information has been given in that regard. If information on the effective or initial effective annual rate of interest states a rate that is too low, the instalment payment price is reduced by the percentage by which the effective or initial effective annual rate of interest is too low.

### **Section 503**

Right of return, withdrawal with regard to instalment payment transactions

(1) Instead of the right of revocation to which the consumer is entitled under section 495 (1), the consumer may be given a right of return under section 356.

(2) The entrepreneur may only withdraw from an instalment payment transaction by reason of default in payment by the consumer if the requirements described in section 498 (1) are satisfied. The consumer must also compensate the entrepreneur for the expenses incurred as a result of the contract. In the calculation of remuneration for the emoluments of a thing to be returned, the decrease in value that has since occurred must be taken into account. If the entrepreneur takes back the thing supplied under the instalment payment transaction, he is deemed to be exercising the right of withdrawal, unless the entrepreneur agrees with the consumer to pay the latter the usual market value of the thing at the time of its removal. Sentence 4 applies with the necessary modifications if a contract for the supply of a thing is connected to a consumer loan contract (section 358 (2)) and if the lender takes the thing for himself; in the case of withdrawal, the legal relationship between the lender and the consumer is determined under sentences 2 and 3.

### **Section 504**

Advance payment with regard to instalment payment transactions

If the consumer performs his obligations under the instalment payment transaction in advance, the instalment price is reduced by the interest and other duration-related costs which, if a graduated method of calculation is applied, are attributable to the period after the date of advance performance.

If a cash price as referred to in section 502 (1) sentence 2 does not have to be stated, the statutory rate of interest (section 246) is to be used as the basis. However, the entrepreneur may demand interest and other duration-related costs for the first nine months of the duration originally envisaged, even if the consumer fulfils his obligations before the end of this period.

### Subtitle 3

#### **Instalment supply contracts between an entrepreneur and a consumer**

##### **Section 505**

Contracts for delivery by instalments

(1) Subject to sentence 2, in contracts with an entrepreneur in which the declaration of intent of the consumer is directed to entering into a contract which

1. relates to the supply of more than one thing sold as belonging together by way of instalments and for which remuneration is to be paid for the totality of the things in instalments, or
2. relates to the periodic supply of things of the same kind, or
3. relates to the duty of recurrent acquisition or procurement of things,

the consumer has a right of revocation under section 355. This does not apply to the extent specified in section 491 (2) and (3). The net loan amount referred to in section 491 (2) no. 1 is equal to the sum of all instalments to be paid by the consumer before the earliest possible date for giving notice of termination.

(2) The contract for delivery by instalments under subsection (1) must be in writing. Sentence 1 does not apply if the consumer is given the possibility of retrieving the terms of the contract, including the standard business terms, when he enters into the contract and of storing them in a reproducible form. The entrepreneur must provide the consumer with the contents of the contract in text form.

### Subtitle 4

#### **Mandatory nature, application to founders of new businesses**

##### **Section 506**

Deviating agreements

The provisions of sections 491 to 505 may not be deviated from to the disadvantage of the consumer. These provisions apply even if they are circumvented by other constructions.

##### **Section 507**

Application to founders of new businesses

Sections 491 to 506 also apply to natural persons who are granted a loan, postponement of payment or other financing assistance to take up a trade or self-employed occupation or who enter into a contract for delivery by instalments for this purpose, unless the net loan amount or the cash price exceeds 50,000 euros.

##### **Sections 508 - 515**

(repealed)

## Title 4

### **Donation**

#### **Section 516**

##### Concept of donation

(1) A disposition by means of which someone enriches another person from his own assets is a donation if both parties are in agreement that the disposition occurs gratuitously.

(2) If the disposition occurs without the intention of the other party, the donor may, specifying a reasonable period of time, request him to make a declaration as to acceptance. Upon expiry of the period of time, the donation is deemed to be accepted if the other party has not previously rejected it. In the case of rejection, return of what has been bestowed may be demanded under the provisions on the return of unjust enrichment.

#### **Section 517**

##### Failure to acquire assets

It is not a donation if someone, to the advantage of another person, fails to acquire assets or waives a right that has become available but not yet been definitively acquired, or declines an inheritance or a legacy.

#### **Section 518**

##### Form of promise of donation

(1) For a contract by which performance is promised as a donation to be valid, notarial recording of the promise is required. The same applies to a promise or a declaration of acknowledgement if the promise to fulfil an obligation or the acknowledgement of a debt is made as a donation in the manner cited in sections 780 and 781.

(2) A defect of form is cured by rendering the performance promised.

#### **Section 519**

##### Defence of paying for necessities

(1) The donor is entitled to refuse to fulfil his promise given as a donation to the extent that he, taking account of his other duties, is not in a position to fulfil the promise without jeopardising his reasonable maintenance or the performance of duties of maintenance incumbent upon him by operation of law.

(2) If the claims of more than one donee coincide, the earlier claim takes precedence.

#### **Section 520**

##### Expiry of the promise of an annuity

If the donor promises maintenance consisting of recurrent performance, the obligation expires with his death unless the promise leads to a different conclusion.

#### **Section 521**

##### Liability of the donor

The donor is responsible only for intent and gross negligence.



### **Section 522**

No default interest

The donor is not obliged to pay default interest.

### **Section 523**

Liability for legal defects

(1) If the donor fraudulently conceals a legal defect, he is obliged to compensate the donee for the resulting damage.

(2) If the donor promised to provide an object that he had to acquire first, the donee may demand damages for non-performance for a legal defect if the defect was known to the donor upon acquisition of the thing or remained unknown as a result of gross negligence. The provisions of section 433 (1) and sections 435, 436, 444, 452 and 453 on the liability of the seller for legal defects apply with the necessary modifications.

### **Section 524**

Liability for material defects

(1) If the donor fraudulently conceals a defect in the donated thing, he is obliged to compensate the donee for the resulting damage.

(2) If the donor promised to provide a thing designated only by class that he had to acquire first, the donee may, if the thing provided is defective and the donor was aware of the defect when the thing was acquired or remained unaware of it due to gross negligence, demand that in place of the defective thing a thing free of defects is supplied. If the donor fraudulently concealed the defect, the donee may demand damages for non-performance in place of supply of a thing free of defects. The provisions applicable to a warranty for defects in a thing sold apply to these claims with the necessary modifications.

### **Section 525**

Donation subject to conditions

(1) Anyone who makes a donation subject to a condition may demand that the condition is fulfilled if he himself has performed.

(2) If fulfilment of the condition is in the public interest, then the competent public authority may also demand fulfilment after the death of the donor.

### **Section 526**

#### Refusal to fulfil the condition

Insofar as due to a legal defect or a defect in the donated thing the value of the disposition does not reach the amount of the expenses required to fulfil the condition, the donee is entitled to refuse to fulfil the condition until the deficit caused by the defect is made up for. If the donee fulfils the condition without knowledge of the defect, then he may demand from the donor reimbursement of the expenses caused by fulfilment to the extent that, as a result of the defect, they exceed the value of the disposition.

### **Section 527**

#### Non-fulfilment of the condition

(1) If fulfilment of the condition fails to occur, the donor may demand the return of the gift under the conditions determined for the right of withdrawal from reciprocal contracts under the provisions on return of unjust enrichment to the extent that the gift would have had to be used to fulfil the condition.

(2) The claim is excluded if a third party is entitled to demand fulfilment of the condition.

### **Section 528**

#### Claim for return due to impoverishment of the donor

(1) To the extent that the donor, after fulfilment of the condition, is not in a position to maintain himself reasonably and to meet the maintenance obligation incumbent upon him by law in relation to his relatives, his spouse, his civil partner or his previous spouse or civil partner, he may demand return of the gift from the donee under the provisions on the return of unjust enrichment. The donee may avoid return by paying the amount required for maintenance. The provision of section 760 and the provision applicable to the maintenance obligation of relatives under section 1613, and in the case of the death of the donor also the provision of section 1615, apply to the duty of the donee with the necessary modifications.

(2) Among more than one donee, the earlier donee is liable only to the extent that the later donee is not obliged.

### **Section 529**

#### Exclusion of claim for return

(1) The claim to return of the gift is excluded if the donor has caused his indigence by intent or gross negligence or if at the time of onset of his indigence ten years have passed since the donated object was provided.

(2) The same applies to the extent that the donee, taking into account his other duties, is not in a position to return the gift without the maintenance suitable to his station in life or the discharging of the duties of maintenance incumbent upon him by operation of law being jeopardised.

### **Section 530**

#### Revocation of donation

(1) A donation may be revoked if the donee is guilty of gross ingratitude by doing serious wrong to the donor or a close relative of the donor.

(2) The heir of the donor only has the right of revocation if the donee has intentionally and unlawfully killed the donor or prevented him from revoking.

### **Section 531**

#### Declaration of revocation

(1) Revocation is effected by declaration to the donee.

(2) If the donation is revoked, return of the gift may be demanded under the provisions on the return of unjust enrichment.

### **Section 532**

#### Exclusion of revocation

Revocation is excluded if the donor has forgiven the donee or if one year has passed since the time when the person entitled to revoke obtained knowledge that the requirements for him to have the right had been satisfied. Revocation is no longer permissible after the death of the donor.

### **Section 533**

#### Waiver of the right of revocation

The right of revocation may only be waived when the person entitled to revoke has become aware of the ingratitude.

### **Section 534**

#### Donations for duty and decency

Donations to meet a moral duty or made from considerations of decency are not subject to a claim for return or to revocation.

## Title 5

### **Lease, usufructuary lease**

#### Subtitle 1

### **General provisions for leases**

### **Section 535**

#### Contents and primary duties of the lease agreement

(1) A lease agreement imposes on the lessor a duty to grant the lessee use of the leased property for the lease period. The lessor must surrender the leased property to the lessee in a condition suitable for use in conformity with the contract and maintain it in this condition for the lease period. He must bear all costs to which the leased property is subject.

(2) The lessee is obliged to pay the lessor the agreed rent.

### **Section 536**

Rent reduction for material and legal defects

(1) If the leased property at the time of surrender to the lessee has a defect which removes its suitability for the contractually agreed use, or if such a defect arises during the lease period, then the lessee is exempted for the period when suitability is removed from paying the rent. For the period of time when suitability is reduced, he need only pay reasonably reduced rent. A trivial reduction of suitability is not taken into account.

(2) Subsection (1) sentences 1 and 2 also apply if a warranted characteristic is lacking or later ceases.

(3) If the lessee is fully or partially deprived by a third-party right of use of the leased property, then subsections (1) and (2) apply with the necessary modifications.

(4) With regard to a lease for residential space, a deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 536a**

Claim of lessee for damages and reimbursement of expenses due to a defect

(1) If a defect within the meaning of section 536 exists when the lease agreement is entered into, or if such a defect arises subsequently due to a circumstance that the lessor is responsible for, or if the lessor is in default in remedying a defect, then the lessee may, notwithstanding the rights under section 536, demand damages.

(2) The lessee may remedy the defect himself and demand reimbursement of the necessary expenses if

1. the lessor is in default in remedying the defect, or
2. immediate remedy of the defect is necessary to preserve or restore the state of the leased property.

### **Section 536b**

Lessee knows of the defect upon entering into the agreement or upon acceptance

If the lessee knows of the defect when entering into the agreement, then he does not have the rights under sections 536 and 536a. If he remains unaware of the defect due to gross negligence, then he has these rights only if the lessor fraudulently concealed the defect. If the lessee accepts a defective thing although he is aware of the defect, then he may only assert the rights under sections 536 and 536a if he reserved his rights at the time of acceptance.

### **Section 536c**

Defects occurring during the lease period; notice of defect by the lessee

(1) If a defect in the leased property comes to light during the lease period or if action to protect the leased property from an unforeseen hazard becomes necessary, then the lessee must without undue delay report this to the lessor. The same applies if a third party arrogates to himself a right to the thing.

(2) If the lessee fails to report this, then he is liable to the lessor for damage incurred thereby. To the extent that the lessor was prevented from providing relief due to the failure of the lessee to report it, the lessee is not entitled

1. to assert the rights specified in section 536,
2. to demand damages under section 536a (1), or
3. to give notice without specifying a reasonable period for relief under section 543 (3) sentence 1.

### **Section 536d**

Contractual exclusion of rights of lessee with regard to defects

The lessor may not invoke an agreement by which the rights of the lessee are excluded or restricted with regard to a defect in the leased property if he fraudulently concealed the defect.

### **Section 537**

Payment of rent when the lessee is unable to be present in person

(1) The lessee is not released from his obligation to pay rent due to the fact that, for a reason relating to his person, he is unable to exercise his right of use. However, the lessor must allow to be credited against him the value of the expenses saved and of the advantages he enjoys from exploiting the use in another way.

(2) As long as the lessor is unable to grant the lessee use because use has been permitted to a third party, the lessee is not obliged to pay the rent.

### **Section 538**

Wear and tear on the leased property from use in conformity with the contract

The lessee is not responsible for modifications to or deterioration of the leased property brought about by use in conformity with the contract.

### **Section 539**

Reimbursement of other expenses and right of removal of the lessee

(1) The lessee may, under the provisions on agency without specific authorisation, demand reimbursement from the lessor for outlays on the leased property that the lessor need not compensate him for under section 536a (2).

(2) The lessee is entitled to remove an installation that he has provided the leased property with.

#### **Section 540**

Permitting use by third parties

(1) Without the permission of the lessor, the lessee is not entitled to permit a third party to use the leased property, in particular not to sublet it. If the lessor refuses permission, then the lessee may terminate the lease for cause with the statutory notice period unless the person of the third party constitutes cause.

(2) If the lessee permits a third party to use the property, then he is responsible for the culpability in the use of the property attributable to that third party even if the lessor has given permission for this.

#### **Section 541**

Application for injunction for use in breach of contract

If the lessee persists with use of the leased property in breach of contract despite a warning by the lessor, then the latter may seek a prohibitory injunction.

#### **Section 542**

End of the lease

(1) If the lease period is indefinite, then each of the parties to the contract may give notice of termination in accordance with the statutory provisions.

(2) A lease entered into for a definite period of time ends at the end of that period unless it

1. has been terminated for cause in legally permissible cases, or
2. is extended.

#### **Section 543**

Termination for cause without notice for a compelling reason

(1) Each party to the contract may terminate the lease for cause without notice for a compelling reason. A compelling reason is deemed to obtain if the party giving notice, with all circumstances of the individual case taken into account, including without limitation fault of the parties to the contract, and after weighing the interests of the parties, cannot be reasonably expected to continue the lease until the end of the notice period or until the lease ends in another way.

(2) A compelling reason is deemed to obtain in cases including without limitation where

1. the lessee is not permitted the use of the leased property in conformity with contract, in whole or in part, in good time, or is deprived of this use,
2. the lessee violates the rights of the lessor to a substantial degree by substantially endangering the leased property by neglecting to exercise the care incumbent upon him or by allowing a third party to use it without authorisation, or
3. the lessee
  - a) is in default, on two successive dates, of payment of the rent or of a portion of the rent that is not insignificant, or
  - b) in a period of time spanning more than two dates is in default of payment of the rent in an amount that is as much as the amount of rent for two months.

In the case of sentence 1 no. 3, termination is excluded if the lessor has by then obtained satisfaction. It becomes ineffective if the lessee has succeeded in discharging his debt by set-off and declares set-off without undue delay after notice of termination is given.

(3) If the compelling reason consists in the violation of an obligation under the lease, then the notice of termination is only permitted after the expiry without result of a reasonable period specified for the purpose of obtaining relief or after an unheeded warning notice. This does not apply if

1. a notice period or a warning notice obviously shows no chance of succeeding,
2. immediate termination for special reasons is justified, weighing the interests of both parties, or
3. the lessee is in default of payment of rent within the meaning of subsection (2) no. 3.

(4) Sections 536b and 536d are to be applied with the necessary modifications to the right to notice of termination to which the lessee is entitled under subsection (2) no. 1. If it is in dispute whether the lessor granted use of the leased property in good time or provided relief prior to expiry of the period specified for this purpose, then he bears the burden of proof.

#### **Section 544**

Lease for more than thirty years

If a lease agreement is signed for a period of more than thirty years, then each of the parties to the contract, after thirty years have passed, may after surrender of the leased property terminate the lease for cause with the statutory notice period. Termination is not permissible if the agreement has been signed for the duration of the life of the lessor or lessee.

### **Section 545**

Tacit extension of the lease

If the lessor continues to use the leased property after the end of the lease period, then the lease is extended for an indefinite period of time, unless one of the parties to the contract has declared his intention to the contrary to the other party within two weeks. The period commences

1. for the lessee upon continuation of use,
2. for the lessor at the point of time when he receives knowledge of the continuation.

### **Section 546**

Duty of lessee to return

- (1) The lessee is obliged to return the leased property after termination of the lease.
- (2) If the lessee has permitted a third party to use the leased property, the lessor may also demand return of the leased property from the third party after termination of the lease.

### **Section 546a**

Compensation of the lessor in the case of late return

- (1) If the lessee fails to return the leased property after termination of the lease, the lessor may for the duration of retention demand as compensation the agreed rent or the rent that is customarily paid for comparable items in the locality.
- (2) The assertion of further damage is not excluded.

### **Section 547**

Reimbursement of rent paid in advance

- (1) Where rent has been paid in advance for the period after termination of the lease, the lessor must reimburse it with interest accrued since receiving it. If the lessor is not responsible for termination of the lease, then he must reimburse his gains under the provisions on the return of unjust enrichment.
- (2) In the case of a lease for residential space, any deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 548**

Limitation of compensation claims and right of removal

- (1) The compensation claims of the lessor for modifications to or deterioration of the leased property are subject to a six-month limitation period. The limitation period commences at the time when the leased property is returned to him. When the claim of the lessor to return of the leased property is statute-barred, the compensation claims of the lessor are likewise statute-barred.
- (2) The claims of the lessee to reimbursement of expenses or to permission to remove an installation are subject to a six-month limitation period after the termination of the lease.
- (3) (repealed)



Subtitle 2

## **Leases for residential space**

Chapter 1

### **General provisions**

#### **Section 549**

Provisions applicable to leases of residential space

(1) Sections 535 to 548 apply to leases relating to residential space to the extent not otherwise stipulated by sections 549 to 577a.

(2) The provisions relating to rent increases (sections 557 to 561) and to lessee protection upon termination of the lease as well as when residential property is created (section 568 (2), sections 573, 573a and 573 d (1), sections 574 to 575, 575a (1) and sections 577 and 577a) do not apply to leases of

1. residential space that is leased only for temporary use,
2. residential space that is part of the dwelling inhabited by the lessor himself and has largely to be furnished with furniture and fixtures by the lessor himself, provided that permission to use the residential space has not been given for permanent use to the lessee with his family or with persons with whom he maintains a joint household set up permanently,
3. residential space that a legal person under public law or a recognised private welfare work organisation has leased to permit use by persons in urgent need of accommodation if, when the lease was entered into, it drew the attention of the lessee to the intended purpose of the residential space and to its exemption from the provisions referred to above.

(3) Sections 557 to 561 and sections 573, 573a and 573d (1) and sections 575, 575a (1) and sections 577 and 577a do not apply to residential space in a student hostel or a hostel for young people.

#### **Section 550**

Form of the lease agreement

If a lease agreement for a longer period of time than one year is not entered into in written form, then it applies for an indefinite period of time. However, termination is only allowed at the earliest at the end of one year after use of the residential space has been permitted.

#### **Section 551**

Restriction and investment of rent security deposits

(1) If the lessee must give the lessor a security deposit for the performance of his duties, then this security deposit, subject to subsection (3) sentence 4, may amount at most to three times the rent for one month, exclusive of the operating costs shown as a lump sum or as an advance payment.

(2) If security is to be provided in the form of a sum of money, then the lessee is entitled to pay in three equal monthly instalments. The first instalment is due upon commencement of the lease.

(3) The lessor must invest a sum of money transferred to him as a deposit with a banking institution at the usual rate of interest for savings deposits with withdrawal notice of three months. The parties to the contract may agree on another form of investment. In either case the investment must be made separately from the assets of the lessor and the lessee is entitled to the income. It accrues to the security deposit. For residential space in a student hostel or a hostel for young people, there is no duty for the lessor to pay interest on the security deposit.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 552**

Warding off the right of removal of the lessee

(1) The lessor may ward off exercise of the right of removal (section 539 (2)) by payment of appropriate compensation unless the lessee has a justified interest in removal.

(2) An agreement excluding the right of removal is only effective if reasonable compensation is provided for.

### **Section 553**

Permitting use by third parties

(1) If the lessee, after entering into the lease agreement, acquires a justified interest in permitting a third party to use part of the residential space, then he may demand permission to do so from the lessor. This does not apply if there is a compelling reason in the person of the third party, if the residential space would be overcrowded or if the lessor cannot for other reasons reasonably be expected to permit third-party use.

(2) If the lessor can only be expected to permit third-party use on a reasonable increase of the rent, then he may make permission dependent upon the lessee agreeing to such an increase in rent.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 554**

Toleration of conservation and modernisation measures

- (1) The lessee must tolerate measures required for conservation of the leased property.
- (2) The lessee must tolerate measures taken to improve the leased property, to save energy or water or to create new residential space. This does not apply if the measure would be, for him, his family or another member of his household, a hardship that is not justifiable even considering the justified interests of the lessor and other lessees in the building. In this context, including, without limitation, the work to be undertaken, the structural consequences, prior outlays by the lessee and the increase to be expected in the rent are to be taken into account. The increase to be expected in the rent is not to be deemed a hardship if the leased property is merely restored to a generally customary condition.
- (3) In the case of measures under subsection (2) sentence 1, the lessor must at the latest three months prior to commencement of the measure inform the lessee in writing of their nature, their estimated scope and commencement, estimated duration and the increase in rent to be expected. The lessee is entitled, up to the end of the month subsequent to the month when notification is received, to give notice for cause with effect to the end of the following month. These provisions do not apply in case of measures having only an insignificant effect on the premises leased and entailing only an insignificant increase in rent.
- (4) Outlays which the lessee had to make as a result of a measure under subsections (1) or (2) sentence 1 must be reimbursed to a reasonable extent by the lessor. Upon demand he must make an advance payment.
- (5) An agreement deviating from subsections (2) to (4) to the disadvantage of the lessee is ineffective.

## **Section 554a**

Accessibility

- (1) The lessee may demand the approval of the lessor to structural changes or other installations required to make the use of the leased property or access to it fit for the needs of the disabled, if he has a justified interest in this. The lessor may refuse approval if his interest in maintaining the leased property or building unchanged outweighs the interest of the lessee in making use of the leased property fit for the needs of the disabled. When this is done, the justified interests of the other lessees in the building are to be taken into account.
- (2) The lessor may make his approval dependent upon payment of a reasonable additional security deposit for restoration of the original condition. Section 551 (3) and (4) applies with the necessary modifications.
- (3) An agreement deviating from subsection (1) to the disadvantage of the lessee is ineffective.

## **Section 555**

Ineffectiveness of contractual penalty

An agreement by which the lessor binds the lessee to promise a contractual penalty is ineffective.

Chapter 2

## **Rent**

Subchapter 1

### **Agreements on rent**

#### **Section 556**

Agreements on operating costs

(1) The parties to the contract may agree that the lessee is to bear operating costs. Operating costs are the costs that are incurred from day to day by the owner or the holder of the heritable building right as a result of the ownership of or the heritable building right to the plot of land or as a result of the intended use of the building, the outbuildings, facilities, installations and the land. The drawing up of the statement of operating costs continues to be governed by the Operating Costs Order [Betriebskostenverordnung] of 25 November 2003 (Federal Law Gazette I pp. 2346, 2347). The Federal Government is authorised to pass provisions on the drawing up of the statement of operating costs by statutory order without the approval of the Federal Council [Bundesrat].

(2) The parties to the contract may agree, subject to other provisions, that operating costs may be reported as a lump sum or as an advance payment. Advance payments for operating costs may only be agreed in a reasonable amount.

(3) Advance payments for operating costs are to be invoiced once per year, and when this is done the principle of economic efficiency is to be observed. The lessee is to be notified of the statement of operating costs at the latest by the end of the twelfth month subsequent to the accounting period. After this period, assertion of a subsequent demand by the lessor is excluded unless the lessor is not responsible for the lateness of the assertion. The lessor is not obliged to provide interim invoicing. The lessor must be informed by the lessee of any objections to invoicing at the latest by the end of the twelfth month after receipt of the invoice. After expiry of this period, objections may no longer be asserted unless the lessee is not responsible for the lateness of the assertion.

(4) An agreement deviating to the disadvantage of the lessee from subsections (1) and (2) sentence 2 or subsection (3) is ineffective.

#### **Section 556a**

Accounting criterion for operating costs

(1) If the parties to the contract have not agreed otherwise and subject to other provisions, operating costs are to be apportioned in proportion to the floor space. Operating costs depending on recorded

consumption or causation by the lessees are to be apportioned according to criteria that take into account the differing consumption or causation.

(2) If the parties to the contract have agreed otherwise, the lessor may by declaration in text form specify that the operating costs may in future, contrary to the agreement reached, be apportioned in whole or in part according to a criterion that takes into account the recorded differing consumption or the recorded differing causation. The declaration may only be made prior to commencement of an accounting period. If the costs have previously been included in the rent, the rent is to be reduced accordingly.

(3) An agreement deviating to the disadvantage of the lessee from subsection (2) is ineffective.

#### **Section 556b**

Due date of rent, right to set-off and right of retention

(1) Rent is to be paid at the commencement of the periods of time according to which it is computed but at the latest by the third working day of each such period.

(2) The lessee may, notwithstanding a contract provision to the contrary, set off a claim based on sections 536a and 539 or a claim for unjust enrichment for excess payment of rent against a claim for rent, or may exercise a right of retention in relation to such a claim if he has notified the lessor in text form of his intention to do so at least one month prior to the due date of the rent. A deviating agreement to the disadvantage of the lessee is ineffective.

Subchapter 2

#### **Provisions on the rent amount**

##### **Section 557**

Increases in rent by agreement or law

(1) During the lease, the parties may agree an increase in rent.

(2) Future changes in the amount of rent may be agreed by the parties to the contract as stepped rent under section 557a or as indexed rent under section 557b.

(3) Apart from this, the lessor may only demand rent increases under the provisions of sections 558 to 560 to the extent that an increase is not excluded by agreement or the exclusion emerges from the circumstances.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 557a**

#### Stepped rent

- (1) The rent may be agreed in writing in varying amounts for specific periods of time; in the agreement, each rent amount or each increase must be indicated as a monetary amount (stepped rent).
- (2) The rent must remain unchanged on each occasion for at least one year. During the period of stepped rent, an increase under sections 558 to 559b is excluded.
- (3) The right of the lessee to give notice may be excluded for a maximum of four years after the stepped rent agreement is entered into. Notice of termination is allowed to the end of this period at the earliest.
- (4) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 557b**

#### Indexed rent

- (1) The parties to the contract may agree in writing that the rent is to be determined by means of the price index for the cost of living of all private households in Germany computed by the Federal Statistics Office [Statistisches Bundesamt] (indexed rent).
- (2) While an indexed rent is applicable, the rent, except for increases under sections 559 to 560, must remain unchanged for at least one year at a time. An increase under section 559 may only be demanded to the extent that the lessor has carried out structural measures due to circumstances for which he is not responsible. An increase under section 558 is excluded.
- (3) A change in rent under subsection (1) must be made by declaration in text form. In this declaration, the change in the price index that has occurred as well as the rent in the individual case or the increase must be indicated as a monetary amount. The revised rent must be paid at the commencement of the second month beginning after receipt of the declaration.
- (4) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 558**

#### Increase in rent up to the reference rent customary in the locality

- (1) The lessor may demand approval of an increase in rent up to the reference rent customary in the locality if, at the time when the increase is to occur, the rent has remained unchanged for fifteen months. The demand for a rent increase may be made at the earliest one year after the most recent rent increase. Increases under sections 559 to 560 are not taken into account.
- (2) The reference rent customary in the locality is formed from the usual payments that have been agreed or, with the exception of increases under section 560, that have been changed in the last four years in the municipality or in a comparable municipality for residential space that is comparable in type, size, furnishings, quality and location. Exempted from this is residential space where the amount of rent has been stipulated by law or in connection with a promise of sponsorship.

(3) In the case of increases under subsection (1), the rent may not be raised within three years, except for increases under sections 559 to 560, by more than twenty per cent (capping limit).

(4) The capping limit does not apply

1. if a duty of the lessee to make compensation payments under the provisions on the reduction of improper subsidisation in housing has lapsed because the public-sector connection has ceased, and
2. to the extent that the increase does not exceed the amount of the most recently payable compensation payment.

The lessor may at the earliest four months prior to the cessation of the public-sector connection demand that the lessee inform him within one month of the duty to pay compensation and of its amount. Sentence 1 applies with the necessary modifications if the duty of the lessee to make a compensation payment under sections 34 to 37 of the Residential Housing Subsidisation Act [Wohnraumförderungsgesetz] and provisions of Land law issued thereunder has lapsed due to the repeal of rent control.

(5) From the annual amount that would result in the case of an increase to the reference rent customary in the locality, third-party funds within the meaning of section 559a are to be deducted, in the case of section 559a (1) in the amount of eleven per cent of the subsidy.

(6) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 558a**

Form and justification of the rent increase

(1) A rent increase demand under section 558 must be declared and justified to the lessee in text form.

(2) In justification, reference may in particular be made to

1. a list of representative rents (sections 558c and 558d),
2. information from a rent database (section 558e),
3. an opinion, provided with supporting grounds, by an officially appointed and sworn expert,
4. examples of equivalent payment for individual comparable dwellings; in this case, it is sufficient to name three dwellings.

(3) If an expert list of representative rents (section 558d (1)), where the provisions of section 558d (2) have been complied with, contains information for the dwelling, then the lessor must in his demand for a rent increase communicate such information even if he wishes to support his rent increase by another means of justification under subsection (2).

(4) When making reference to a list of representative rents containing spans, it is sufficient if the rent demanded lies within the span. If, at the time when the lessor makes his declaration, no list of representative rents in which sections 558c (3) or 558d (2) have been complied with is available, then another list of representative rents, in particular an outdated one, or a list of representative rents from a comparable municipality may be used.

(5) A deviating agreement to the disadvantage of the lessee is ineffective.

#### **Section 558b**

##### Approval of a rent increase

(1) To the extent that the lessee approves the rent increase, he owes the increased rent from the beginning of the third calendar month after receipt of the demand for an increase.

(2) To the extent that the lessee does not approve of the rent increase by the end of the second calendar month after receipt of the demand, the lessor may sue for grant of approval. An action must be brought within three additional months.

(3) If the action is preceded by a demand for increase that does not comply with the requirements of section 558a, then the lessor may correct this in the legal dispute or remedy the defects in the demand for increase. In this case too, the lessee is entitled to the approval period under subsection (2) sentence 1.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

#### **Section 558c**

##### List of representative rents

(1) A list of representative rents is a table showing the reference rent customary in the locality, if the table has been jointly produced or recognised by the municipality or by representatives of lessors and lessees.

(2) Lists of representative rents may be produced for the area of one municipality or of more than one municipality or for parts of municipalities.

(3) Lists of representative rents should be adjusted for market trends at intervals of two years.

(4) Municipalities should produce lists of representative rents if there is a need for this and if this is possible at a reasonable cost. The lists of representative rents and the changes to them should be published.

(5) The Federal Government is authorised, by statutory order issued with the approval of the Federal Council [Bundesrat], to issue provisions on the detailed contents and on the procedure for drawing up and adjusting lists of representative rents.



### **Section 558d**

Expert list of representative rents

(1) An expert list of representative rents is a list of representative rents produced according to recognised scientific principles and recognised by the municipality or by representatives of lessors and lessees.

(2) The expert list of representative rents is to be adjusted for market trends at intervals of two years. When this is done, a spot check or the trend of the price index for living standards of all private households in Germany computed by the Federal Statistical Office [Statistisches Bundesamt] may be used as a basis. After four years a new expert list of representative rents must be produced.

(3) If the provisions of subsection (2) are complied with, then it is assumed that the payment cited in the expert list of representative rents reflects the reference rent customary in the locality.

### **Section 558e**

Rent database

A rent database is a collection of rents maintained on an ongoing basis to determine the reference rent customary in the locality; this database is jointly maintained or recognised by the municipality or by representatives of lessors and lessees, and information is issued on the basis of this database that makes it possible to come to a conclusion as to the reference rent customary in the locality with regard to individual dwellings.

### **Section 559**

Rent increase in case of modernisation

(1) If the lessor has carried out construction measures that increase the utility value of the leased property with lasting effect, improve general living conditions permanently or lead to savings of energy or water with lasting effect (modernisation), or if he has carried out other construction measures due to circumstances for which he is not responsible, then he may increase the annual rent by 11 per cent of the costs spent on the dwelling.

(2) If the construction measures have been carried out for more than one dwelling, then the costs must be apportioned reasonably among the individual dwellings.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 559a**

#### Crediting of third-party funds

- (1) Costs assumed by the lessee or assumed by a third party for the lessee or covered by subsidies from public authorities do not form part of costs spent within the meaning of section 559.
- (2) If the costs of the construction measures are covered in full or in part by low-interest or interest-free loans from public authorities, then the amount of the increase under section 559 is reduced by the annual amount of the interest reduction. The latter is calculated from the difference between the reduced rate of interest and the going market interest rate for the original amount of the loan. The going market interest rate for first-priority mortgages at the date when the measures ended is conclusive. If subsidies or loans are used to cover ongoing outlays, then the amount of the increase is reduced by the annual amount of the subsidy or loan.
- (3) A lessee loan, an advance rent payment or a service performed for the lessee by a third party for the construction measures are equivalent to a loan from public authorities. Funds from the financial institutions of the Federal Government or of a Land are deemed to be funds from public authorities.
- (4) If it cannot be ascertained in what amount subsidies or loans have been granted for the individual dwellings, then they must be apportioned according to the ratio of costs spent on individual dwellings.
- (5) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 559b**

#### Assertion of an increase; effect of declaration of increase

- (1) The rent increase under section 559 must be declared to the lessee in text form. The declaration is only effective if in it the increase is calculated on the basis of the costs incurred and explained in accordance with the requirements of sections 559 and 559a.
- (2) The lessee owes the increased rent from the beginning of the third month after receipt of the declaration. The period is extended by six months if the lessor has failed to notify the lessee of the expected increase in rent as required by section 554 (3) sentence 1 or if the de facto rent increase is more than ten per cent greater than the increase notified.
- (3) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 560**

### Changes in operating costs

(1) In the case of a lump sum charge for operating costs, the lessor is entitled to apportion increases in operating costs proportionately to the lessee by a declaration in text form, to the extent that this has been agreed in the lease agreement. The declaration is only effective if the basis of the apportionment is referred to and explained in it.

(2) The lessee owes the part of the apportionment falling to him from the beginning of the second month following the month in which the declaration is made. To the extent that the declaration is based on the fact that operating costs have risen retroactively, it has a retroactive effect from the date when the operating costs rose, but at the earliest from the beginning of the calendar year preceding the year of the declaration, provided the lessor makes the declaration within three months after he first has knowledge of the increase.

(3) If operating costs are reduced, then the lump sum for operating costs must be reduced accordingly from the date of such reduction. The lessee must be informed of the reduction without undue delay.

(4) If advance payments of operating costs have been agreed, then, after a statement of operating costs, each of the parties to the contract may undertake an adjustment to a reasonable amount by a declaration in text form.

(5) In the case of changes in operating costs, the principle of economic efficiency must be observed.

(6) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 561**

### Special right of termination of the lessee following a rent increase

(1) If the lessor asserts a right to a rent increase under sections 558 or 559, then, until the end of the second month after receipt of the declaration of the lessor, the lessee may terminate the lease for cause by special notice to the end of the second month thereafter. If the lessee gives notice of termination, then the rent increase does not take effect.

(2) A deviating agreement to the disadvantage of the lessee is ineffective.

## Chapter 3

### **Security right of the lessor**

## **Section 562**

### Extent of the security right of the lessor

(1) The lessor, for his claims under the lease, has a security right over things contributed by the lessee. It does not extend to the things that are not subject to attachment.

(2) The security right may not be asserted for future compensation claims and for rent for periods subsequent to the current and the following year of the lease.

### **Section 562a**

Extinction of the security right of the lessor

The security right of the lessor is extinguished upon the removal of the things from the plot of land, except if this removal occurs without the knowledge of or despite the objection of the lessor. The lessor may not object if this is consistent with the ordinary circumstances of life or if things left behind evidently suffice to give the lessor security.

### **Section 562b**

Self-help; claim for return

(1) The lessor may prevent the removal of the things that are subject to his security right, even without having recourse to the court, to the extent that he is entitled to object to removal. If the lessee moves out, the lessor may take possession of these things.

(2) If the things have been removed without the knowledge of or despite the objection of the lessor, then he may demand surrender of the items for the purpose of returning them to the plot of land and, if the lessee has moved out, surrender of possession. The security right is extinguished at the end of one month after the lessor has obtained knowledge of removal of the things, unless he has previously asserted this claim in court.

### **Section 562c**

Warding off the security right by provision of security

The lessee may ward off assertion of the security right of the lessor by provision of security. He may release each individual thing from the security right by providing security in the amount of its value.

### **Section 562d**

Attachment by a third party

If a thing subject to the security right of the lessor is attached for another creditor, then in relation to this other creditor the security right may not be asserted for rent from an earlier period than the last year prior to the attachment.

## Chapter 4

### **Change of parties to the contract**

#### **Section 563**

Right of succession upon death of the lessee

(1) A spouse who maintains a joint household with the lessee succeeds to the lease upon the death of the lessee. The same applies to a civil partner.

(2) If children of the lessee live in the joint household of the lessee, then these children succeed to the lease on the death of the lessee if the spouse does not succeed. The succession of the civil partner is not affected by the succession of the children of the lessee. Other family members who maintain a joint household with the lessee succeed to the lease on the death of the lessee if the spouse or the civil partner does not succeed. The same applies to persons who maintain a joint household of a permanent nature with the lessee.

(3) If persons who have succeeded to the lease within the meaning of subsection (1) or (2) declare to the lessor within one month of obtaining knowledge of the death of the lessee that they do not wish to continue the lease, the succession is deemed not to have occurred. For persons without capacity to contract or having limited capacity to contract, section 210 applies with the necessary modifications. If more than one person succeeds to the lease, then each may make the declaration on his own behalf.

(4) The lessor may terminate the lease for cause with the statutory notice period within one month after obtaining knowledge of the definitive succession to the lease if there is a compelling reason in the person of the successor.

(5) A deviating agreement to the disadvantage of the lessee or of such persons as are entitled to succeed under subsection (1) or (2) is ineffective.

#### **Section 563a**

Continuation with surviving lessees

(1) If more persons than one within the meaning of section 563 are joint lessees, then the lease is continued, after the death of one lessee, with the surviving persons.

(2) The surviving lessees may, within one month after obtaining knowledge of the death of the lessee, terminate the lease for cause with the statutory notice period.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 563b**

Liability in the case of succession or continuation

(1) The persons who succeed to the lease under section 563 or with whom it is continued under section 563a are liable together with the heir as joint and several debtors for obligations incurred up to the death of the lessee. In relation to these persons, the heir has sole liability to the extent that nothing else has been specified.

(2) If the lessee paid rent in advance for a period of time subsequent to his death, the persons who succeed to the lease under section 563 or with whom it is continued under section 563a are obliged to surrender to the heir the sum that they save or gain due to such advance payment.

(3) The lessor may, if the deceased lessee did not provide any security, demand provision of security under section 551 from persons who succeed to the lease under section 563 or with whom it is continued under section 563a.

### **Section 564**

Continuation of the lease with the heir; termination for cause

If, on the death of the lessee, no persons within the meaning of section 563 succeed to the lease or the lease is not continued with them under section 563a, then it is continued with the heir. In this case, both the heir and the lessor are entitled to terminate the lease for cause within one month with the statutory notice period after they obtain knowledge of the death of the lessee and of the fact that there has been no succession to the lease and no continuation thereof.

### **Section 565**

Commercial subletting

(1) If under the lease agreement the lessee is to sublet the leased residential space to a third party on a commercial basis for residential purposes, then upon termination of the lease the lessor takes over the rights and duties under the lease agreement between the lessee and the third party. If the lessor enters into a new lease agreement for subletting on a commercial basis, then the lessee, in place of the previous party to the contract, takes over the rights and duties under the lease agreement with the third party.

(2) Sections 566 to 566e apply with the necessary modifications.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 566**

Purchase is subject to existing leases

(1) If, after the lessee is given use of the leased residential space, it is disposed of by the lessor to a third party, then the acquirer, in place of the lessor, takes over the rights and duties that arise under the lease agreement during the period of his ownership.

(2) If the acquirer does not perform his duties, then the lessor is liable in the same way as a surety who has waived the defence of unexhausted remedies for the damage to be compensated for by the acquirer. If the lessee obtains knowledge of the passing of ownership by notification from the lessor, then the lessor is released from liability unless the lessee terminates the lease to the earliest date at which termination is allowed.

## **Section 566a**

Rent security deposit

If the lessee of the residential space disposed of has provided security to the lessor for the performance of his duties, then the acquirer takes over the rights and duties created by this. If, upon termination of the lease, the lessee is unable to obtain the security from the acquirer, then the lessor continues to be obliged to return it.

## **Section 566b**

Advance disposition of the rent

(1) If the lessor, prior to the passing of ownership, disposes of the rent attributable to the period when the acquirer is entitled, then the disposition is effective to the extent that it relates to the rent for the calendar month current at the time when the ownership passes. If ownership passes after the fifteenth day of the month, then the disposition is also effective to the extent that it relates to the rent for the following calendar month.

(2) The acquirer must allow a disposition of the rent for a later period to be asserted against himself if he has knowledge of it at the time when ownership passes.

## **Section 566c**

Agreement between lessee and lessor on the rent

A legal transaction entered into between lessee and lessor on the rent claim, including without limitation payment of rent, is effective in relation to the acquirer to the extent that it does not relate to rent for a period of time subsequent to the calendar month in which the lessee obtains knowledge of the passing of ownership. If the lessee obtains knowledge of this after the fifteenth day of the month, then the legal transaction is also effective to the extent that it relates to the rent for the next calendar month. A legal transaction undertaken after the passing of ownership is, however, ineffective if the lessee has knowledge of the passing of ownership when the legal transaction is entered into.

### **Section 566d**

Set-off by the lessee

To the extent that payment of the rent to the lessor is effective in relation to the acquirer under section 566c, the lessee can set off against the claim to rent of the acquirer a claim to which he is entitled against the lessor. Set-off is excluded if the lessee acquires the counterclaim after obtaining knowledge of the passing of ownership, or if the counterclaim becomes due only after the lessee obtains knowledge and after the rent becomes due.

### **Section 566e**

Notification by the lessor of passing of ownership

(1) If the lessor notifies the lessee that he has transferred ownership of the leased residential space to a third party, then he must, in regard to the rent claim, allow the notification of the transfer to be asserted against himself by the lessee even if it has not occurred or is not effective.

(2) The notification may be retracted only with the approval of the person who has been named as the new owner.

### **Section 567**

Encumbrance of the residential space by the lessor

If, subsequent to permission of use to the lessee, the leased residential space is encumbered by the lessor with a third-party right, then sections 566 to 566e are to be applied with the necessary modifications if by exercise of the right the lessee is deprived of the use of it in conformity with the contract. If the lessee is restricted by the exercise of this right in his use in conformity with the contract, then the third party has a duty to the lessee to refrain from exercising the right to the extent that exercising the right would adversely affect use in conformity with the contract.

### **Section 567a**

Disposal or encumbrance prior to permission of use of residential space

If, prior to transferring the use of the leased residential space to the lessee, the lessor disposes of the residential space to a third party or encumbers it with a right by the exercise of which the lessee is deprived of or restricted in the use of it in conformity with the contract, then the same applies as in the cases of sections 566 (1) and 567 if the acquirer has agreed with the lessor to take over the performance of the duties arising from the lease agreement.

### **Section 567b**

Further disposal or encumbrance by the acquirer

If the leased residential space is further disposed of or encumbered by the acquirer, then sections 566 (1) and sections 566a to 567a are to be applied with the necessary modifications. If the new acquirer fails to perform the duties arising from the lease, then the lessor is liable to the lessee under section 566 (2).



## Chapter 5

### Termination of the lease

#### Subchapter 1

#### General provisions

##### Section 568

Form and contents of the notice of termination

- (1) The notice of termination of the lease must be in written form.
- (2) The lessor should, in good time, draw the attention of the lessee to the possibility of an objection and the form and period for the objection under sections 574 to 574b.

##### Section 569

Termination for cause without notice for a compelling reason

(1) A compelling reason within the meaning of section 543 (1) for the lessee also exists if the leased residential space is in such a condition that its use entails a significant endangerment of health. This also applies if the lessee knew of the hazardous condition when he entered into the lease agreement or waived his rights arising from this condition.

(2) A compelling reason within the meaning of section 543 (1) also exists if one party to the contract permanently disturbs the domestic peace in such a way that the party giving notice, taking all circumstances of the specific case into account, including without limitation fault of the parties to the contract, and weighing the interests of both parties, cannot reasonably be expected to continue the lease to the end of the notice period or until the lease is terminated in another way.

(3) In supplement to section 543 (2) sentence 1 no. 3, the rules are:

1. In the case of section 543 (2) sentence 1, no. 3, letter a, the part of the rent in arrears may only be deemed not to be insignificant if it exceeds the rent for one month. This does not apply if the residential space is leased only for temporary use.
2. The notice of termination also becomes ineffective if, at the latest by the end of two months after the eviction claim is pending, the lessor is satisfied or a public authority agrees to satisfy the lessor with regard to the rent due and the compensation due under section 546a (1). This does not apply if, no longer than two years earlier, the notice of termination was preceded by a notice of termination that became ineffective under sentence 1 above.
3. If the lessee has been finally and absolutely ordered to pay an increased rent under sections 558 to 560, then the lessor may not terminate the lease for default in payment of the lessee before the end of two months after the final and absolute order unless the requirements for termination for cause without notice have already been satisfied due to rent previously owed.

(4) The compelling reason leading to termination must be stated in the notice of termination.

(5) An agreement diverging from subsections (1) to (3) of this provision or from section 543 to the disadvantage of the lessee is ineffective. In addition, an agreement is also ineffective under which the lessor is to be entitled to terminate the lease for cause without notice for other reasons than those permitted by law.

#### **Section 570**

Exclusion of the right of retention

The lessee is not entitled to any right of retention against the claim to return of the lessor.

#### **Section 571**

Further damages for late return of residential space

(1) If the lessee fails to return the leased residential space upon termination of the lease, then the lessor may only assert further damages within the meaning of section 546a (2) if the return failed to occur for reasons for which the lessee is responsible. Damage is only to be compensated for to the extent that equity demands indemnification. This does not apply if the lessee has given notice of termination.

(2) If the lessee is granted a period of time before vacating the premises under section 721 or section 794a of the Code of Civil Procedure [Zivilprozessordnung], then he is not liable for compensation for further damage until the end of the period of time.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

#### **Section 572**

Agreement on right of withdrawal; lease subject to condition subsequent

(1) The lessor may not invoke an agreement by which the lessor is intended to be entitled to withdraw from the lease agreement after he has permitted the lessee to use the residential space.

(2) In addition, the lessor may not invoke an agreement by which the lease is subject to a condition subsequent to the disadvantage of the lessee.

## Subchapter 2

### Leases for an indefinite period of time

#### Section 573

##### Notice of termination by the lessor

(1) The lessor may only give notice if he has a justified interest in the termination of the lease. Notice of termination for the purpose of increasing the rent is excluded.

(2) A justified interest of the lessor in the termination of the lease exists, without limitation, in cases where

1. the lessee has culpably and non-trivially violated his contractual duties,
2. the lessor needs the premises as a dwelling for himself, members of his family or members of his household, or
3. the lessor, by continuing the lease, would be prevented from making appropriate commercial use of the plot of land and would as a result suffer substantial disadvantages; the possibility of attaining a higher rent by leasing the residential space to others is disregarded; the lessor may likewise not invoke the fact that he wishes to dispose of the residential premises in connection with an intention to create apartment ownership, or in connection with a creation of apartment ownership that took place after use of the residential space was granted to the lessee.

(3) The reasons for a justified interest of the lessor must be indicated in the notice of termination.

Other reasons are taken into account only to the extent that they arose subsequently.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

#### Section 573a

##### Simplified termination by the lessor

(1) The lessor may also terminate a lease of a dwelling in a building inhabited by the lessor himself and having no more than two dwellings without the need for a justified interest within the meaning of section 573. The notice period is in this case extended by three months.

(2) Subsection (1) applies with the necessary modifications to residential space inside the dwelling inhabited by the lessor himself to the extent that the residential space is not exempted from lessee protection under section 549 (2) no. 2.

(3) In the letter containing notice of termination it must be stated that the termination is based on the requirements of subsection (1) or (2).

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 573b**

Partial termination by the lessor

(1) The lessor may terminate the lease of side rooms or parts of a plot of land that are not intended as residential without a justified interest within the meaning of section 573 if he limits the notice of termination to these rooms or parts of the plot of land and if he wishes to use them

1. to create residential space for the purpose of leasing, or
2. to provide the intended or existing residential space with side rooms or parts of a plot of land.

(2) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter.

(3) If commencement of construction work is delayed, then the lessee may demand an extension of the lease by an equivalent period of time.

(4) The lessee may demand an appropriate reduction of the rent.

(5) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 573c**

Termination notice periods

(1) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter. The notice period for the lessor is extended, by three months in each case, five and eight years after the lessee is permitted to use the residential space.

(2) For residential space that is only leased for temporary use, a shorter notice period may be agreed.

(3) For residential space under section 549 (2) no. 2, notice of termination is allowed at the latest on the fifteenth day of a month to the end of that month.

(4) An agreement deviating from subsections (1) or (3) to the disadvantage of the lessee is ineffective.

### **Section 573d**

Termination for cause with the statutory notice period

(1) If a lease may be terminated for cause with the statutory notice period, then sections 573 and 573a apply with the necessary modifications, with the exception of notice of termination to the heirs of the lessee under section 564.

(2) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter, and in the case of residential space under section 549 (2) no. 2 at the latest on the fifteenth day of the month to the end of that month (statutory period). Section 573a (1) sentence 2 does not apply.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 574**

### Objection of lessee to termination

(1) The lessee may object to the notice of termination of the lessor and demand continuation of the lease from the latter if termination of the lease would be, for the lessee, his family or another member of his household, a hardship that is not justifiable even considering the justified interests of the lessor. This does not apply if a reason exists that entitles the lessor to terminate the lease for cause without notice.

(2) Hardship also exists if appropriate substitute residential space cannot be procured on reasonable terms.

(3) When the justified interests of the lessor are considered, only the reasons given in the letter containing notice of termination under section 573 (3) are taken into account, except where the reasons arose subsequently.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 574a**

### Continuation of lease after objection

(1) In the case of section 574, the lessee may demand that the lease is continued as long as is appropriate if all circumstances are taken into consideration. If the lessor cannot reasonably be expected to continue the lease under the previously applicable contract terms, then the lessee may only demand that it is continued with an appropriate amendment of the terms.

(2) If no agreement is reached, then the continuation of the lease, its duration and the terms under which it is continued are determined by judicial decision. If it is uncertain when the circumstances can be expected to cease on the basis of which termination of the lease would be a hardship, then it may be specified that the lease is to be continued for an indefinite period of time.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 574b**

### Form and period of objection

(1) An objection of the lessee to termination must be declared in writing. Upon demand by the lessor, the lessee should without undue delay provide information on the reasons for the objection.

(2) The lessor may refuse continuation of the lease if the lessee does not declare the objection to him at the latest two months prior to termination of the lease. If the lessor has not referred to the possibility of objection and to its form and period in good time before the end of the period for filing an objection, then the lessee may declare his objection in the first hearing in the eviction proceedings.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 574c**

Further continuation of lease in the case of unforeseen circumstances

(1) If it has been determined on the basis of sections 574 to 574b by agreement or judicial decision that the lease is to be continued for a definite period of time, then the lessee may only demand its further continuation if this is justified by a material change in circumstances or if circumstances have not come about whose foreseen occurrence was decisive for the period of time the lease was to continue.

(2) If the lessor terminates a lease whose continuation for an indefinite period of time has been established by judicial decision, then the lessee may object to the termination and demand from the lessor continuation of the lease for an indefinite period of time. If the circumstances that were decisive for continuation have changed, then the lessee may demand continuation of the lease only under section 574; trivial changes are disregarded.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

Subchapter 3

### **Leases for a definite period of time**

#### **Section 575**

Fixed-term lease

(1) A lease may be entered into for a fixed period of time if the lessor upon termination of the lease period

1. wishes to use the premises as a dwelling for himself, members of his family or members of his household, or

2. wishes, admissibly, to eliminate the premises or change or repair them so substantially that the measures would be significantly more difficult as a result of a continuation of the lease, or

3. wishes to lease the premises to a person obliged to perform services

and he notifies the lessee in writing of the reasons for the fixed term when the agreement is entered into. Otherwise the lease is deemed to have been entered into for an indefinite period of time.

(2) The lessee may at the earliest four months prior to expiry of the fixed term demand of the lessor that the lessor notify him within one month whether the grounds for the fixed term still apply. If the notification occurs later, then the lessee may demand an extension of the lease by the period of time of the delay.

(3) If the reason for the fixed term occurs later, then the lessee may demand an extension of the lease by an equivalent period of time. If the reason ceases, then the lessee may demand an extension for an indefinite period of time. The burden of proof for the occurrence of a reason for setting a fixed term and for the duration of the delay is on the lessor.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 575a**

Termination for cause with the statutory notice period

(1) If a lease entered into for a fixed term may be terminated for cause with the statutory notice period, then sections 573 and 573a apply with the necessary modifications, with the exception of notice of termination to the heirs of the lessee under section 564.

(2) Sections 574 to 574c apply with the necessary modifications subject to the proviso that the continuation of the lease may be demanded at most until the contractually specified date of termination.

(3) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter, and in the case of residential space under section 549 (2) no. 2 at the latest on the fifteenth day of the month to the end of the month (statutory period). Section 573a (1) sentence 2 does not apply.

(4) A deviating agreement to the disadvantage of the lessee is ineffective.

Subchapter 4

### **Tied dwellings**

#### **Section 576**

Periods for notice of termination in the case of tied leased dwellings

(1) If residential space is leased in view of the existence of a service relationship, then the lessor may upon termination of the employment and notwithstanding section 573c (1) sentence 2 terminate the lease with the following notice periods:

1. for residential space the lessee has been permitted to use for less than ten years, at the latest on the third working day of a calendar month to the end of the second month thereafter if the residential space is needed for another person obliged to perform services;
2. at the latest on the third working day of a calendar month to the end of that month if the service relationship by its nature requires permission to use residential space that is located in immediate relation to or in the immediate vicinity of the place of work and the residential space is needed for the same reason for another person obliged to perform services.

(2) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 576a**

Special features of the right of objection in the case of tied leased dwellings

(1) When sections 574 to 574c are applied to tied leased dwellings, the interests of the person entitled to services must also be taken into account.

(2) Sections 574 to 574c do not apply if

1. the lessor has given notice under section 576 (1) no 2;
2. the lessee has terminated the service relationship without the person entitled to service giving him any legally justified reason for doing so, or the lessee, by his conduct, provided the person entitled to service with legally justified grounds for terminating the service relationship.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

### **Section 576b**

Application of landlord and tenant law with the necessary modifications in connection with tied dwellings

(1) If permission to use residential space has been given in connection with a service relationship, then the termination of the legal relationship with regard to the residential space is governed by the provisions on leases with the necessary modifications if the person obliged to perform services has predominantly supplied the residential space with furniture and fixtures or lives in the residential space with his family or persons with whom he maintains a joint household set up permanently.

(2) A deviating agreement to the disadvantage of the lessee is ineffective.

Chapter 6

## **Special features when creating apartment ownership of leased residences**

### **Section 577**

Right of preemption of the lessee

(1) If leased residential premises, apartment ownership of which has been established or is to be established after the lessee has been permitted to use it, is sold to a third party, then the lessee has a right of preemption with regard to it. This does not apply if the lessor sells the residential premises to a member of his family or a member of his household. To the extent that the following subsections do not lead to a different conclusion, the right of preemption is governed by the provisions on preemption.

(2) The notification of the seller or of the third party on the contents of the purchase agreement is to be supplied together with information to the lessee on his right of preemption.

(3) The right of preemption is exercised by a written declaration of the lessee to the seller.

(4) If the lessee dies, then the purchase option passes to the persons who succeed to the lease under section 563 (1) or (2).

(5) A deviating agreement to the disadvantage of the lessee is ineffective.



### **Section 577a**

Restriction on notice of termination in connection with conversion of the dwelling

(1) If apartment ownership of leased residential premises has been established in the residential space after the lessee was permitted to use it and the apartment ownership has been disposed of, then an acquirer may only invoke a justified interest within the meaning of section 573 (2) nos. 2 or 3 after the end of three years after the disposal.

(2) The period under subsection (1) is up to ten years if adequate supply of leased dwellings to the population on reasonable conditions in a municipality or part of a municipality is particularly jeopardised and these areas are specified under sentence 2. The Land governments are authorised to specify these territories and the period of time under sentence 1 by statutory order for the duration of ten years at most in each case.

(3) A deviating agreement to the disadvantage of the lessee is ineffective.

Subtitle 3

### **Leases of other things**

#### **Section 578**

Leases of plots of land and premises

(1) The provisions of sections 550, 562 to 562d, 566 to 567b as well as 570 are applicable to leases of plots of land with the necessary modifications.

(2) The provisions cited in subsection 1 as well as section 552 (1), section 554 (1) to (4) and section 569 (2) are applicable with the necessary modifications on leases for premises not constituting residential premises. If the premises are intended for the residence of human beings, section 569 (2) also applies with the necessary modifications.

#### **Section 578a**

Lease of registered ships

(1) The provisions of sections 566, 566a, 566e to 567d apply with the necessary modifications in the case of disposal or encumbrance of a ship registered in the ship register.

(2) A disposition of the rent made by the lessor prior to the passing of ownership and relating to the period of time when the acquirer is entitled is effective in relation to the acquirer. The same applies to a legal transaction that is entered into between the lessee and the lessor on the rent claim, in particular, without limitation, regarding the payment of the rent; a legal transaction entered into after the passing of ownership is, however, ineffective if the lessee, when entering into the transaction, has knowledge of the passing of ownership. Section 566d applies with the necessary modifications.

### **Section 579**

#### Due date of the rent

(1) The rent for a plot of land, a ship registered in the ship register and for movable things is payable at the end of the lease period. If the rent is assessed according to time periods, then it is to be paid at the end of the individual time periods. Rent for a plot of land, unless assessed by shorter time periods, is in each case to be paid after the end of a calendar quarter on the first working day of the next month.

(2) Section 566b (1) applies with the necessary modifications to leases of premises.

### **Section 580**

#### Notice of termination for cause in the case of the death of the lessee

If the lessee dies, then both his heir and the lessor are entitled, within a month of obtaining knowledge of the death of the lessee, to terminate the lease for cause with the statutory notice period.

### **Section 580a**

#### Notice periods

(1) In the case of a lease of plots of land, of premises that are not business premises or of ships registered in the ship register, notice of termination is allowed

1. if the rent is assessed by days, on any day to the end of the following day;
2. if the rent is assessed by weeks, at the latest on the first working day of a week to the end of the following Saturday;
3. if the rent is assessed in months or longer periods of time, at the latest on the third working day of a calendar month to the end of the second month thereafter; in the case of a lease of commercially used undeveloped plots of land or ships registered in the ship register, however, only to the end of a calendar quarter.

(2) In the case of a lease of business premises, notice of termination is admissible at the latest on the third working day of a calendar quarter to the end of the next calendar quarter.

(3) In the case of a lease of movable things, notice of termination is admissible

1. if the rent is assessed by days, on any day to the end of the following day;
2. if the rent is assessed by longer periods of time, at the latest on the third day prior to the day at the end of which the lease is to terminate.

(4) Subsection (1) no. 3, subsections (2) and (3) no. 2 are also to be applied if a lease may be terminated for cause with the statutory notice period.

#### Subtitle 4

### **Usufructuary lease**

#### **Section 581**

##### Typical contractual duties in a usufructuary lease

(1) A usufructuary lease imposes on the lessor the duty to allow the lessee, for the lease period, the use of the leased object and the enjoyment of its fruits to the extent that they are deemed to be income under the rules of proper management. The lessee is obliged to pay the lessor the agreed rent.

(2) The provisions on leases apply with the necessary modifications to usufructuary leases with the exception of farm leases, unless sections 582 to 584b lead to a different conclusion.

#### **Section 582**

##### Maintenance of inventory

(1) If a plot of land together with its inventory is leased under a usufructuary lease, then the lessee must maintain the individual inventory items.

(2) The lessor is obliged to replace inventory items disposed of due to a circumstance for which the lessee is not responsible. However, the usufructuary lessee must make up for the routine disposition of animals that are part of the inventory to the extent that this complies with proper management.

#### **Section 582a**

##### Taking over inventory at its estimated value

(1) If the usufructuary lessee of a plot of land takes over the inventory at its estimated value with the duty of returning it at its estimated value upon termination of the lease, then he bears the risk of accidental loss and accidental deterioration of such inventory. Within the limits of proper management, the lessee may dispose of the individual inventory items.

(2) The usufructuary lessee must maintain the inventory in a condition and replace it to an extent that complies with the rules of proper management. The items purchased by him become the property of the lessor when they are incorporated into the inventory.

(3) Upon the termination of the usufructuary lease, the lessee must return the existing inventory to the lessor. The lessor may refuse to take over those of the inventory items purchased by the lessee that are superfluous or too expensive for the plot of land under the rules of proper management; upon rejection, the ownership of the rejected items passes to the lessee. If there is a difference between the total estimated value of the inventory taken over and that to be returned, then this difference is to be compensated for in money. The estimated values are to be based on the prices valid at the time of termination of the usufructuary lease.

### **Section 583**

Security right of usufructuary lessee over inventory

- (1) The usufructuary lessee of a plot of land has a security right over the inventory items in his possession for claims on the lessor that relate to inventory included in the usufructuary lease.
- (2) The usufructuary lessor may ward off the assertion of the security right of the lessee by provision of security. He may release every single inventory item from the security right by providing security in the amount of the value.

### **Section 583a**

Restrictions on disposition of inventory

Terms of the contract that oblige the usufructuary lessee of a business not to dispose of inventory items or not to dispose of them without prior consent by the lessor or to dispose of inventory items to the lessor are only effective if the lessor agrees to acquire the inventory at its estimated value upon termination of the lease.

### **Section 584**

Notice period

- (1) If, in the usufructuary lease of a plot of land or of a right, the lease period is not specified, then notice of termination is only allowed to the end of a lease year; it must occur at the latest on the third working day of the half-year at the end of which the usufructuary lease is to end.
- (2) This also applies if the usufructuary lease may be terminated for cause with the statutory notice period.

### **Section 584a**

Exclusion of certain rights of termination under landlord and tenant law

- (1) The usufructuary lessee is not entitled to the right of notice of termination determined in section 540 (1).
- (2) The usufructuary lessor is not entitled to terminate the usufructuary lease under section 580.

### **Section 584b**

Late return

If the usufructuary lessee fails to return the leased property upon termination of the usufructuary lease, then the lessor may, for the duration of the retention, demand the agreed rent as compensation in the ratio of the emoluments which the lessee took or could have taken in this period to the emoluments of the whole lease year. Assertion of additional damage is not excluded.

## Subtitle 5

### **Farm lease**

#### **Section 585**

##### Concept of farm lease

(1) By means of a farm lease, a plot of land with the residential and utility buildings (business) that serve its cultivation, or a plot of land without such buildings, is leased largely for agriculture.

Agriculture means the cultivation of the soil and the livestock breeding associated with the use of the soil in order to produce plant or animal products, and horticultural production.

(2) Section 581 (1) and sections 582 to 583a apply to farm leases, as do the special provisions below.

(3) The provisions on farm leases also apply to leases relating to forestry properties if the plots of land are leased for use in a predominantly agricultural business.

#### **Section 585a**

##### Form of a farm lease

If a farm lease is entered into for more than two years without written form, then it remains in effect for an indefinite period of time.

#### **Section 585b**

##### Description of the leased property

(1) The lessor and the lessee should at the beginning of the usufructuary lease jointly prepare a description of the leased property in which its extent and the condition in which it is when surrendered are established. This applies with the necessary modifications to the termination of the usufructuary lease. The description should state the date of its preparation and must be signed by both parties.

(2) If a party to the lease refuses to participate in the preparation of a description or if differences of opinion as to fact emerge during the preparation, then each party to the lease may demand that a description is prepared by an expert, unless more than nine months have passed since permitting use of the leased property or more than three months have passed since termination of lease; the expert is appointed by the Agricultural Court [Landwirtschaftsgericht] upon application. Costs incurred in this connection are borne by the parties to the lease at the rate of one-half each.

(3) If a description of this type has been prepared, then the presumption between the parties to the contract is that it is correct.

### **Section 586**

Typical contractual duties in a farm lease

(1) The usufructuary lessor must surrender the leased property to the lessee in a condition suitable for use in conformity with the contract and must maintain it in this condition for the lease period. However, the lessee must carry out the customary improvements of the leased property at his own expense, including without limitation improvements of the residential and utility buildings, the paths, ditches, drains and fences. He is obliged to manage the leased property properly.

(2) The provisions of sections 536 (1) to (3) and of 536a to 536d apply to the liability of the usufructuary lessor for material and legal defects in the leased property as well as for the rights and duties of the lessee in relation to such defects.

### **Section 586a**

Encumbrances on the leased property

The usufructuary lessor must bear the encumbrances imposed on the leased property.

### **Section 587**

Due date of rent; payment of rent where the usufructuary lessee is personally prevented

(1) The rent is to be paid at the end of the lease period. If the lease period is assessed by time periods, then it is to be paid on the first working day after the end of the individual time periods.

(2) The usufructuary lessee is not released from payment of the rent due to the fact that he is unable to exercise the right of use to which he is entitled for a reason relating to him personally. Section 537

(1) sentence 2 and (2) apply with the necessary modifications.

### **Section 588**

Measures of maintenance or improvement

(1) The usufructuary lessee must acquiesce in impacts on the leased property necessary to maintain it.

(2) Measures to improve the leased property must be tolerated by the usufructuary lessee, unless the measure would represent a hardship for him that is not justified even when the justified interests of the lessor are taken into account. The usufructuary lessor must compensate the lessee for expenses incurred and earnings lost as a result of the measure to an extent appropriate to the circumstances.

On demand, the usufructuary lessor must make advance payment.

(3) To the extent that the usufructuary lessee, due to measures under subsection (2) sentence 1, earns higher income or could earn it with proper management, the lessor may demand that the lessee gives prior consent to a reasonable increase in rent unless the usufructuary lessee cannot reasonably be expected to accept an increase in rent in view of the circumstances of the business.

(4) Upon application, the Agricultural Court [Landwirtschaftsgericht] decides disputes under subsections (1) and (2). If the usufructuary lessee fails to give prior consent in the cases in subsection (3), then the Agricultural Court [Landwirtschaftsgericht] may give substitute consent on application by the lessor.

### **Section 589**

#### Surrender of use to third parties

(1) Without the permission of the usufructuary lessor, the lessee is not entitled to

1. permit use of the leased property to a third party, including without limitation subletting the property,
2. permit use of the leased property, in whole or in part, to an agricultural association for the purpose of joint use.

(2) If the usufructuary lessee permits use of the leased property to a third party, then he is responsible for any fault of the third party in its use, even if the lessor has given permission for this use by the third party.

### **Section 590**

#### Change of agricultural purpose or of previous use

(1) The usufructuary lessee may only change the agricultural purpose of the leased property with the prior permission of the lessor.

(2) For a change of the previous use of the leased property, the prior permission of the lessor is only required if the nature of the use will be influenced by the change after the lease period. The usufructuary lessee may only erect buildings with the prior permission of the lessor. If the usufructuary lessor refuses permission, then substitute permission may be given by the Agricultural Court [Landwirtschaftsgericht] upon application by the lessee to the extent that the change appears to be appropriate for the maintenance or permanent improvement of the profitability of the business and the lessor can reasonably be expected to accept it if his justified interests are taken into account. This does not apply if the lease has been terminated or the lease ends in less than three years. The Agricultural Court [Landwirtschaftsgericht] may give substitute permission subject to stipulations and conditions, including without limitation by ordering that security is provided, and may specify the nature and extent of the security. If the reason for providing security has ceased, then the Agricultural Court

[Landwirtschaftsgericht], upon application, decides with regard to the return of the security; Section 109 of the Code of Civil Procedure [Zivilprozessordnung] applies with the necessary modifications.

(3) If, in connection with a change of use of the leased property, the usufructuary lessee has substantially reduced the inventory taken over under section 582a at its estimated value, then the lessor may demand compensation in money, applying section 582a (3) with the necessary modifications, even during the lease period, unless the proceeds of the inventory items disposed of have been used for an improvement of the leased property under section 591 that is in a reasonable ratio to the amount of the proceeds.

#### **Section 590a**

Use in breach of contract

If the usufructuary lessee makes use of the leased property in breach of contract, and if he continues the use in breach of contract notwithstanding a warning by the lessor, then the lessor may seek a prohibitory injunction.

#### **Section 590b**

Necessary outlays

The usufructuary lessor is obliged to compensate the lessee for necessary outlays on the leased property.

#### **Section 591**

Outlays that increase value

(1) The usufructuary lessor must reimburse the usufructuary lessee on the termination of the lease for outlays that are not necessary outlays for which he has given his approval, to the extent that the outlays increase the value of the leased property beyond the lease period (added value).

(2) If the usufructuary lessor refuses to approve the outlays, then substitute approval may be given by the Agricultural Court [Landwirtschaftsgericht] upon application by the usufructuary lessee to the extent that the outlays appear to be appropriate for the maintenance or permanent improvement of the profitability of the business and the usufructuary lessor can reasonably be expected to accept them when his justified interests are taken into account. This does not apply if the lease has been terminated or the lease ends in less than three years. The Agricultural Court [Landwirtschaftsgericht] may give substitute approval subject to stipulations and conditions.



(3) The Agricultural Court [Landwirtschaftsgericht] may upon application decide on provisions relating to the added value and may assess the latter. It may determine that the usufructuary lessor need only reimburse the added value in instalments and may impose conditions for granting such instalments. If the usufructuary lessor cannot reasonably be expected to accept reimbursement of the added value upon the termination of the lease, even in instalments, then the lessee may only demand that the lease is continued on the previous conditions until the added value of the leased property has been paid for. If no agreement can be reached, then the Agricultural Court [Landwirtschaftsgericht] decides upon application as to the continuation of the lease.

#### **Section 591a**

##### Removal of installations

The usufructuary lessee is entitled to remove an installation with which he has furnished the thing. The usufructuary lessor may ward off exercise of the right of removal by paying appropriate compensation, unless the lessee has a justified interest in removal. Any agreement excluding the right of removal of the usufructuary lessee is only effective if it provides for appropriate compensation.

#### **Section 591b**

##### Limitation of compensation claims

(1) The compensation claims of the usufructuary lessor for change to or deterioration of the leased thing as well as the claims of the lessee for reimbursement of outlays or for permission to remove an installation are subject to a six-month limitation period.

(2) The limitation period for the compensation claims of the usufructuary lessor commences on the date when he receives the returned thing. The limitation period for the usufructuary lessee commences upon termination of the lease.

(3) Upon limitation of the claim of the usufructuary lessor to return of the thing, the compensation claims of the lessor are also statute-barred.

#### **Section 592**

##### Security right of the usufructuary lessor

For his claims under the usufructuary lease, the lessor has a security right over the things contributed by the lessee and over the fruits of the leased property. The security right may not be asserted with regard to future compensation claims. With the exception of the things cited in section 811 (1) no. 4 of the Code of Civil Procedure [Zivilprozessordnung], the security right does not extend to things that are not subject to attachment. The provisions of sections 562a to 562c apply with the necessary modifications.

### **Section 593**

#### Amendment of farm leases

(1) If, after the usufructuary lease is entered into, the circumstances that were decisive for the determination of the performance under the lease change with lasting effect in such a way that the mutual duties are in a gross disparity to each other, then each party to the contract may demand an amendment of the lease, with the exception of the duration of the lease. If, as a result of the cultivation of the leased property by the lessee, its income improves or deteriorates, then, to the extent not otherwise agreed, an amendment of the lease may not be demanded.

(2) An amendment may be demanded at the earliest two years after the commencement of the lease or after the most recent amendment of the performance under the lease has become effective. This does not apply if devastating natural events against which insurance coverage is not customary have fundamentally and permanently changed the ratio of the acts of performance under the lease.

(3) Amendment may not be demanded for a period prior to the lease year in which the demand for amendment is declared.

(4) If one party to the lease refuses to consent to an amendment of the lease, then the other party may apply to the Agricultural Court [Landwirtschaftsgericht] for a decision.

(5) The right to demand an amendment of the lease under subsections (1) to (4) may not be waived. An agreement that one party to the lease is to enjoy special advantages or suffer special disadvantages if he exercises or fails to exercise the rights under subsections (1) to (4) is ineffective.

### **Section 593a**

#### Transfer of a business

If, on the transfer of a business by way of a lifetime transfer of property, a plot of land leased for the business that serves agricultural purposes is included, then the transferee succeeds to the usufructuary lease in place of the lessee. The usufructuary lessor must, however, be promptly notified of the transfer of business. If proper management of the leased property by the transferee is not guaranteed, then the usufructuary lessor is entitled to terminate the lease for cause with the statutory notice period.

### **Section 593b**

#### Disposal or encumbrance of the leased property

If the leased property is disposed of or encumbered with a third-party right, then sections 566 to 567b apply with the necessary modifications.

## **Section 594**

### Termination and extension of the lease

The usufructuary lease ends at the end of the period for which the lease has been entered into. In the case of usufructuary leases entered into for at least three years it is extended for an indefinite period of time if, upon the inquiry of one of the parties to the lease as to whether the other party is willing to continue the lease, the latter does not refuse continuation within a period of three months. The enquiry and the refusal must be in writing. The inquiry is without effect if there is no explicit reference in it to the consequences of disregarding it and if it is not made within the third-but-last year of the lease.

## **Section 594a**

### Notice periods

(1) If the lease period is not fixed, then each party to the lease may terminate the lease at the latest on the third working day of a lease year to the end of the next lease year. In case of doubt, the calendar year is deemed to be the lease year. Agreement on a shorter period must be in writing.

(2) In the cases where the lease may be terminated for cause with the statutory notice period, termination is only allowed to the end of a lease year; it must occur at the latest on the third working day of the half-year at the end of which the lease is to terminate.

## **Section 594b**

### Lease for more than thirty years

If a usufructuary lease is entered into for a period of more than thirty years, then after thirty years each party to the lease may terminate the lease at the latest on the third working day of a lease year to the end of the next subsequent lease year. Termination is not allowed if the lease has been entered into for the lifetime of the lessor or the lessee.

## **Section 594c**

### Termination in the case of occupational disability of the usufructuary lessee

If the usufructuary lessee has become occupationally disabled within the meaning of the provisions of the statutory pension scheme, then he may terminate the lease for cause with the statutory notice period if the lessor objects to the transfer of the leased property for use to a third party who guarantees proper management. A deviating agreement is ineffective.

## **Section 594d**

### Death of the usufructuary lessee

(1) If the usufructuary lessee dies, then both his heirs and the lessor are entitled within a month after obtaining knowledge of the death of the lessee to terminate the lease with a notice period of six months to the end of a calendar quarter.

(2) The heirs may contest the notice of termination of the usufructuary lessor and demand continuation of the lease if proper management of the leased property appears to be guaranteed by them or by a co-heir commissioned by them or by a third party. The usufructuary lessor may refuse the continuation of the lease if the heirs have not declared their objection at the latest three months prior to expiry of the lease and informed of the circumstances by reason of which further proper management of the leased property appears ensured. The enquiry and the refusal must occur in writing. If no agreement can be reached then the Agricultural Court [Landwirtschaftsgericht] decides on application.

(3) In response to notice of termination by the usufructuary lessor under subsection (1), a continuation demand by the heir under section 595 is excluded.

#### **Section 594e**

Termination for cause without notice for a compelling reason

(1) Immediate termination of the lease for cause is allowed, applying sections 543, and 569 (1) and (2) with the necessary modifications.

(2) Notwithstanding section 543 (2) n. 3 letters a and b, just cause exists in particular, without limitation, if the usufructuary lessee is in default for more than three months of payment of the rent or of a portion of the rent that is not insignificant. If the lease is assessed by time periods of less than one year, then termination is only admissible if the usufructuary lessee is in default, for two successive dates, of payment of the rent or of a substantial portion of the rent.

#### **Section 594f**

Written form of termination

Notice of termination must be made in written form.

#### **Section 595**

Continuation of the lease

(1) The usufructuary lessee may demand continuation of the lease from the lessor if

1. in the case of a commercial usufructuary lease, the business constitutes the economic basis of his existence,

2. in the case of a usufructuary lease of a plot of land, the lessee is dependent on this plot of land to maintain his business, which is the economic basis of his existence, and termination of the lease in conformity with the contract would be a hardship for the lessee or his family which would not be justifiable even if the justified interests of the lessor were taken into account. Subject to these requirements, continuation may be demanded repeatedly.

(2) In the case in subsection (1), the usufructuary lessee may demand that the lease is continued as long as is appropriate when all circumstances are taken into consideration. If the usufructuary lessor cannot reasonably be expected to continue the lease under the previously applicable contract terms, then the lessee may demand that it be continued with an appropriate amendment of the terms.

(3) The usufructuary lessee may not demand continuation of the lease from the usufructuary lessor if

1. he has terminated the lease,
2. the usufructuary lessor is entitled to terminate the lease for cause without notice, or in the case of section 593a to terminate the lease for cause with the statutory notice period,
3. the lease period in the case of a usufructuary lease of a business, the leasing of additional plots of land as a result of which a business is created, or in the case of the lease of marshland or wasteland that has been cultivated by the lessee has been agreed for at least eighteen years, or in the case of the lease of other plots of land for at least twelve years,
4. in the case of property leased only temporarily under a usufructuary lease, the lessor wishes to repossess it for his own use or to use it to perform statutory or other public tasks.

(4) The declaration of the usufructuary lessee demanding the continuation of the lease must be in writing. Upon demand by the usufructuary lessor, the lessee should without undue delay provide information on his reasons for demanding continuation.

(5) The usufructuary lessor may refuse continuation of the lease if the usufructuary lessee did not demand continuation from the lessor at least one year prior to termination of the lease or rejected continuation upon inquiry by the lessor under section 594. If a twelve-month notice period or less has been agreed, then it suffices if the demand is declared within a month of receipt of the notice of termination.

(6) If agreement is reached, then the Agricultural Court [Landwirtschaftsgericht] decides upon application on a continuation and on the lease period, and also on the conditions under which the lease will be continued. The court may order continuation of the lease, but only up to a date that, starting from the commencement of the current lease, does not exceed the periods stated in subsection (3) no. 3. Continuation may be limited to a part of the leased property.

(7) The usufructuary lessee must file the application for a court decision at the Agricultural Court [Landwirtschaftsgericht] at the latest nine months prior to termination of the lease and, in the case of a twelve-month notice period or less, two months after receipt of notice of termination. The court may admit the application at a later date if it appears called for to avoid undue hardship and the lease has not yet expired.

(8) The right to demand extension of the lease under subsections (1) to (7) may only be waived if the waiver is declared in settlement of a lease dispute heard in a court of law or by a professional lease conciliation board. An agreement that one party is to have particular advantages or particular disadvantages if the party exercises or does not exercise the rights under subsections (1) to (7) is ineffective.

#### **Section 595a**

Early notice of termination of farm leases

(1) To the extent that the parties to the contract are entitled to terminate a farm lease for cause with the statutory notice period, they are entitled to this even after the extension of the farm lease or the modification of the farm lease.

(2) Upon application by one of the parties to the lease, the Agricultural Court [Landwirtschaftsgericht] may make orders on the winding up of a farm lease terminated early or terminated in part. If the extension of a farm lease is limited to a portion of the leased property, then the Agricultural Court [Landwirtschaftsgericht] may determine the rent for this portion.

(3) The contents of Agricultural Court [Landwirtschaftsgericht] orders are deemed to be part of the lease agreement as between the parties to the lease. The Agricultural Court [Landwirtschaftsgericht] decides upon application on disputes relating to these contents of the contract.

#### **Section 596**

Return of the leased property

(1) The usufructuary lessee is obliged to return the leased property upon termination of the lease in a condition conforming with proper management continued up to its return.

(2) The usufructuary lessee has no right of retention of the plot of land for his claims on the lessor.

(3) If the usufructuary lessee has transferred use of the leased property to a third party, the lessor may also demand return of the leased property from that third party upon termination of the lease.

#### **Section 596a**

Duty to compensate for early termination of lease

(1) If the lease terminates in the course of a lease year, the usufructuary lessor must compensate the lessee for the value of any fruits not yet severed but to be severed prior to the end of the lease year under the rules of proper management. When this is done, the harvesting risks must be given appropriate consideration.

(2) If the value referred to in subsection (1) cannot be determined for seasonal reasons, then the usufructuary lessor must compensate the lessee for outlays on these fruits to the extent that they correspond to proper management.

(3) Subsection (1) also applies to timber intended for felling but not yet felled. If the usufructuary lessee has felled more timber than allowed in the case of proper use, then he must compensate the lessor for the quantity of timber that exceeds normal use. Assertion of additional damage is not excluded.

#### **Section 596b**

Duty to leave behind

(1) The usufructuary lessee of a business must prior to termination of the lease leave behind as much of the available agricultural produce as is needed for continuation of the farm until the next harvest, even if he did not take over such produce at commencement of the lease.

(2) To the extent that the usufructuary lessee is obliged under subsection (1) to leave produce behind in a greater quantity or of a better quality than he took over at commencement of the lease, then he may demand compensation of their value from the lessor.

#### **Section 597**

Late return

If the usufructuary lessee does not return the leased property upon termination of the lease, then the usufructuary lessor may for the duration of such withholding demand the agreed rent as compensation. Assertion of additional damage is not excluded.

Title 6

### **Gratuitous loan**

#### **Section 598**

Typical contractual duties in the case of a gratuitous loan

By a gratuitous loan agreement, the lender of a thing is obliged to permit the borrower to use the item at no charge.

#### **Section 599**

Liability of the lender

The lender is only responsible for intent and gross negligence.

#### **Section 600**

Liability for defects

If the lender fraudulently conceals a legal defect or a defect in the thing lent, then he is liable to compensate the borrower for any damage arising from this.

#### **Section 601**

Reimbursement of outlays

(1) The borrower must bear the customary costs of maintaining the thing lent; in the case of the gratuitous loan of an animal, in particular, without limitation, the costs of feeding it.

(2) The duty of the lender to reimburse other outlays is governed by the provisions on agency without specific authorisation. The borrower is entitled to remove an installation which he attached to the thing.

### **Section 602**

Wear and tear on the thing

The borrower is not responsible for changes to or deterioration of the thing lent that are caused by use in conformity with the contract.

### **Section 603**

Use in conformity with the contract

The borrower may not make any other use of the thing lent than use in conformity with the contract.

He is not entitled without permission from the lender to transfer the use of the thing to a third party.

### **Section 604**

Duty to return

(1) The borrower is obliged to return the thing lent at the end of the period of time specified for the gratuitous loan.

(2) If no period of time is specified, then the thing must be returned after the borrower has made use of it as corresponds to the purpose of the loan. The lender may demand the thing back even earlier if so much time has passed that the borrower could have made use of it.

(3) If the duration of the loan neither has been specified nor is to be inferred from the purpose of the loan, then the lender may demand the thing back at any time.

(4) If the borrower transfers the use of the thing to a third party, the lender may demand it back from that third party as well, upon termination of the loan.

(5) Limitation of the claim to return of the thing commences upon termination of the loan.

### **Section 605**

Right of termination

The lender may terminate a gratuitous loan:

1. if he requires the thing lent due to an unforeseen circumstance,
2. if the borrower makes use of the thing in breach of contract, in particular, without limitation, by transferring its use to a third party without authorisation, or jeopardises the thing by neglecting the care he owes,
3. if the borrower dies.

### **Section 606**

Short limitation period

(1) The compensation claims of the lender for changes to or deterioration of the thing lent as well as the claims of the borrower for reimbursement of outlays or for permission to remove an installation are subject to a six-month limitation period. The provisions of section 548 (1) sentences 2 and 3 and (2) apply with the necessary modifications.



## Title 7

### **Contract for the loan of a thing**

#### **Section 607**

Typical contractual duties in a contract for the loan of a thing

(1) By a contract for the loan of a thing, the lender agrees to hand over to the borrower an agreed fungible thing. The borrower is obliged to make payment for the loan and, when the loan falls due, to return what he has received in things of the same kind, quality and amount.

(2) The provisions of this title do not apply when what is handed over is money.

#### **Section 608**

Termination

(1) If a time for the return of the thing handed over is not specified, the due date depends on the termination of the loan by the lender or the borrower.

(2) To the extent that nothing else has been agreed, a contract for the loan of a thing entered into for an indefinite period of time may be terminated in whole or in part by the lender or the borrower at any time.

#### **Section 609**

Payment

The borrower must make the payment at the latest upon return of the thing handed over.

#### **Section 610**

(repealed)

## Title 8

### **Service contract<sup>\*)</sup>**

\*) Official note: This title serves to implement 1. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, p. 40), and 2. Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61, p. 26).

#### **Section 611**

Typical contractual duties in a service contract

(1) By means of a service contract, a person who promises service is obliged to perform the services promised, and the other party is obliged to grant the agreed remuneration.

(2) Services of any type may be the subject matter of service contracts.

#### **Sections 611a and 611b**

(repealed)

## **Section 612**

### Remuneration

(1) Remuneration is deemed to have been tacitly agreed if in the circumstances it is to be expected that the services are rendered only for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

(3) (repealed)

## **Section 612a**

### Prohibition of victimisation

The employer may not discriminate against an employee in an agreement or a measure because that employee exercises his rights in a permissible way.

## **Section 613**

### Non-transferability

The party under a duty of service must in case of doubt render the services in person. The claim to services is, in case of doubt, not transferable.

## **Section 613a**

### Rights and duties in the case of transfer of business

(1) If a business or part of a business passes to another owner by legal transaction, then the latter succeeds to the rights and duties under the employment relationships existing at the time of transfer. If these rights and duties are governed by the legal provisions of a collective agreement or by a works agreement, then they become part of the employment relationship between the new owner and the employee and may not be changed to the disadvantage of the employee before the end of the year after the date of transfer. Sentence 2 does not apply if the rights and duties with the new owner are governed by the legal provisions of another collective agreement or by another works agreement. Prior to expiry of the period of time under sentence 2, the rights and duties may be changed if the collective agreement or the works agreement no longer applies or, where it is not the case that both parties are bound by a collective agreement in the scope of applicability of another collective agreement, the application of that collective agreement is agreed between the new owner and the employee.

(2) The previous employer is jointly and severally liable with the new owner for duties under subsection (1) to the extent that they arose prior to the date of transfer and are due before the end of one year after that date. If such duties are due after the date of transfer, however, the previous employer is only liable for them to the extent that corresponds to the part of their assessment period that ended on the date of transfer.

(3) Subsection (2) does not apply if a legal person or a commercial partnership ceases to exist through conversion.

(4) The termination of the employment relationship of an employee by the previous employer or by the new owner due to transfer of a business or a part of a business is ineffective. The right to terminate the employment relationship for other reasons is unaffected.

(5) The previous employer or the new owner must notify employees affected by a transfer in text form prior to transfer:

1. of the date or planned date of transfer,
2. of the reason for the transfer,
3. of the legal, economic and social consequences of the transfer for the employees, and
4. of measures that are being considered with regard to employees.

(6) The employee may object in writing to the transfer of the employment relationship within one month of receipt of notification under subsection 5. The objection may be addressed to the previous employer or to the new owner.

#### **Section 614**

##### Due date of remuneration

Remuneration is to be paid after performance of the services. If remuneration is assessed by time periods, then it is to be paid at the end of the individual time periods.

#### **Section 615**

##### Remuneration in the case of default in acceptance and business risk

If the person entitled to services is in default in accepting the services, then the party owing the services may demand the agreed remuneration for the services not rendered as the result of the default without being obliged to provide cure. However, he must allow to be credited against him what he saves as a result of not performing the services or acquires or wilfully fails to acquire through use of his employment elsewhere. Sentences 1 and 2 apply with the necessary modifications in cases in which the employer bears the risk of loss of working hours.

#### **Section 616**

##### Temporary prevention from performing services

The person obliged to perform services is not deprived of his claim to remuneration by the fact that he is prevented from performing services for a relatively trivial period of time for a reason in his person without fault on his part. However, he must allow to be credited against him the amount he receives for the period when he is prevented under a health or accident insurance policy that exists on the basis of a statutory duty.

### **Section 617**

#### Duty of medical care

(1) If, in a permanent service relationship that completely or mainly takes up the economic activity of the person obliged to perform services, the person obliged is integrated into the joint household, then the person entitled to services must, in the event of illness, grant him the necessary food and medical treatment up to a duration of six weeks, but not beyond termination of his service relationship, unless the illness was caused by the person obliged by intent or gross negligence. The provision of food and medical treatment may be granted by the admission of the person obliged to a hospital. The costs may be credited against the remuneration owed for the period of illness. If the service relationship is terminated by the person entitled to services under section 626 on the grounds of illness, then termination of the employment caused by this is not taken into account.

(2) The duty of the person entitled to services does not arise if provision has been made for the food and medical treatment by an insurance company or a public health institution.

### **Section 618**

#### Duty to undertake protective measures

(1) The person entitled to services must furnish and maintain premises, devices and equipment that he must provide for performance of the services in such a way and must arrange services that must be undertaken on his order or under his supervision in such a way that the person obliged to perform services is protected against danger to life and limb to the extent that the nature of the services permits.

(2) If the person obliged has been integrated into the common household, then the person entitled to services must provide the installations and make the arrangements, with regard to the living and sleeping space, the provision of food and work and leisure time, that are required with a view to the health, morality and religion of the person obliged.

(3) If the person entitled to services fails to fulfil the duties it has with regard to the life and the health of the person obliged, then the provisions of sections 842 to 846 governing torts apply with the necessary modifications to his duty to provide damages.

### **Section 619**

#### Absolute nature of welfare duties

The duties incumbent upon the person entitled to services under sections 617 and 618 may not be cancelled or restricted in advance by contract.

### **Section 619a**

Burden of proof when the employee is liable

Notwithstanding section 280 (1), the employee must only provide the employer with compensation for damage arising from the breach of a duty under the employment relationship if he is responsible for the breach of duty.

### **Section 620**

Termination of services relationship

(1) The service relationship ends at the end of the period of time for which it has been entered into.

(2) If the duration of the service relationship neither is specified nor may be inferred from the nature or the purpose of the services, then either party may terminate the service relationship under the provisions of sections 621 to 623.

(3) The Part-Time Work and Fixed-Term Employment Act [Teilzeit- und Befristungsgesetz] governs employment contracts entered into for a specified period of time.

### **Section 621**

Notice periods for service relationships

In the case of a service relationship that is not an employment relationship within the meaning of section 622, termination is allowed

1. if the remuneration is assessed by days, on any day to the end of the following day;
2. if the remuneration is assessed by weeks, at the latest on the first working day of a week to the end of the following Saturday;
3. if the remuneration is assessed by months, at the latest by the fifteenth of one month to the end of the calendar month;
4. if the remuneration is assessed by quarters or longer periods of time, observing a notice period of six weeks, to the end of a calendar quarter;
5. if the remuneration is not assessed by time periods, at any time; in the case of a service relationship that completely or mainly takes up the economic activity of the person obliged; however, a notice period of two weeks must be observed.

### **Section 622**

Notice periods in the case of employment relationships

(1) The employment relationship of a wage-earner or a salary-earner (employee) may be terminated with a notice period of four weeks to the fifteenth or to the end of a calendar month.

(2) For notice of termination by the employer, the notice period is as follows if the employment relationship in the business or the enterprise

1. has lasted for two years, one month to the end of a calendar month,
2. has lasted for five years, two months to the end of a calendar month,
3. has lasted for eight years, three months to the end of a calendar month,
4. has lasted for ten years, four months to the end of a calendar month,
5. has lasted for twelve years, five months to the end of a calendar month,
6. has lasted for fifteen years, six months to the end of a calendar month,
7. has lasted for twenty years, seven months to the end of a calendar month.

In calculating the duration of employment, time periods prior to completion of the twenty-fifth year of life of the employee are not taken into account.

(3) During an agreed probationary period, at most for the duration of six months, the employment relationship may be terminated with a notice period of two weeks.

(4) Provisions differing from subsections (1) to (3) may be agreed in collective agreements. Within the scope of applicability of such a collective agreement, the different collective agreement provisions between employers and employees who are not subject to collective agreements apply if the application of collective agreements has been agreed between them.

(5) In an individual contract, shorter notice periods than those cited in subsection (1) may be agreed only

1. if an employee is employed to help out on a temporary basis; this does not apply if the employment relationship is extended beyond a period of three months;
2. if the employer as a rule employs not more than 20 employees with the exception of those employed for their own training and the notice period does not fall short of four weeks.

When the number of employees employed is determined, part-time employees with regular weekly working hours of not more than 20 hours are counted as 0.5 employees and those working not more than 30 hours are counted as 0.75 employees. The agreement in an individual contract of longer notice periods than those stated in subsections (1) to (3) is unaffected by this.

(6) For notice of termination of employment by the employee, no longer notice period may be agreed than for notice of termination by the employer.

### **Section 623**

Written form of termination

Termination of employment by notice of termination or separation agreement requires written form to be effective; electronic form is excluded.

#### **Section 624**

Notice period in the case of contracts lasting more than five years

If the service relationship is entered into for the lifetime of a person or for a longer period of time than five years, then it may be terminated by the person obliged at the end of five years. The notice period is six months.

#### **Section 625**

Tacit extension

If the service relationship is continued after the end of the service period by the person obliged with the knowledge of the other party, then it is deemed to be extended for an indefinite period of time unless the other party objects to it without undue delay.

#### **Section 626**

Termination without notice for a compelling reason

(1) The service relationship may be terminated by either party to the contract for a compelling reason without complying with a notice period if facts are present on the basis of which the party giving notice cannot reasonably be expected to continue the service relationship to the end of the notice period or to the agreed end of the service relationship, taking all circumstances of the individual case into account and weighing the interests of both parties to the contract.

(2) Notice of termination may only be given within two weeks. The notice period commences with the date on which the person entitled to give notice obtains knowledge of facts conclusive for the notice of termination. The party giving notice must notify the other party, on demand, of the reason for notice of termination without undue delay in writing.

#### **Section 627**

Termination without notice in the case of a position of trust

(1) In a service relationship that is not an employment relationship within the meaning of section 622, notice of termination is allowed, even without the requirement specified in section 626, if the person obliged to perform services, without being in a permanent service relationship with fixed earnings, must perform services of a higher nature with which people are customarily entrusted on the basis of special trust.

(2) The person obliged to perform services may only give notice in such a manner that the person entitled to services can obtain the services elsewhere, unless there is a compelling reason for untimely notice of termination. If he should give notice in untimely fashion without such cause, then he must compensate the person entitled to services for damage arising from this.

### **Section 628**

Partial remuneration and damages in case of termination without notice

(1) If after commencement of performance of the service, the service relationship is terminated on the ground of section 626 or 627, then the person obliged to perform services may demand a part of his remuneration corresponding to his services performed thus far. If he gives notice without being prompted to do so by action of the other party in breach of contract, or if he should prompt termination by the other party by his own action in breach of contract, then he has no claim to the remuneration to the extent that his previous services are of no interest to the other party as a result of the notice of termination. If remuneration is paid in advance for a later period of time, then the person obliged must reimburse it under the provisions of section 346 or, if notice of termination is given by reason of a circumstance for which he is not responsible, under the provisions on the return of unjust enrichment.

(2) If notice of termination is prompted by the conduct of the other party in breach of contract, then the other party is obliged to compensate the damage arising from the dissolution of the service relationship.

### **Section 629**

Time off for search for employment

After the termination of a permanent service relationship, the person entitled to services must grant the person obliged, on demand, reasonable time to seek another service relationship.

### **Section 630**

Duty to provide a reference

Upon the termination of a permanent service relationship, the person obliged may demand from the other party a written reference on the service relationship and its duration. The reference must extend, on demand, to the services performed and conduct in service. The reference may not be provided in electronic form. If the person obliged is an employee, section 109 of the Trade Code [Gewerbeordnung] applies.



## Title 9

### **Contract to produce a work and similar contracts**

#### Subtitle 1

### **Contract to produce a work**

#### **Section 631**

Typical contractual duties in a contract to produce a work

(1) By a contract to produce a work, a contractor is obliged to produce the promised work and the customer is obliged to pay the agreed remuneration.

(2) The subject matter of a contract to produce a work may be either the production or alteration of a thing or another result to be achieved by work or by a service.

#### **Section 632**

Remuneration

(1) Remuneration for work is deemed to be tacitly agreed if the production of the work, in the circumstances, is to be expected only in return for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

(3) In case of doubt, remuneration is not to be paid for a cost estimate.

#### **Section 632a**

Part payments

(1) The contractor may demand a part payment from the customer for work carried out in accordance with the contract in the amount in which the customer has received an increased value by virtue of the work. The part payment may not be refused because of minor defects. Section 641 (3) applies with the necessary modifications. The work must be documented by a list which must facilitate a rapid, secure evaluation of the work. Sentences 1 to 4 also apply to required materials or building components that are supplied or specially prepared and made available if ownership of the materials or building components is transferred to the customer or an appropriate security is provided for this, at his option.

(2) If the subject-matter of the contract is the construction or conversion of a house or comparable building and at the same time entails an obligation incumbent on the contractor to assign to the customer ownership of the plot of land or to establish or assign a hereditary building right, part payments may only be demanded insofar as they have been agreed in accordance with an ordinance based on Article 244 of the Introductory Act to the Civil Code.

(3) If the customer is a consumer, and if the subject-matter of the contract is the construction or conversion of a house or comparable building, the customer must be given a security amounting to five percent of the remuneration claim on effecting the first part payment for the correct implementation of the work without major defects. If the remuneration claim increases by more than ten percent as a result of amendments to or supplements of the contract, the customer is to be given a further security of five percent of the additional remuneration claim on effecting the next part payment. At the request of the contractor, the security is to be provided by retention such that the customer retains the part payments up to the total amount of the security owed.

(4) Securities in accordance with this provision may also be provided by means of a guarantee or other payment undertaking by a financial institution or credit insurer entitled to operate in the scope of application of this Code.

### **Section 633**

#### Material defects and legal defects

(1) The contractor must procure the work for the customer free of material defects and legal defects.

(2) The work is free of material defects if it is of the agreed quality. To the extent that the quality has not been agreed, the work is free from material defects

1. if it is suitable for the use envisaged in the contract, or else
2. if it is suitable for the customary use and is of a quality that is customary in works of the same type and that the customer may expect in view of the type of work.

It is equivalent to a material defect if the contractor produces a work that is different from the work ordered or too small an amount of the work.

(3) The work is free of legal defects if third parties, with regard to the work, either cannot assert any rights against the customer or can assert only such rights as are taken over under the contract.

### **Section 634**

#### Rights of the customer in the case of defects

If the work is defective, the customer, if the requirements of the following provisions are met and to the extent not otherwise specified, may

1. under section 635, demand cure,
2. under section 637, remedy the defect himself and demand reimbursement for required expenses,
3. under sections 636, 323 and 326 (5), withdraw from the contract or under section 638, reduce payment, and
4. under sections 636, 280, 281, 283 and 311a, demand damages, or under section 284, demand reimbursement of futile expenditure.

### **Section 634a**

#### Limitation of claims for defects

(1) The claims cited in section 634 nos. 1, 2 and 4 are statute-barred

1. subject to no. 2, in two years in the case of a work whose result consists in the manufacture, maintenance or alteration of a thing or in the rendering of planning or monitoring services for this purpose,
2. in five years in the case of a building and in the case of a work whose result consists in the rendering of planning or monitoring services for this purpose, and
3. apart from this, in the regular limitation period.

(2) In the cases of subsection (1) nos. 1 and 2, limitation begins on acceptance.

(3) Notwithstanding subsection (1) nos. 1 and 2, and subsection (2), claims are statute-barred in the standard limitation period if the contractor fraudulently concealed the defect. However, in the case of subsection (1) no. 2, claims are not statute-barred before the end of the period specified there.

(4) The right of withdrawal referred to in section 634 is governed by section 218. Notwithstanding the ineffectiveness of withdrawal under section 218 (1), the customer may refuse to pay the remuneration to the extent that he would be entitled to do so by reason of the withdrawal. If he uses this right, the contractor may withdraw from the contract.

(5) Section 218 and subsection (4) sentence 2 above apply with the necessary modifications to the right to reduce the price specified in section 634.

### **Section 635**

#### Cure

(1) If the customer demands cure, then the contractor may, at his option, remedy the defect or produce a new work.

(2) The contractor must bear the expenditure necessary for cure, including, without limitation, transport, workmen's travel, work and materials costs.

(3) The contractor may refuse cure, without prejudice to section 275 (2) and (3), if it is only possible at disproportionate cost.

(4) If the contractor produces a new work, he may demand from the customer return of the defective work in accordance with sections 346 to 348.

### **Section 636**

#### Special provisions on withdrawal and damages

Except in the cases of sections 281 (2) and 323 (2), there is no need for a period to be set even if the contractor refuses cure under section 635 (3) or if cure has failed or cannot be reasonably expected of the customer.

### **Section 637**

#### Self-help

(1) If there is a defect in the work, the customer may, after the expiry without result of a reasonable period specified by him for cure, remedy the defect himself and demand reimbursement of the necessary expenses, unless the contractor rightly refuses cure.

(2) Section 323 (2) applies with the necessary modifications. A period of time need not be specified even if cure has failed or cannot reasonably be expected of the customer.

(3) The customer may demand from the contractor advance payment of the expenses necessary to remedy the defect.

### **Section 638**

#### Reduction of price

(1) Instead of withdrawal from the contract, the customer may reduce the remuneration by declaration to the contractor. The ground for exclusion under section 323 (5) sentence 2 does not apply.

(2) If the customer or the contractor consists of more than one person, reduction of price may be declared only by or to all of them.

(3) In the case of reduction of price, the payment is to be reduced in the proportion which, at the time when the contract was entered into, the value of the work in a state free of defects would have had to the actual value. To the extent necessary, the price reduction is to be established by appraisal.

(4) If the customer has paid more than the reduced remuneration, the contractor must reimburse the surplus. Section 346 (1) and section 347 (1) apply with the necessary modifications.

### **Section 639**

#### Exclusion of liability

The contractor may not rely on an agreement by which the rights of the customer with regard to a defect are excluded or restricted, insofar as the contractor fraudulently concealed the defect or gave a guarantee for the quality of the work.

### **Section 640**

#### Acceptance

(1) The customer is obliged to accept the work produced in conformity with the contract, except to the extent that, in view of the quality of the work, acceptance is excluded. Acceptance may not be refused by reason of trivial defects. It is equivalent to acceptance if the customer does not accept the work within a reasonable period of time specified for him by the contractor, although he is under a duty to do so.

(2) If the customer accepts a defective work under subsection (1) sentence 1, even though he knows of the defect, he only has the rights designated in section 634 nos. 1 to 3 if he reserves his rights with regard to the defect when he accepts the work.

## **Section 641**

### Due date of remuneration

(1) The remuneration must be paid upon acceptance of the work. If the work is to be accepted in parts and the remuneration for the individual parts is specified, then the remuneration is to be paid for each part when it is accepted.

(2) The remuneration of the contractor for a work whose production the customer has promised to a third party is due at the latest

1. to the extent that the customer has received from the third party his remuneration or parts of his remuneration for the production of the promised work,
2. to the extent that the work of the customer has been accepted by the third party or is deemed to have been accepted, or
3. to the extent that the contractor has unsuccessfully set the customer a suitable deadline for information on the circumstances referred to in Nos. 1 and 2.

If the customer has given the third party security on account of possible defects of the work, sentence 1 applies only if the contractor gives the customer an appropriate security.

(3) If the customer may demand remedy of a defect, he may, after becoming due, refuse to pay a reasonable portion of the remuneration; twice the costs necessary to remedy the defect are appropriate as a rule.

(4) If the remuneration is assessed in money, the customer must pay interest on it from the acceptance of the work on, except to the extent that remuneration is deferred.

## **Section 641a**

(repealed)

## **Section 642**

### Collaboration by the customer

(1) If, in the production of the work, an act by the customer is necessary, then the contractor may demand reasonable compensation if the customer, by failing to perform the act, is in default of acceptance.

(2) The amount of compensation is assessed on the one hand on the basis of the duration of the default and the amount of the agreed remuneration, and on the other hand on the basis of what expenses the contractor saves or what the contractor can earn by employing his working capacity elsewhere.

### **Section 643**

Termination for failure to collaborate

In the case of section 642, the contractor is entitled to give the customer a reasonable period of time for making up for the act to be performed by declaring that he will terminate the contract if the act is not undertaken by the end of the period of time. The contract is deemed to be cancelled if the act is not made up for by the end of the period of time.

### **Section 644**

Allocation of risk

(1) The contractor bears the risk until acceptance of the work. If the customer is in default of acceptance, then the risk passes to him. The contractor is not liable for any accidental destruction or accidental deterioration of the materials supplied by the customer.

(2) If, at the demand of the customer, the contractor ships the work to a place other than the place of performance, then the provisions of section 447 governing purchase apply with the necessary modifications.

### **Section 645**

Responsibility of the customer

(1) If the work, before acceptance, is destroyed or deteriorates or becomes impracticable as the result of a defect in the materials supplied by the customer or as the result of an instruction given by the customer for the carrying out of the work, without a circumstance for which the contractor is responsible contributing to this, then the contractor may demand a part of the remuneration that corresponds to the work performed and reimbursement of those expenses not included in the remuneration. The same applies if the contract is cancelled under section 643.

(2) A more extensive liability of the customer for fault is unaffected.

### **Section 646**

Completion in lieu of acceptance

If acceptance is excluded due to the quality of the work, then, in the cases of sections 634a (2) and 641, 644 and 645, completion of the work takes the place of acceptance.

### **Section 647**

Security right of the contractor

For his claims under the contract, the contractor has a security right over the movable things of the customer that he has produced or repaired if they have come into his possession during the production or for the purpose of repair.

## **Section 648**

### Mortgage of a building contractor

- (1) The contractor for a building or an individual part of a building may demand, for satisfaction of his claims under the contract, that a mortgage over the building plot of the customer is granted. If the work is not yet completed, then he may demand that a mortgage is granted for a portion of the remuneration corresponding to the work performed and for expenses not included in the remuneration.
- (2) The owner of a shipyard, for his claims in relation to the building or repair of a ship, may demand to be granted a ship mortgage over the ship under construction or ship of the customer; subsection (1) sentence 2 applies with the necessary modifications. Section 647 does not apply.

## **Section 648a**

### Builder's security

- (1) A contractor for a building, outdoor facilities or a part thereof may demand a security from the customer for the remuneration also agreed in additional commissions and not yet paid, including associated incidental claims, which are to be estimated at ten per cent of the remuneration claim to be secured. Sentence 1 also applies to the same degree to claims replacing the remuneration. The claim of the contractor for a security is not ruled out by the customer being able to demand fulfilment or having accepted the work. Claims with which the customer is able to offset against the contractor's right to remuneration are disregarded when calculating the remuneration unless they are non-contentious or have been ascertained with the force of law. The security is to be deemed sufficient even if the provider of the security reserves the right to revoke his promise, in case of substantial deterioration of the financial circumstances of the customer, with effect for claims to remuneration for building work that the contractor has not yet performed when the declaration of revocation is received.
- (2) The security may also be provided by means of a guarantee or other promise of payment by a banking institution or credit insurer authorised to conduct business operations within the area of application of this Code. The banking institution or credit insurer may only make payments to the contractor to the extent that the customer recognises the claim of the contractor to remuneration or has been ordered by a provisionally enforceable judgment to pay the remuneration and the requirements are met under which execution of judgment may be commenced.
- (3) The contractor must pay to the customer the customary costs of provision of security up to a maximum amount of two per cent per year. This does not apply to the extent that the security must be maintained because of objections of the customer to the remuneration claim of the contractor and the objections turn out to be unfounded.

(4) To the extent that the contractor has obtained a security for his claim to remuneration under subsections (1) and (2), the claim to be granted a mortgage under section 648 (1) is excluded.

(5) If the contractor has unsuccessfully set the customer a suitable deadline to provide the security in accordance with subsection (1), the contractor may refuse to carry out the work or may terminate the contract. If he terminates the contract, the contractor is also entitled to claim the agreed remuneration; he must however allow set-off of the expenses he saves as a result of cancelling the contract or acquires or wilfully fails to acquire from other use of his labour. There is a presumption that the contractor is accordingly entitled to five percent of the remuneration accounted for by the part of the work not yet provided.

(6) The provisions of subsections (1) to (5) are not applicable if the customer

1. is a legal person under public law or a special fund under public law with regard to the property of which insolvency proceedings are not permissible, or
2. is a natural person and is having the construction work done to build or repair a one-family house with or without a self-contained apartment attached.

Sentence 1 No. 2 does not apply if the construction project is looked after by a construction agent authorised to dispose of the financial resources of the customer.

(7) Any agreement deviating from the provisions of subsections (1) to (5) above is ineffective.

#### **Section 649**

Right of termination of the customer

The customer may terminate the contract at any time up to completion of the work. If the customer terminates the contract, then the contractor is entitled to demand the agreed remuneration; however, he must allow set-off of the expenses he saves as a result of cancelling the contract or acquires or wilfully fails to acquire from other use of his labour. There is a presumption that the contractor is accordingly entitled to five percent of the remuneration accounted for by the part of the work not yet provided.

#### **Section 650**

Cost estimate

(1) If the contract is based on a cost estimate without the contractor guaranteeing the accuracy of the estimate and if it turns out that the work cannot be carried out without substantially exceeding the estimate, then the contractor is only entitled, if the customer terminates the contract for this reason, to the claim specified in section 645 (1).

(2) If such exceeding of the estimate is to be expected, then the contractor must notify the customer of this without undue delay.



## **Section 651**

Application of sale of goods law<sup>\*)</sup>

The provisions of sale of goods law are applicable to a contract dealing with the supply of movable things to be produced or manufactured. Section 442 (1) sentence 1 also applies to these contracts if the defect is caused by the material supplied by the customer. To the extent that the movable things to be produced or manufactured are not fungible things, sections 642, 643, 645, 649 and 650 apply, subject to the proviso that the applicable point of time under sections 446 and 447 takes the place of acceptance.

<sup>\*)</sup> Official note: This provision serves to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

Subtitle 2

### **Package travel contract<sup>\*)</sup>**

<sup>\*)</sup> Official note: This subtitle serves to implement Council Directive 90/314/EEC of the European Parliament and of the Council of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, p. 59).

#### **Section 651a**

Typical contractual duties in a package travel contract

(1) By a package travel contract, a travel organiser is obliged to render for the traveller a complete set of travel services (travel package) for the traveller. The traveller is obliged to pay the travel organiser the agreed price for the travel package.

(2) A declaration that the only contracts being arranged are contracts with the persons who are to carry out the individual travel services (service providers) will be disregarded if the other circumstances create the impression that the party making the declaration is performing the contractually provided travel services on his own responsibility.

(3) The travel organiser must provide the traveller with a document on the package travel contract (travel confirmation) when the contract is entered into or without undue delay after the contract is entered into. The travel confirmation and a brochure provided by the travel organiser must include the information specified in the statutory order made under Article 238 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch].

(4) The travel organiser may only increase the travel price if this is provided for in the contract with precise information on the calculation of the new price and if in doing this he is taking into account an increase in transport costs, charges for specific services, port or airport fees or a change in the foreign exchange rates relating to the travel package in question. A price increase demanded after the twentieth day prior to the agreed date of departure is ineffective. Section 309 no. 1 remains unaffected.

(5) The travel organiser must declare a change in the travel price under subsection (4), an admissible change of an essential travel service or an admissible cancellation of the travel package to the traveller without undue delay after being informed of the reason for change or the cancellation. In the event of an increase in the travel package price by more than five per cent or of a substantial change of an essential travel service, the traveller may withdraw from the contract. He may instead, just as in the case of a cancellation of the travel package by the travel organiser, demand to be able to participate in another travel package of at least equivalent value if the travel organiser is in a position to offer such a travel package from his programme without any extra charge to the traveller. The traveller must assert these rights to the travel organiser without undue delay after the declaration by the travel organiser.

#### **Section 651b**

##### Transfer of contract

(1) Until the commencement of the travel package, the traveller may demand that a third party takes over the rights and duties under the package travel contract in his place. The travel organiser may object to such taking over of the contract by a third party if the third party does not satisfy the specific travel requirements or if the participation of the third party is contrary to statutory regulations or official orders.

(2) If a third party takes over the contract, then the third party and the traveller are liable to the travel organiser as joint and several debtors for the travel price and any extra charges incurred by the third party taking over the contract.

#### **Section 651c**

##### Relief

(1) The travel organiser is obliged to provide the travel package in such a way that it has the warranted characteristics and is not impaired by faults that cancel or reduce its value or its suitability for the customary use or the use assumed under the contract.

(2) If the travel package is not of this quality, then the traveller may demand relief. The travel organiser may refuse the relief if it requires disproportionate expense.

(3) If the travel organiser does not provide relief within a reasonable period of time set by the traveller, then the traveller may himself provide relief and demand reimbursement of the required expenses. A period of time need not be specified if the travel organiser refuses relief or if immediate relief is required by a particular interest of the traveller.

### **Section 651d**

#### Reduction of price

(1) If the travel package is defective within the meaning of section 651c (1), then the travel package price is reduced for the duration of the defect subject to the provisions of section 638 (3). Section 638

(4) applies with the necessary modifications.

(2) The reduction of price is not made to the extent that the traveller culpably fails to make notification of the defect.

### **Section 651e**

#### Termination for defect

(1) If the travel package is substantially impaired as a result of a defect of the type referred to in section 651c, the traveller may terminate the contract. The same applies if he cannot reasonably be expected to accept the travel package due to such a defect for a compelling reason discernible to the travel organiser.

(2) Termination is only admissible if the travel organiser has let a reasonable period of time set by the traveller pass without providing relief. A period of time need not be specified if the relief is impossible or is refused by the travel organiser or if immediate termination of the contract is required by a particular interest of the traveller.

(3) If the contract is terminated, then the travel organiser loses his claim to the agreed package price. However, he may demand compensation to be assessed under section 638 (3) for travel services already provided or yet to be provided in order to bring the travel package to an end. This does not apply to the extent that the traveller has no more interest in these services as the result of the cancellation of the contract.

(4) The travel organiser is obliged to take measures necessitated by cancellation of the contract, including without limitation, if the contract includes return transport, to transport the traveller back.

Extra costs are borne by the travel organiser.

### **Section 651f**

#### Damages

(1) Notwithstanding any reduction of price or notice of termination, the traveller may demand damages for nonperformance unless the defect in the travel package resulted from a circumstance for which the travel organiser is not responsible.

(2) If the travel package is made impossible or significantly impaired, then the traveller may also demand appropriate compensation in money for holiday leave spent to no avail.

### **Section 651g**

Cut-off period; limitation

(1) Claims under sections 651c to 651f must be asserted by the traveller to the travel organiser within one month of the contractually provided end of the travel package. Section 174 is not applicable. After the end of the period of time, the traveller may only assert claims if he was prevented from complying with the period of time through no fault of his own.

(2) Claims by the traveller under sections 651c to 651f are subject to a two-year limitation period. The limitation period commences on the day on which the travel package was to end under the contract.

### **Section 651h**

Admissible limitation of liability

(1) The travel organiser may, by agreement with the traveller, limit his liability for damage that does not constitute bodily injuries to three times the package price

1. to the extent that damage suffered by the traveller was caused neither intentionally nor with gross negligence or

2. to the extent that the travel organiser is responsible for damage suffered by the traveller merely due to the fault of a service provider.

(2) If international agreements or statutory provisions based on international agreements apply to travel services to be rendered by a service provider and provide that a claim for damages is incurred or may be asserted only under certain conditions or with certain restrictions or is barred under certain conditions, then the travel organiser may also invoke this in relation to the traveller.

### **Section 651i**

Withdrawal prior to commencement of travel

(1) Prior to commencement of travel, the traveller may withdraw from the contract at any time.

(2) If the traveller withdraws from the contract, then the travel organiser loses his claim to the agreed package price. He may, however, demand appropriate compensation. The amount of such compensation is determined by the price of the travel package minus the value of the expenses saved by the travel organiser and what he can gain by alternative deployment of the travel services.

(3) In the contract, for each type of travel package, taking into account the customarily saved expenses and the customary potential savings from alternative deployment of the travel services, a percentage of the package price may be specified as compensation.

### **Section 651j**

Termination due to force majeure

(1) If the travel package is substantially obstructed, jeopardised or impaired as the result of force majeure not foreseeable when the contract was entered into, then both the travel organiser and the traveller may terminate the contract merely under this provision.

(2) If the contract is terminated under subsection (1), then the provisions of section 651e (3) sentences 1 and 2 and 651e (4) sentence 1 apply. Extra costs for return transport are to be borne by the parties one-half each. Apart from this, extra costs are borne by the traveller.

### **Section 651k**

Guarantee; payment

(1) The travel organiser must guarantee that the traveller is reimbursed

1. the price of the travel package paid to the extent that travel services fail to materialise due to insolvency or the commencement of insolvency proceedings relating to the assets of the travel organiser, and

2. necessary expenses incurred by the traveller for return travel due to insolvency or the commencement of insolvency proceedings relating to the assets of the travel organiser.

The duties under sentence 1 may only be performed by the travel organiser

1. by means of an insurance policy taken out with an insurance company authorised to conduct business operations within the area of application of this Code, or

2. by the promise of payment of a banking institution authorised for business operations within the area of application of this Code.

(2) The insurer or the banking institution (customer finance guarantor) may limit its liability for the total amounts to be reimbursed by it in one year to 110 million euros. If the total of the amounts to be reimbursed by a customer finance guarantor under this law in one year exceed the maximum amounts stated in sentence 1, then the individual reimbursement claims will be reduced in the ratio of their total amount to the maximum amount.

(3) To discharge his duty under subsection (1), the travel organiser must provide the traveller with a direct claim on the customer finance guarantor and must evidence it by handing over a confirmation (guarantee certificate) issued by the customer finance guarantor or at its behest. The customer finance guarantor may not invoke, in relation to a traveller to whom a guarantee certificate has been handed out, either objections under the customer finance guarantor contract or the fact that the guarantee certificate was only issued after termination of the customer finance guarantor contract. In the cases referred to in sentence 2, the claim of the traveller against the travel organiser passes to the customer finance guarantor to the extent that the latter satisfies the claim of the traveller. A travel agent is under a duty to the traveller to check the validity of the guarantee certificate when he hands it over to the traveller.

(4) The travel organiser and the travel agent may only demand or accept payments towards the package price from the traveller prior to the end of the travel package if a guarantee certificate has been given to the traveller. A travel agent is deemed to be authorised by the travel organiser to accept payments towards the package price if he hands over a guarantee certificate or if other circumstances attributable to the travel organiser show that he has been entrusted by the travel organiser to negotiate travel contracts on his behalf. This does not apply if acceptance of payments by the travel agent is excluded in relation to the traveller in a conspicuous form.

(5) If, at the time when the contract is entered into, the travel organiser has his principal place of business in another Member State of the European Communities or in another contracting state to the Agreement on the European Economic Area, then the travel organiser also discharges his duties under subsection (1) if he gives the traveller security in compliance with the provisions of the other state and if those provisions satisfy the requirements of subsection (1) sentence 1. Subsection (4) applies subject to the proviso that the provision of security must be evidenced to the traveller.

(6) Subsections (1) to (5) do not apply if

1. the travel organiser only organises travel occasionally and outside his commercial activities,
2. the travel package does not last longer than twenty-four hours, does not include an overnight stay and the package price does not exceed seventy-five euros,
3. the travel organiser is a legal person under public law whose assets may not be the object of insolvency proceedings.

## **Section 651l**

### Exchange student stays

(1) The provisions below apply to a package travel contract dealing with a stay of an exchange student with a host family in another state (host country), lasting at least three months and coupled with regular attendance at a school. They only apply to a package travel contract dealing with a shorter exchange student stay (sentence 1), or with a stay with a host family in the host country coupled with the organised conduct of a traineeship, if this has been agreed.

(2) The travel organiser is obliged

1. to ensure lodging, supervision and care for the exchange student in a host family that are appropriate according to the conditions in the guest country with the cooperation of the exchange student and

2. to create the necessary conditions for regular school attendance by the exchange student in the host country.

(3) If the traveller withdraws prior to the start of the travel package, section 651i (2) sentences 2 and 3 and (3) are not applicable if the travel organiser has not informed him at least two weeks prior to the start of the travel package at all events of

1. the name and address of the host family specified for the exchange student after his arrival, and

2. the name and accessibility of a contact person in the host country from whom assistance may also be demanded,

and appropriately prepared him for the stay.

(4) The traveller may terminate the contract at any time prior to the start of the travel package. If the traveller gives notice, then the travel organiser is entitled to demand the agreed package price minus the expenses saved. The travel organiser is obliged to take the measures necessitated by termination of the contract, in particular, without limitation, if the contract includes return transport, transporting the exchange student back home. Extra costs are borne by the traveller. The sentences above do not apply if the traveller may give notice in accordance with sections 651e or 651j.

## **Section 651m**

### Deviating agreements

Subject to sentence 2, no deviation may be made from the provisions of sections 651a to 651l to the disadvantage of the traveller. The limitation specified in section 651g (2) may be relaxed, but not, prior to notification to the travel organiser of a defect, if the agreement results in a limitation of less than one year from the beginning of the period of limitation set in section 651g (2) sentence 2.

Title 10

## **Brokerage contract**

Subtitle 1

### **General provisions**

#### **Section 652**

Accrual of fee claim

(1) A person who promises a brokerage fee for evidence of the opportunity to enter into a contract or for negotiating a contract is obliged to pay the fee only if the contract comes into existence as a result of the evidence or as a result of the negotiation of the broker. If the contract is entered into subject to a condition precedent, the brokerage fee may only be demanded if the condition is fulfilled.

(2) The broker is only to be reimbursed for expenses if this has been agreed. This also applies even if the contract does not come about.

#### **Section 653**

Brokerage fee

(1) A brokerage fee is deemed to have been tacitly agreed if in the circumstances the task entrusted to the broker can only be expected for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff rate of remuneration is deemed to have been agreed; if no tariff exists, the customary fee is deemed to have been agreed.

#### **Section 654**

Forfeiture of the fee claim

The claim to a brokerage fee and reimbursement of expenses are excluded if the broker, contrary to the contents of the contract, also worked for the other party.

#### **Section 655**

Reduction of the brokerage fee

If a disproportionately high brokerage fee has been agreed for the evidence of an opportunity to enter into a service contract or for negotiating such a contract, then it may, on the application of the party owing it, be reduced to the appropriate amount by court decision. Reduction of the fee is excluded after it has been paid.



Subtitle 2

## **Loan brokerage contract between an entrepreneur and a consumer**

### **Section 655a**

Loan brokerage contract

A contract by which an entrepreneur agrees for a fee to broker a consumer loan contract or to give the consumer evidence of an opportunity to enter into a consumer loan contract is governed, subject to sentence 2, by the following provisions. This does not apply to the extent specified in section 491 (2).

### **Section 655b**

Written form

(1) The loan brokerage contract must be in writing. The contract, subject to other duties to provide information, must in particular, without limitation, state the fee of the loan broker as a percentage of the loan; if the loan broker has agreed remuneration with the entrepreneur too, this remuneration must also be stated. The contract may not be linked to the application for the loan to be granted. The loan broker must notify the consumer in text form of the contents of the contract.

(2) A loan brokerage contract that does not satisfy the requirements of subsection (1) sentences 1 to 3 is void.

### **Section 655c**

Remuneration

The consumer is only obliged to pay the fee if as the result of the negotiation by or evidence from the loan broker the loan is granted to the consumer and the loan has been paid out to the consumer and revocation by the consumer under section 355 is no longer possible. To the extent that, with the knowledge of the loan broker, the consumer loan contract is intended for the early repayment of another loan (debt rescheduling), a claim to remuneration arises only if the effective annual rate of interest or the initial effective annual rate of interest is not increased; when the effective or initial effective annual rate of interest for the loan to be repaid is calculated, any possible brokerage costs are disregarded.

### **Section 655d**

Ancillary payment

For services that are linked to negotiating the consumer loan contract or giving evidence of an opportunity to enter into a consumer loan contract, the loan broker may not agree any payment except for remuneration in accordance with section 655c sentence 1. However, it may be agreed that the loan broker is reimbursed necessary expenses that were incurred.

### **Section 655e**

Deviating agreements, application to founders of new businesses

(1) Deviation from the provisions of this subtitle to the disadvantage of the consumer is not allowed.

The provisions of this subtitle apply even if they are circumvented by other constructions.

(2) This subtitle also applies to loan brokerage contracts between an entrepreneur and a founder of a new business within the meaning of section 507.

Subtitle 3

### **Marriage broking**

#### **Section 656**

Marriage broking

(1) No obligation is established by promising a fee for giving evidence of an opportunity to contract a marriage or for acting as a broker in arranging a marriage. What has been paid on the basis of such a promise may not be claimed back on the grounds that there was no obligation.

(2) These provisions also apply to an agreement by which the other party has entered into an obligation in relation to the broker for the purpose of fulfilling the promise, including without limitation to an acknowledgement of a debt.

Title 11

### **Promise of a reward**

#### **Section 657**

Binding promise

Anyone offering by means of public announcement a reward for undertaking an act, including without limitation for producing an outcome, is obliged to pay the reward to the person who has undertaken the act, even if that person did not act with a view to the promise of a reward.

#### **Section 658**

Revocation

(1) The promise of a reward may be revoked until the act is undertaken. Revocation is only effective if it is announced in the same way as the promise of a reward was or if it occurs by means of a special announcement.

(2) Revocability may be waived in the promise of a reward; in cases of doubt, a waiver may be seen in the setting of a period of time for undertaking the act.

### **Section 659**

Act undertaken more than once

- (1) If an act for which a reward has been promised is undertaken more than once, then the reward is due to the person who undertook the act first.
- (2) If the act has been undertaken simultaneously by more than one person, then each is entitled to an equal portion of the reward. Where the reward cannot be shared due to its quality, or if, according to the terms of the promise of a reward, only one person is to be given the reward, then the matter is decided by drawing lots.

### **Section 660**

Collaboration by more than one person

- (1) If more than one person has contributed to an outcome for which the reward is promised, then the person promising the reward must apportion the reward at his reasonably exercised discretion, taking into account the contribution of each one to the outcome. The apportionment is not mandatory if it is evidently inequitable; in such a case the matter is decided by court decision.
- (2) If the apportionment by the person promising the reward is not recognised as binding by one of those concerned, then the person promising the reward is entitled to refuse fulfilment until those concerned have settled the dispute on their entitlement among themselves; each of them may demand that the reward is deposited for all of them.
- (3) The provision of section 659 (2) sentence 2 applies.

### **Section 661**

Prize competition

- (1) The promise of a reward relating to a prize competition is only valid if a period of time is set for submission of entries in the announcement.
- (2) The decision on whether an entry submitted within the period of time meets the requirements of the promise of a reward or which entry among more than one is to be given preference, is to be made by the person designated in the promise of a reward or, where such a person is lacking, by the person promising the reward. The decision is binding on the participants.
- (3) In the case of entries of equal merit, the provisions of section 659 (2) are applicable to awarding the prize.
- (4) The person promising the reward may only transfer ownership of the work if he has stipulated in the promise of a reward that the transfer is to occur.

### **Section 661a**

Promises of prizes

An entrepreneur who sends promises of prizes or comparable announcements to consumers and creates the impression through the design of such mailings that the consumer has won a prize must give the consumer that prize.

Title 12

## **Mandate and contract for the management of the affairs of another**

Subtitle 1

### **Mandate**

#### **Section 662**

Typical contractual duties in a mandate

By accepting a mandate, the mandatary agrees to carry out a transaction entrusted to him by the mandator for the mandator gratuitously.

#### **Section 663**

Duty to notify when rejecting

A person who is officially appointed to perform certain transactions or who has publicly offered to do so is obliged, when he does not accept a mandate to perform such transaction, to notify the mandator of the refusal without undue delay. The same applies if someone has offered to perform certain transactions in regard to the mandator.

#### **Section 664**

Non-transferability; liability for assistants

(1) In case of doubt the mandatary may not transfer the performance of the mandate to a third party. If the transfer is permitted, then he is only liable for fault in connection with the transfer. He is liable under section 278 for fault on the part of an assistant.

(2) In case of doubt, a claim to the performance of the mandate is not transferable.

#### **Section 665**

Deviation from instructions

The mandatary is entitled to deviate from the instructions of the mandator if he may assume in the circumstances that the mandator would approve of such deviation if he were aware of the factual situation. The mandatary must make notification to the mandator prior to such deviation and must wait for the decision of the latter unless postponement entails danger.

#### **Section 666**

Duty of information and duty to render account

The mandatary is obliged to provide the mandator with the required reports, and on demand to provide information on the status of the transaction and after carrying out the mandate to render account for it.

### **Section 667**

#### Duty to return

The mandatary is obliged to return to the mandator everything he receives to perform the mandate and what he obtains from carrying out the transaction.

### **Section 668**

#### Interest on money spent

If the mandatary spends money for himself that he must return to the mandator or spend for the mandator, then he is obliged to pay interest on it from the time of spending onwards.

### **Section 669**

#### Duty of advance payment

For expenses necessary to perform the mandate, the mandator must upon demand make advance payment to the mandatary.

### **Section 670**

#### Reimbursement of expenses

If the mandatary, for the purpose of performing the mandate, incurs expenses that he may consider to be necessary in the circumstances, then the mandator is obliged to make reimbursement.

### **Section 671**

#### Revocation; termination

(1) The mandate may be revoked by the mandator at any time and may be terminated by the mandatary at any time.

(2) The mandatary may only give notice in such a manner that the mandator can make other arrangements for the transaction to be carried out, unless there is a compelling reason for premature termination. If he gives premature notice of termination without such a compelling reason, then he must compensate the mandator for the damage thus incurred.

(3) If there is a compelling reason, then the mandatary is entitled to terminate the mandate even if he has waived the right of termination.

### **Section 672**

#### Death or incapacity to contract of the mandator

In case of doubt, a mandate is not extinguished by the death or incapacity to contract of the mandator. If the mandate is extinguished, then, if postponement entails danger, the mandatary must continue to carry out the transaction transferred until the heir or the legal representative of the mandator can make other arrangements for the transaction to be carried out; to this extent, the mandate is deemed to continue.

### **Section 673**

#### Death of the mandatary

In case of doubt, the mandate is extinguished on the death of the mandatary. If the mandate is extinguished, then the heir of the mandatary must notify the mandator of the death without undue delay and, if postponement entails danger, must continue carrying out the transaction entrusted to him until the mandator can make other arrangements for the agency business; in this respect, the mandate is deemed to continue.

### **Section 674**

#### Legal fiction of continuation

If the mandate is extinguished in any other way than by revocation, then it is still deemed to continue for the benefit of the mandatary until the mandatary obtains knowledge of the extinction or ought to have knowledge.

#### Subtitle 2

### **Contract for the management of the affairs of another<sup>\*)</sup>**

\*) Official note: This subtitle serves to implement 1. Directive 97/7/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers (OJ L 43 of 14 February 1997, p. 25), 2. Articles 3 to 5 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166 of 11 June 1998, p. 45).

#### Chapter 1

### **General provisions**

### **Section 675**

#### Nongratuitous management of the affairs of another

(1) The provisions of sections 663, 665 to 670 and 672 to 674 apply to a service contract or a contract to produce a work dealing with the management of the affairs of another to the extent that nothing else is provided in this subtitle and, if the person obliged is entitled to terminate without complying with a notice period, the provisions of section 671 (2) also apply with the necessary modifications.

(2) A person who gives another person advice or a recommendation, notwithstanding the responsibility that arises from a contractual relationship, a tort or another statutory provision, is not obliged to pay compensation for the damage arising from following the advice or the recommendation.

### **Section 675a**

#### Duties to provide information

(1) A person who is officially appointed to manage the affairs of others or publicly offers to do so provides, for regularly occurring standardised business transactions (standard transactions), in writing, or in appropriate cases also electronically, and gratuitously, information on fees and expenses for such transactions, to the extent that a price is not determined in accordance with section 315 or the fees and expenses are subject to binding statutory provisions. Banking institutions (section 1 (1) of the German Banking Act [Gesetz über das Kreditwesen]) must additionally provide information on transaction periods, value dates, reference rates for bank transfers and additional details specified in the statutory order under Article 239 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch], in the form provided for there; this does not apply to bank transfers of the type designated in section 676c (3).

(2) The following are equivalent to banking institutions within the meaning of this title:

1. the Deutsche Bundesbank,
2. other enterprises that carry out bank transfers on a commercial basis, and
3. domestic branch offices of banking institutions and other enterprises with their seat abroad that carry out bank transfers on a commercial basis.

### **Section 676**

#### Termination of transfer contracts

The termination of a contract for the management of the affairs of another whose subject matter is the forwarding of securities or of claims to the delivery of securities by way of booking or by other means (transfer contract) is only effective if it is notified to the custodian enterprise of the beneficiary in such good time that the notice of termination, if the appropriate care is exercised, can be taken into account prior to booking to the securities account of the beneficiary. The securities or the claims to delivery of securities are in this case to be returned to the enterprise originally entrusted with them. In connection with securities delivery and clearing systems, a transfer contract may, notwithstanding sentence 1, no longer be terminated after the time specified in the rules of the system.

## Chapter 2

### **Bank transfer contract**

#### **Section 676a**

Typical contractual duties; notice of termination

(1) By a bank transfer contract, the banking institution (transferring banking institution) is put under a duty to the person who orders the transfer (transferor) to make a specified amount of money available to the beneficiary for credit to the account of the beneficiary at the transferring banking institution (bank transfer) and to supply information on the identity of the transferor and a purpose of the transfer, to the customary extent. If the credit is to be made by another banking institution, the transferring banking institution is obliged to transfer the bank transfer amount in good time and, to the extent that nothing else has been agreed, without deduction to the banking institution of the beneficiary directly or with the participation of intermediate banking institutions for this purpose and to forward the information specified in sentence 1. The transferor may, to the extent agreed, alternatively provide the banking institution with the monetary amount to be transferred in cash.

(2) To the extent that no other periods of time are agreed, bank transfers are to be executed as soon as possible. The following:

1. cross-border bank transfers in Member States of the European Union and in contracting states to the Agreement on the European Economic Area that are denominated in the currency or currency unit of those states or in euros, to the extent that nothing else has been agreed, within five working days on which all concerned banking institutions are customarily open for business, with the exception of Saturdays (banking days) to the account of the banking institution of the beneficiary,
  2. bank transfers within the country in domestic currency at the latest within three banking days to the account of the banking institution of the beneficiary, and
  3. bank transfers in domestic currency within a main office or branch office of a banking institution at the latest within one banking day, other intra-bank transfers at the latest within two banking days to the account of the beneficiary
- are to be executed (transaction period). The period commences, to the extent not otherwise agreed, at the end of the day on which the name of the beneficiary, his account, his banking institution and other information required for carrying out the bank transfer are available to the transferring banking institution and a credit balance sufficient to carry out the bank transfer is available or sufficient credit has been granted.

(3) After this, the transferring banking institution may only terminate the bank transfer contract without indicating any reasons as long as the transaction period has not yet begun if insolvency proceedings have been commenced in relation to the assets of the transferor or if a credit required to carry out the



bank transfer has been terminated. In connection with payment systems, a bank transfer may, notwithstanding sentence 1, no longer be terminated after the time determined in the rules of the system.

(4) The transferor may terminate the bank transfer contract at any time prior to commencement of the transaction period, but after this he may only give notice if the banking institution of the beneficiary is notified of the termination by the time at which the transfer amount is finally made available to this banking institution for credit to the account of the beneficiary. In connection with payment systems, a bank transfer may, notwithstanding sentence 1, no longer be terminated after the time determined in the rules of the system. The transferring banking institution must arrange for the banking institution of the beneficiary to be informed of a termination without delay.

### **Section 676b**

Liability for late execution; money-back guarantee

(1) If the bank transfer is not executed until after the end of the transaction period, then the transferring banking institution must pay interest to the transferor on the bank transfer amount for the duration of the delay unless the transferor or the beneficiary is responsible for the delay. The rate of interest is five percentage points per annum above the basic rate of interest.

(2) The transferring banking institution must without additional charges and expenses and at the option of the transferor either return to the transferor or transfer to the beneficiary any amounts retained by itself or by one of the intermediate banking institutions contrary to the transfer contract.

(3) The transferor may demand the return of the transfer amount up to an amount of 12,500 euros (guarantee amount) plus fees and expenses already paid for the transfer if the transfer has been executed neither by the end of the transaction period nor within an additional period of time of fourteen banking days from the demand of the transferor for return on. The transfer amount is in this case to bear interest from the commencement of the transaction period up to crediting of the guarantee amount to the account of the transferor at the rate of interest specified in subsection (1) sentence 2. Upon demand for return by the transferor and the end of the additional period of time the bank transfer contract is deemed to be terminated. The banking institution is entitled to terminate the contract if the banking institution cannot reasonably be expected to continue the contract, weighing the interests of both parties, provided it has paid the guarantee amount or pays it simultaneously. The transferor need not, in the cases cited in sentences 3 and 4, pay the agreed fees and expenses. Claims under this subsection do not exist if the bank transfer has not been executed because the transferor has given the transferring banking institution erroneous or incomplete instructions or if an intermediate bank expressly specified by the transferor has failed to execute the bank transfer. In the second case of

sentence 6, the banking institution expressly specified by the transferor is liable to the transferor in the place of the transferring banking institution.

(4) Claims under subsections (1) to (3) are excluded if force majeure is the cause of the error in the processing of the bank transfer.

### **Section 676c**

No-fault liability; other claims

(1) Claims under section 676b do not require fault. Other claims that require fault and claims for unjust enrichment are unaffected. The transferring banking institution must be responsible for any fault on the part of an intermediate banking institution as it would be for its own fault, unless the essential cause lies with an intermediate banking institution specified by the transferor. Liability under sentence 3 may be limited to 25,000 euros for bank transfers to an account abroad. Liability for damage arising from delay in or non-execution of the bank transfer may be limited to 12,500 euros; this does not apply to intent and gross negligence, to loss of interest receipts and risks specifically assumed by the banking institution.

(2) In the cases cited in subsection (1) sentence 3 half-sentence 2, the intermediate banking institution specified by the transferor is liable instead of the transferring banking institution.

(3) To the extent not otherwise stipulated, there may be no provisions deviating to the disadvantage of the transferor from those of sections 675 (1), 676a and 676b and subsection (1) 1. whose transferor is a banking institution,

2. that exceed the amount of 75,000 euros, or

3. that are to be credited to an account at a banking institution with its seat outside the European Union and the European Economic Area.

## Chapter 3

### **Interbank payment contract**

#### **Section 676d**

Typical contractual duties in an interbank payment contract

(1) By an interbank payment contract, an intermediate banking institution puts itself under a duty to another banking institution to forward a bank transfer amount, using credit transfer operations, to another banking institution or to the banking institution of the beneficiary.

(2) The banking institution of the beneficiary is obliged to return the bank transfer amount to the transferring banking institution if it receives a notification to this effect from the transferring banking institution prior to receipt of the amount. In payment settlement systems, notice of termination need not be heeded from the point of time stipulated in the rules of the system on.

## **Section 676e**

### Equalisation claims

- (1) If the cause for a late execution of a bank transfer lies in the area of responsibility of an intermediate banking institution, then the intermediate banking institution must compensate for the damage incurred by the transferring banking institution in fulfilment of the claims of the transferor under section 676b (1).
- (2) The intermediate banking institution must with no additional charges and expenses, at the option of the transferring banking institution, either return to the transferring banking institution or transfer to the beneficiary the amounts retained by itself contrary to the transfer contract.
- (3) The banking institution that entered into an interbank payment contract with the transferring banking institution is obliged to return to the transferring banking institution the payments made that the transferring banking institution was obliged to make to the transferor under section 676b (3). Each intermediate banking institution is obliged to return the payments made under sentence 1 or under this provision to the banking institution with which it entered into an interbank payment contract to forward the bank transfer. If the bank transfer is not executed because a banking institution has issued erroneous or incomplete instructions to the intermediate banking institution it instructed, then the claim of the former banking institution to reimbursement is excluded under sentences 1 and 2. The banking institution responsible for the error must compensate the transferring banking institution for the more extensive loss incurred by it in fulfilment of its duties under section 676c (1).
- (4) Banking institutions involved in forwarding a transfer amount and not liable for compensation must independently research the whereabouts of the transfer amount and return the transfer amount they trace to the person entitled to the claim, less reasonable compensation for their research.
- (5) Where claims fail because the transferor specified the banking institution commissioned with forwarding, then the banking institution must put the transferor in the same position he would be in if section 676b (3) applied. Apart from this, section 676b (4) applies with the necessary modifications.

## Chapter 4

### **Current account contract**

#### **Section 676f**

##### Typical contractual duties in a current account contract

By a current account contract, the banking institution is put under a duty to open an account for the customer, to credit incoming payments to the account and to process completed bank transfer contracts to the debit of this account. The banking institution must notify the customer of any information relating to the person of the transferor and of the purpose of the bank transfer that is forwarded.

#### **Section 676g**

##### Credit claim of the customer

(1) If a transfer amount has been received by the banking institution of the customer, the banking institution must credit this amount to the customer within the agreed period of time or, if there is no agreement on a period of time, within one banking day after the day on which the amount was credited to the banking institution, unless prior to receipt of the transfer amount it received notification under section 676d (2) sentence 1. If the amount transferred is not credited to the account of the customer in good time, then the banking institution must pay the customer interest on the transfer amount for the duration of the delay, unless the transferor or the customer is responsible for the delay. Section 676b (1) sentence 2 applies. The credit, even if it is made subsequently, must be undertaken in such a way that value dating of the incoming amount on the customer's account, to the extent not otherwise agreed with entrepreneurs, coincides with the date on which the amount is made available to the banking institution.

(2) If the banking institution, when it credits the amount to the account of the customer, has in breach of contract reduced the transfer amount, then it must credit the deficit to the beneficiary free of fees and expenses. The claim of the banking institution to a fee agreed in the current account contract for the crediting of incoming payments remains unaffected.

(3) If an interbank payment contract is not executed by a banking institution that has been instructed to receive it by the banking institution of the beneficiary, then the latter must credit its customer with the transfer amount up to an amount of 12,500 euros without additional fees and charges.

(4) Claims under subsections (1) to (3) do not require fault. More extensive claims that require fault are unaffected. The banking institution of the customer must in this context assume the same responsibility for fault on the part of an intermediate banks it instructed as for its own fault. Liability under sentence 3 may be limited to 25,000 euros for bank transfers to an account abroad. Liability for damage arising from delay in or non-execution of the bank transfer may be limited to 12,500 euros; this does not apply to intent and gross negligence, to loss of interest receipts and risks specifically assumed by the banking institution. The claims are excluded to the extent that the error in execution of the contract is due to force majeure.

(5) To the extent not otherwise provided there, deviation from the provisions of subsection (1) to (4) to the disadvantage of the beneficiary is only allowed in the case of bank transfers of the type specified in section 676c (3).

#### **Section 676h**

##### **Abuse of payment cards<sup>\*)</sup>**

<sup>\*) Official note: This provision serves to implement Article 8 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, p. 19).</sup>

The banking institution may only demand reimbursement of expenses for use of payment cards or of their data if the latter have not been abused by a third party. If the payment card is not based on a current account contract but another contract for the management of the affairs of another, sentence 1 applies with the necessary modifications to the issuer of the card.

Title 13

#### **Agency without specific authorisation**

##### **Section 677**

##### **Duties of the voluntary agent**

A person who conducts a transaction for another person without being instructed by him or otherwise entitled towards him must conduct the business in such a way as the interests of the principal require in view of the real or presumed will of the principal.

##### **Section 678**

##### **Agency contrary to the will of the principal**

If the assumption of agency is at variance with the real or presumed will of the principal and if the voluntary agent should have realised this, then he is liable to compensate the principal for damage arising from the agency even if he is not otherwise at fault.

### **Section 679**

Irrelevance of the contrary will of the principal

A will of the principal contrary to the agency is disregarded if without the agency a duty of the principal whose fulfilment is in the public interest or a statutory maintenance duty of the principal would not have been fulfilled in good time.

### **Section 680**

Agency to ward off danger

If the voluntary agency is intended to ward off danger threatening the principal, then the voluntary agent is only responsible for deliberate intent and gross negligence.

### **Section 681**

Ancillary duties of the voluntary agent

The voluntary agent must notify the principal, as soon as feasible, of his assumption of the agency and, if postponement does not entail danger, wait for the decision of the principal. Apart from this, the provisions relating to a mandatary in sections 666 to 668 apply to the duties of the voluntary agent with the necessary modifications.

### **Section 682**

Lack of capacity to contract on the part of the voluntary agent

If the voluntary agent lacks capacity to contract or is limited in his capacity to contract, then he is only responsible under the provisions on damages for torts and on the return of unjust enrichment.

### **Section 683**

Reimbursement of expenses

If the assumption of agency corresponds to the interest and the real or presumed will of the principal, then the voluntary agent may demand reimbursement of expenses like a mandatary. In the cases of section 679, the voluntary agent is entitled to this claim, even if the assumption of agency is at variance with the will of the principal.

### **Section 684**

Return of enrichment

If the requirements of section 683 do not apply, then the principal is obliged to return everything that he obtains as a result of the voluntary agency under the provisions on the return of unjust enrichment. If the principal ratifies the agency, then the voluntary agent is entitled to the claim specified in section 683.

### **Section 685**

Intention to donate

- (1) The voluntary agent has no claim if he did not intend to demand reimbursement from the principal.
- (2) If parents or forebears grant their descendants maintenance, or vice versa, then in case of doubt it is to be assumed that there is no intention to demand reimbursement from the receiver.

### **Section 686**

Error as to the identity of the principal

If the voluntary agent is in error with regard to the identity of the principal, then the real principal is entitled and obliged as the result of agency.

### **Section 687**

False agency without specific authorisation

(1) The provisions of sections 677 to 686 do not apply if a person conducts the transaction of another person in the belief that it is his own.

(2) If a person treats the business of another person as his own although he knows that he is not entitled to do so, then the principal can assert claims resulting from sections 677, 678, 681 and 682. If he asserts them, then he is under a duty to the voluntary agent under section 684 (1).

Title 14

## **Safekeeping**

### **Section 688**

Typical contractual duties in safekeeping

By a safekeeping contract, the depositary is obliged to store a movable thing delivered to him by a depositor.

### **Section 689**

Remuneration

Remuneration for safekeeping is deemed to have been tacitly agreed if in the circumstances it is to be expected that safekeeping is to be performed only for remuneration.

### **Section 690**

Liability for gratuitous safekeeping

If safekeeping is assumed gratuitously, then the depositary is only liable for the care that he customarily exercises in his own affairs.

### **Section 691**

Deposit with third parties

In case of doubt, the depositary is not entitled to deposit the deposited thing with a third party. If deposit with a third party is permitted, then the depositary is only responsible for his own fault in making this deposit. He is liable under section 278 for fault on the part of an assistant.

### **Section 692**

Change of safekeeping

The depositary is entitled to change the agreed type of safekeeping if he may assume in the circumstances that the depositor would approve of the change if he were aware of the factual situation. The depositary must make notification to the depositor prior to such a change and must wait for the decision of the depositor unless postponement entails danger.

### **Section 693**

Reimbursement of expenses

If the depositary, for the purpose of safekeeping, incurs expenses that he may regard as necessary in the circumstances, then the depositor is obliged to make reimbursement.

### **Section 694**

Liability in damages of the depositor

The depositor must compensate the depositary for damage incurred by the depositary due to the quality of the thing deposited, unless he neither knows of the dangerous quality of the thing when depositing it nor should have known of it, or he notified the depositary of it or the depositary knew of it without notification.

### **Section 695**

Right of the depositor to demand return

The depositor may at any time demand that the thing deposited is returned, even if a period for safekeeping has been specified. Limitation of the claim to return of the thing commences on the claim for return.

### **Section 696**

Claim of depositary for repossession of the thing deposited

The depositary may, if no safekeeping period has been specified, demand repossession of the thing deposited at any time. If a period has been specified, then he may only demand early repossession if there is a compelling reason to do so. The limitation of the claim commences upon the demand for repossession.

### **Section 697**

Place for return

Return of the thing deposited must be made at the place where the thing was to be stored; the depositary is not obliged to take the thing to the depositor.

### **Section 698**

Interest on money spent

If the depositary spends deposited money for himself, then he is obliged to pay interest on it from the time of spending onwards.

### **Section 699**

Due date of remuneration

(1) The depositor must pay the agreed remuneration upon termination of safekeeping. If remuneration is assessed by time periods, then it is to be paid at the end of the individual time periods.

(2) If safekeeping ends prior to expiry of the time specified for it, then the depositary may demand a portion of his remuneration corresponding to his performance to date unless the agreement on remuneration leads to a different conclusion.



## **Section 700**

### Irregular safekeeping contract

(1) If fungible things are deposited in such a way that ownership is to pass to the depositary and the depositary is to be obliged to return things of the same type, quality and quantity, then in the case of money the provisions on loan contracts apply, and in the case of other things the provisions on contracts for the loan of things apply. If the depositor permits the depositary to consume fungible things, then in the case of money the provisions on loan contracts apply and in the case of other things the provisions on contracts for the loan of a thing apply from the point of time when the depositary appropriates the things on. In both cases, the time and place for return are, in case of doubt, determined under the provisions of the safekeeping contract.

(2) In the case of deposit of securities, an agreement of the type cited in subsection (1) is only valid if it is made expressly.

## Title 15

### **Bringing things onto the premises of innkeepers**

#### **Section 701**

##### Liability of the innkeeper

(1) An innkeeper who accommodates strangers commercially must make compensation for the damage incurred by the loss of, destruction of or damage to things brought in by a guest accommodated in the course of operating such a business.

(2) The following are deemed to have been brought in:

1. things that during the time when the guest was accommodated were brought into the inn or to a place indicated by the innkeeper or the helpers of the innkeeper or to a place generally intended for this purpose by the innkeeper outside the inn, or otherwise taken into safekeeping outside the inn by the innkeeper or his helpers,
2. things that within a reasonable period of time prior to or after the time when the guest was first accommodated were taken into custody by the innkeeper or his helpers.

In the case of an instruction or assumption of custody by helpers of the innkeeper, however, this only applies if they were ordered or must be considered to have been ordered to do this in the circumstances.

(3) Liability in damages is not incurred if the loss, destruction or damage is caused by the guest, a person accompanying the guest or a person that the guest has taken in, or by the quality of the things or by force majeure.

(4) Liability in damages does not extend to vehicles, to things left in a vehicle, or to live animals.

## **Section 702**

Limitation of liability; valuables

(1) The innkeeper is only liable by reason of section 701 up to an amount corresponding to one-hundred times the cost of accommodation for one day, but at least up to the amount of 600 euros and at most up to an amount of 3,500 euros; for money, securities and valuables the amount of 800 euros takes the place of the amount of 3,500 euros.

(2) The innkeeper's liability is unlimited

1. if the loss, destruction or damage has been culpably caused by him or his helpers,
2. if the things brought in are things that he assumed for safekeeping or which he refused to assume contrary to the provision of subsection (3).

(3) The innkeeper is obliged to accept money, securities, valuables and other valuable items for safekeeping unless they are excessively valuable or sizeable in view of the size or status of the inn or if they are hazardous. He may demand that they be delivered in a closed or sealed container.

## **Section 702a**

Release from liability

(1) The innkeeper may only be released from liability in advance to the extent that the sum involved exceeds the applicable maximum amount under section 702 (1). Nor may the innkeeper be released from liability even to this extent in the case that the loss, destruction or damage was caused intentionally or with gross negligence by the innkeeper or the helpers of the innkeeper or that it involves things whose acceptance for safekeeping the innkeeper refused contrary to the provisions of section 702 (3).

(2) The release is only effective if the declaration of the guest has been issued in writing and if it does not include any other provisions.

## **Section 703**

Extinction of the claim for damages

The claim to which the guest is entitled under sections 701 and 702 lapses if the guest fails to notify the innkeeper without undue delay after obtaining knowledge of the loss, destruction or damage. This does not apply if the things were accepted by the innkeeper for safekeeping or if the loss, destruction or damage was culpably caused by him or his helpers.

## **Section 704**

Security right of the innkeeper

For his claims for providing living space and other services to satisfy the needs of the guest, including his expenses, the innkeeper has a security right over the things brought in by the guest. The provisions relating to the security right of the lessor in sections 562 (1) sentence 2 and 562a to 562d apply with the necessary modifications.

## Title 16

### **Partnership**

#### **Section 705**

Contents of partnership agreement

By a partnership agreement, the partners mutually put themselves under a duty to promote the achievement of a common purpose in the manner stipulated by the contract, in particular, without limitation, to make the agreed contributions.

#### **Section 706**

Contributions of the partners

- (1) Unless otherwise agreed, the partners must make equal contributions.
- (2) If fungible or consumable things are to be contributed, then in case of doubt it is to be assumed that they are to be the joint property of the partners. The same applies to non-fungible and non-consumable things if they are to be contributed according to an appraisal that is not merely intended for the profit distribution.
- (3) The contribution of a partner may also consist in the performance of services.

#### **Section 707**

Increase of the agreed contribution

A partner is not obliged to increase the agreed contribution or to supplement a capital contribution reduced by losses.

#### **Section 708**

Liability of the partners

A partner is only liable, in discharging the duties incumbent upon him, for the care he customarily exercises in his own affairs.

#### **Section 709**

Joint management

- (1) The partners are jointly entitled to manage the business of the partnership; for each transaction the approval of all partners is required.
- (2) If, under the partnership agreement, the majority of votes decides, then in case of doubt a majority is calculated in relation to the number of partners.

#### **Section 710**

Transfer of management

If, in the partnership agreement, the conduct of business is transferred to one partner or more than one partner, then the remaining partners are excluded from management. Where management has been transferred to more than one partner, the provisions of section 709 apply with the necessary modifications.

### **Section 711**

#### Right to object

If the partnership agreement entitles all partners or more than one partner to conduct business in such a way that each is authorised to act on his own, then each may object to the undertaking of a transaction by another partner. In the case of objection the business must be forgone.

### **Section 712**

#### Withdrawal and dismissal of management

(1) The authority to manage that is conferred on a partner by the partnership agreement may be withdrawn from that partner by a unanimous resolution or, if under the partnership agreement a majority of votes decides, by a majority resolution of the remaining partners if there is a compelling reason; such a reason includes without limitation gross breach of duty or incapacity for proper management.

(2) The partner may also in turn dismiss the management if there is a compelling reason; the provisions of section 671 (2) and (3) applicable to mandates apply with the necessary modifications.

### **Section 713**

#### Rights and duties of managing partners

The rights and duties of the managing partners are determined by the provisions in sections 664 to 670 applicable to mandates to the extent that the partnership relationship does not lead to a different conclusion.

### **Section 714**

#### Power of agency

To the extent that, under the partnership agreement, a partner has the authority to manage, then in case of doubt he is also authorised to represent the other partners in relation to third parties.

### **Section 715**

#### Withdrawal of the power of agency

If one partner is authorised in the partnership agreement to represent the other partners in relation to third parties, then the power of agency may only be withdrawn under the provisions of section 712 (1) and, if it has been granted in connection with the authority to manage, may only be withdrawn together with the latter.

### **Section 716**

#### Right of control of the partners

(1) A partner may, even if excluded from management, inform himself personally of the affairs of the partnership, inspect the accounts and documents of the partnership and provide himself with a survey of the state of the assets of the partnership.

(2) An agreement that excludes or limits this right does not prevent its being asserted if there are grounds for assuming dishonest management.

### **Section 717**

#### Non-transferability of partner rights

The claims to which the partners are entitled against each other under the partnership relationship are not transferable. Excepted are the claims to which a partner is entitled in his management to the extent that their satisfaction may be demanded prior to the winding-up of the partnership, and the claims to profit sharing or to what the partner is owed on the winding-up.

### **Section 718**

#### Partnership assets

- (1) The contributions of the partners and the items acquired for the partnership as a result of management are the joint assets of the partners (partnership assets).
- (2) Partnership assets also include anything acquired due to a right belonging to the partnership assets or as compensation for destruction, damage or removal of an item belonging to the partnership assets.

### **Section 719**

#### Joint property

- (1) A partner may not dispose of his share in partnership assets and in the individual items that are part of partnership assets; he is not entitled to demand division.
- (2) A debtor may not set off a claim he has against an individual partner against a claim that is part of the partnership assets.

### **Section 720**

#### Protection of good faith debtor

A debtor need only allow it to be asserted against himself that a claim acquired under section 718 (1) is part of the partnership assets if he has obtained knowledge that it comprises such a part; the provisions of sections 406 to 408 apply with the necessary modifications.

### **Section 721**

#### Distribution of profits and losses

- (1) A partner may only demand the statement of accounts and distribution of profits and losses after dissolution of the partnership.
- (2) If the partnership is intended to exist for a protracted period of time, then the statement of accounts and the distribution of profits must in case of doubt occur at the end of every business year.

### **Section 722**

#### Shares in profit and loss

- (1) If the shares in profits and losses of the partners are not specified, then each partner, without regard to the nature and size of his contribution, has an equal share in profit and loss.
- (2) If only the share in profit or in loss has been determined, then in case of doubt the determination applies to profits and losses.

### **Section 723**

Termination by partner

(1) If the partnership has not been set up for a definite period of time, then each partner may terminate it at any time. If a period of time has been determined, then notice of termination prior to the expiry of that period is admissible if there is a compelling reason. A compelling reason includes without limitation

1. if another partner has intentionally or with gross negligence violated a fundamental duty incumbent upon him under the partnership agreement or if the discharge of such a duty becomes impossible,
2. if the partner has reached the age of eighteen.

The partner who has reached the age of majority may only give notice of termination under no. 2 within three months from the time when he knew of or should have known of his position as a partner.

There is no right to give notice if the partner was authorised in regard to the object of the partnership to independently operate a trade or business under section 112 or if the object of the partnership served solely to satisfy his personal needs. Under the same conditions, if a notice period has been specified, termination is admissible without complying with the notice period.

(2) Notice of termination may not be premature unless there is a compelling reason for the premature termination. If a partner gives premature notice of termination without such a reason, then he must compensate the remaining partners for the damage thus incurred.

(3) An agreement by which the right to give notice is excluded or is limited contrary to these provisions is void.

### **Section 724**

Notice of termination in the case of a partnership for life or a continuing partnership

If a partnership has been entered into for the lifetime of a partner, then it may be terminated in the same way as a partnership set up for an indefinite period of time. The same applies if a partnership is tacitly carried on after expiry of a stipulated period of time.

### **Section 725**

Termination by attachment creditors

(1) If the creditor of a partner has obtained attachment of the share of the partner in partnership assets, then he may terminate the partnership without complying with a notice period provided the instrument of indebtedness is not merely provisionally enforceable.

(2) As long as the partnership exists, the creditor may not assert the rights of the partner under the partnership relationship with the exception of the claim to a share in profits.

### **Section 726**

Dissolution due to achievement or impossibility of its object

The partnership comes to an end when the agreed object is achieved or its achievement has become impossible.

### **Section 727**

Dissolution due to the death of a partner

(1) The partnership is dissolved by the death of one of its partners unless its partnership agreement leads to a different conclusion.

(2) In the case of dissolution, the heir of the deceased partner must inform the remaining partners of the death without undue delay and, where postponement entails danger, must carry on the business transferred to the deceased by the partnership agreement until the remaining partners can reach another arrangement jointly with him. The remaining partners are in like manner obliged to continue temporarily the business transferred to them. The partnership is deemed to continue in existence in this respect.

### **Section 728**

Dissolution due to insolvency of the partnership or one of its partners

(1) The partnership is dissolved by the commencement of insolvency proceedings relating to the assets of the partnership. If the proceedings are discontinued on the application of the debtor or cancelled after the confirmation of an insolvency plan that provides for the partnership to continue in existence, then the partners may resolve to carry on the partnership.

(2) The partnership is dissolved by the commencement of insolvency proceedings relating to the assets of a partner. The provisions of section 727 (2) sentences 2 and 3 apply.

### **Section 729**

Continuation of authority to manage

If the partnership is dissolved, then the authority of a partner to manage is likewise deemed to continue in existence to his benefit until he obtains knowledge of the dissolution or should have knowledge of it. The same applies to the authority to manage of a partner leaving the partnership when the partnership is carried on or for the loss of the authority in another way.

### **Section 730**

Winding-up of the partnership; management

(1) After the dissolution of the partnership, winding-up takes place between the partners with regard to the assets of the partnership unless insolvency proceedings have been opened in relation to the assets of the partnership.

(2) For the termination of transactions in progress, for the entering into of new business required for this purpose and for the maintenance and administration of the assets of the partnership, the partnership is deemed to be carried on to the extent the purpose of the winding-up so requires. However, the authority to manage to which a partner is entitled under the partnership agreement is extinguished, unless the contract leads to a different conclusion, upon dissolution of the partnership; from dissolution onwards all partners are entitled to jointly manage its business.

#### **Section 731**

Procedure for winding-up of the partnership

In the absence of an agreement to the contrary, winding-up is carried out in accordance with sections 732 to 735. In other respects, the provisions on co-ownership apply to division.

#### **Section 732**

Return of objects

Objects that a partner has handed over to the partnership for use must be returned to him. He may not demand compensation for an object that is accidentally lost or has accidentally deteriorated.

#### **Section 733**

Discharge of partnership debts; reimbursement of capital contributions

(1) From the assets of the partnership, the first debts to be discharged are the joint debts, including those divided among the partners in relation to the creditors or for which the remaining partners are liable as debtors to one partner. If a debt is not yet due for repayment or is contested, then the amount required for discharge must be retained.

(2) From the assets of the partnership remaining after discharge of debts, the capital contributions are to be repaid. For capital contributions that did not consist of money, the value that they had at the time when they were contributed must be reimbursed. Compensation may not be demanded for capital contributions consisting in the performance of services or in permission of the use of an object.

(3) For discharge of debts and repayment of capital contributions, the assets of the partnership must be converted into money to the extent necessary.

#### **Section 734**

Distribution of the surplus

If a surplus remains after discharge of the joint debts and repayment of the capital contributions, then it is owed to the partners in the ratio of their shares in profit.

#### **Section 735**

Duty to make subsequent contributions in case of loss

If the assets of the partnership do not suffice to discharge the joint debts and to reimburse the capital contributions, then the partners must make up the deficit in the ratio in which they must bear losses. If an amount attributable to a partner cannot be obtained from him, then the remaining partners must bear the deficit in the same ratio.



### **Section 736**

Retirement of a partner; continuing liability

(1) If the partnership agreement stipulates that if a partner gives notice or dies or if insolvency proceedings are opened in relation to his assets, the partnership will be carried on by the remaining partners, then upon the occurrence of such an event the partner personally so affected retires from the partnership.

(2) The provisions on the limitation of continuing liability relating to commercial partnerships apply with the necessary modifications.

### **Section 737**

Exclusion of a partner

If the partnership agreement stipulates that if a partner gives notice, the partnership will be carried on by the remaining partners, then a partner in whose person a circumstance occurs which entitles the remaining partners to give notice under section 723 (1) sentence 2 may be excluded from the partnership. The remaining partners are jointly entitled to the right of exclusion. Exclusion occurs by declaration to the partner to be excluded.

### **Section 738**

Winding-up of the partnership on retirement

(1) If a partner retires from the partnership, then his share in the assets of the partnership accrues to the remaining partners. The latter are obliged to return to the retiring partner under the provisions of section 732 the items he transferred to the partnership for use and to exempt him from joint debts and to pay him what he would receive in case of winding-up if the partnership had been dissolved at the time of his retirement. If joint debts are not yet due for repayment, then the remaining partners may provide the retiring partner with security instead of exempting him.

(2) The value of the assets of the partnership is, to the extent necessary, to be determined by means of an appraisal.

### **Section 739**

Liability for deficit

If the assets of the partnership do not suffice to cover the joint debts and the capital contributions, then the retiring partner is liable to the remaining partners for deficit in the ratio of his share in the loss.

### **Section 740**

Sharing in the financial results of transactions in progress

(1) The retiring partner shares in profits and losses resulting from transactions in progress at the time of his retirement. The remaining partners are entitled to terminate such transactions in the way that appears most advantageous to them.

(2) The retiring partner may at the end of each business year demand accounting for transactions terminated in the meanwhile, disbursement of the amount due to him and information on the status of transactions still in progress.

Title 17

### **Co-ownership**

#### **Section 741**

Co-ownership by defined shares

Where more than one person is jointly entitled to a right, then, unless the law leads to a different conclusion, the provisions of sections 742 to 758 apply (co-ownership by defined shares).

#### **Section 742**

Equal shares

In case of doubt it is to be assumed that the part owners are entitled to equal shares.

#### **Section 743**

Share in the fruits; authority to use

(1) A fraction of the fruits corresponding to his share is owed to each part owner.

(2) Each part owner is authorised to use the joint object to the extent that joint use by other part owners is not impaired.

#### **Section 744**

Joint administration

(1) The part owners are jointly entitled to administration of the joint object.

(2) Each part owner is entitled to take the measures required to maintain the object without approval by the other part owners; he may demand that the latter grant their consent to such a measure in advance.

### **Section 745**

Administration and use by resolution

(1) By a majority of votes it may be resolved that there is to be proper administration and use appropriate to the quality of the joint item. The majority of votes is to be calculated according to the size of the shares.

(2) Each part owner may, where administration and use is not regulated by agreement or by a majority vote, demand administration corresponding to the interests of all part owners according to their reasonably exercised discretion.

(3) No substantial change to the object may be resolved or demanded. The right of each part owner to a fraction of the emoluments corresponding to his share may not be impaired without his approval.

### **Section 746**

Effect in relation to successors in interest

If the part owners have made arrangements for the administration and use of the joint object, the determination reached also takes effect for and against the successors in interest.

### **Section 747**

Disposal of a share and joint objects

Each part owner may control his own share. The part owners may control the joint object in its entirety only jointly.

### **Section 748**

Bearing of charges and costs

Each part owner is obliged to the other part owners to bear the charges of the joint object as well as costs of maintenance, administration and joint use according to the proportion of his share.

### **Section 749**

Cancellation claim

(1) Each part owner may at any time demand cancellation of the co-ownership.

(2) If the right to demand cancellation is excluded by agreement permanently or for a period of time, then cancellation may still be demanded if there is a compelling reason to do so. Subject to the same requirement, if a notice period has been specified, cancellation is admissible without complying with the notice period.

(3) An agreement by which the right to demand cancellation is excluded or limited contrary to these provisions is void.

### **Section 750**

Exclusion of cancellation in case of death

If the part owners have temporarily excluded entitlement to demand cancellation of co-ownership, then in case of doubt the agreement loses its effect upon the death of a part owner.

### **Section 751**

#### Exclusion of cancellation and successors in interest

If the part owners have excluded entitlement to demand cancellation of co-ownership permanently or temporarily or have specified a notice period, then the agreement is effective for or against successors in interest as well. If a creditor has had the share of a part owner attached, then he may demand cancellation of co-ownership notwithstanding the agreement if the instrument of indebtedness is not merely provisionally enforceable.

### **Section 752**

#### Division in kind

Cancellation of co-ownership occurs by division in kind if the joint object is or, if there are more than one object held jointly, the joint objects are capable of being divided into identical parts corresponding to the shares of the part owners without reducing their value. The distribution of identical parts among the part owners is effected by drawing lots.

### **Section 753**

#### Division by sale

(1) If division in kind is excluded, then the cancellation of co-ownership occurs by sale of the joint object according to the regulations on sale of a pledge, or in the case of a plot of land by compulsory auction, and by division of the proceeds. If disposal to a third party is inadmissible, then the object must be auctioned off among the part owners.

(2) If the attempt to sell the object is unsuccessful, then each part owner may demand a repeated attempt but must bear the costs if a repeated attempt fails.

### **Section 754**

#### Sale of joint claims

The sale of a joint claim is only allowed if it cannot yet be collected. If collection is possible, then each part owner may demand joint collection.

### **Section 755**

#### Discharge of a joint debt

(1) If the part owners are jointly and severally liable for an obligation that they will have to discharge in the proportion of their shares in accordance with section 748 or that they have entered into for the purpose of discharging such an obligation, then each part owner may demand upon cancellation of the co-ownership that the debt is discharged out of the joint object.

(2) The claim may also be asserted against successors in interest.

(3) To the extent that sale of the joint object is required for discharge of the debt, sale must occur in accordance with section 753.

### **Section 756**

Discharge of the debt of a part owner

If one part owner has a debt to another part owner that is based on the co-ownership, then when the co-ownership is cancelled he may demand discharge of his claim from the part of the joint object attributable to the debtor. The provisions of section 755 (2) and (3) apply.

### **Section 757**

Warranty upon allocation to a part owner

If, upon the cancellation of co-ownership, a joint object is allocated to one of the part owners, then each of the remaining part owners must give a warranty in the proportion of his share for a legal defect or a material defect in the same manner as a seller.

### **Section 758**

Right of cancellation not subject to the statute of limitations

The claim to cancellation of co-ownership is not subject to the statute of limitations.

Title 18

## **Life annuity**

### **Section 759**

Duration and amount of the annuity

(1) A person who is obliged to provide a life annuity must in case of doubt pay the annuity for the duration of the lifetime of the creditor.

(2) The amount intended for the annuity is in case of doubt the annual amount of the annuity.

### **Section 760**

Advance payment

(1) The life annuity is payable in advance.

(2) An annuity in money is payable for three months in advance; in the case of another kind of annuity, the period of time for which it must be paid in advance is determined according to the quality and purpose of the annuity.

(3) If the creditor is alive at the beginning of the period of time for which the annuity is payable in advance, then he is entitled to the entire amount attributable to that period of time.

### **Section 761**

Form of life annuity commitment

For a contract which promises a life annuity to be valid, the promise must be made in writing, unless another form is specified. The life annuity commitment may not be issued in electronic form to the extent that the commitment serves to provide maintenance in family law.

Title 19

## **Imperfect obligations**

### **Section 762**

Gaming, betting

(1) No obligation is established by gaming and betting. What has been paid due to such gaming or betting may not be demanded back on the basis that no obligation existed.

(2) These provisions also apply to an agreement by which the losing party, for the purpose of meeting a gaming or betting debt, enters into an obligation in relation to the winning party, including without limitation the acknowledgement of a debt.

### **Section 763**

Lottery contracts and gaming contracts

A lottery contract or a gaming contract is binding if the lottery or the gaming has state approval. Apart from this, the provisions of section 762 apply.

### **Section 764**

(repealed)

Title 20

## **Suretyship**

### **Section 765**

Typical contractual duties in suretyship

(1) By a contract of suretyship the surety puts himself under a duty to the creditor of a third party to be responsible for discharging that third party's obligation.

(2) Suretyship may also be assumed for a future or contingent obligation.

### **Section 766**

Written form of the declaration of suretyship

For the contract of suretyship to be valid, the declaration of suretyship must be issued in writing. The declaration of suretyship may not be made in electronic form. If the surety discharges the main obligation, the defect of form is remedied.

### **Section 767**

Extent of the suretyship debt

(1) The currently applicable amount of the main obligation determines the duty of the surety. This applies in particular, without limitation, if the main obligation has been changed through no fault of or default by the principal debtor. The duty of the surety is not extended by a legal transaction that the principal debtor undertakes after assumption of the suretyship.

(2) The surety is liable for the costs of termination and prosecution of rights that are reimbursable by the principal debtor to the creditor.

### **Section 768**

Defences of surety

(1) The surety may assert the defences to which the principal debtor is entitled. If the principal debtor dies, then the surety may not invoke the fact that the heir has only limited liability for the obligation.

(2) The surety is not deprived of a defence by the fact that the principal debtor waives it.

### **Section 769**

Co-suretyship

Where more than one person enters a suretyship commitment for the same obligation, they are jointly and severally liable even if they do not assume suretyship jointly.

### **Section 770**

Defences of voidability and set-off

(1) The surety may refuse to satisfy the creditor as long as the principal debtor is entitled to avoid the legal transaction on which the obligation is based.

(2) The surety has the same authority as long as the creditor can obtain satisfaction by set-off against a claim of the principal debtor that is due.

### **Section 771**

#### Defence of unexhausted remedies

The surety may refuse to satisfy the creditor as long as the creditor has not attempted without success to obtain execution of judgment against the principal debtor (defence of unexhausted remedies). If the surety raises the defence of unexhausted remedies, the limitation of the claim of the creditor against the surety is suspended until the creditor has attempted without success to obtain execution of judgment against the principal debtor.

### **Section 772**

#### Duty of creditor of enforcement and realisation

(1) If the suretyship applies to a monetary claim, then enforcement of judgment must be attempted against the movable things of the principal debtor at his residence and, if the principal debtor has a business establishment in another locality, at the latter as well, and, in the absence of a residence and a business establishment, at his place of abode.

(2) If the creditor has a pledge over or right of retention to a movable thing of the principal debtor, then he must attempt to satisfy his claim from this thing too. If the creditor has such a right to the thing for another claim as well, then this only applies if both claims are covered by the value of the thing.

### **Section 773**

#### Exclusion of defence of unexhausted remedies

(1) The defence of unexhausted remedies is excluded:

1. if the surety waives the defence, including without limitation if he has assumed suretyship as principal debtor,
2. if pursuit of rights against the principal debtor is made appreciably more difficult due to a change of residence, of business establishment or of place of abode occurring after assumption of suretyship,
3. if insolvency proceedings have been opened in relation to the assets of the principal debtor,
4. if it must be assumed that enforcement of judgment against the assets of the principal debtor will not result in satisfaction of the claim of the creditor.

(2) In the cases cited in nos. 3 and 4, the defence is admissible to the extent that the creditor may satisfy his claim out of a movable thing of the principal debtor over which he has a security right or of which he has a right of retention; the provisions of section 772 (2) sentence 2 apply.



### **Section 774**

#### Statutory passing of claims

(1) To the extent that the surety satisfies the claims of the creditor, the claim of the creditor against the principal debtor passes to him. The passing of ownership may not be asserted to the disadvantage of the creditor. Objections by the principal debtor under a legal relationship existing between himself and the surety are unaffected.

(2) Co-sureties are only liable to each other under section 426.

### **Section 775**

#### Claim to release of the surety

(1) If the surety has provided suretyship on the instructions of the principal debtor, or if he is entitled under the provisions on agency without specific authorisation, as a result of assuming the suretyship, to the rights of a voluntary agent against the principal debtor, then he may demand that the principal debtor releases him from the suretyship

1. if the financial situation of the principal debtor has substantially deteriorated,
2. if pursuit of rights against the principal debtor is made appreciably more difficult due to a change of residence, of business establishment or of place of abode occurring after assumption of suretyship,
3. if the principal debtor is in default of discharging his obligation,
4. if the creditor has obtained an enforceable judgment for discharge against the surety.

(2) If the main obligation has not yet fallen due, then the principal debtor may provide security to the surety instead of releasing him.

### **Section 776**

#### Waiver of a security

If the creditor waives a preferential right connected with the claim, a mortgage or ship mortgage, a pledge existing for the claim or a right against a co-surety, then the surety is released to the extent that he would have been able to obtain compensation under section 774 from the right waived. This also applies if the right waived only arose after assumption of the suretyship.

### **Section 777**

#### Temporary suretyship

(1) If the surety has provided suretyship for an existing obligation for a specified period of time, then at the end of the specified period of time he is released, unless the creditor effects collection of the claim without undue delay under the provisions of section 772, continues the proceedings without any substantial delay and without undue delay after the end of the proceedings notifies the surety that he is claiming payment from him. If the surety is not entitled to the defence of unexhausted remedies,

then he is released at the end of a specified period of time, unless the creditor makes this notification to him without undue delay.

(2) If notification has been made in good time, then the liability of the surety in the case of subsection (1) sentence 1 is limited to the scope the main obligation has at the time when the proceedings ended, or in the case cited in subsection (1) sentence 2 to the scope the main obligation has at the end of the specified period of time.

### **Section 778**

Credit mandate

A person who instructs another person to grant a third party a loan or financing assistance in his own name and for his own account is liable as surety to the mandatary for the obligation of the third party arising from the loan or the financing assistance.

Title 21

### **Settlement**

#### **Section 779**

Concept of settlement; mistake as to the basis of the settlement

(1) A contract by which a dispute or uncertainty of the parties with regard to a legal relationship is removed by way of mutual concession (settlement) is ineffective if the fact situation used as a basis according to the contents of the contract does not correspond to reality and the dispute or uncertainty would not have occurred if the facts had been known.

(2) It is equivalent to uncertainty about a legal relationship if the realisation of a claim is uncertain.

## Title 22

### **Promise to fulfil an obligation; acknowledgement of debt**

#### **Section 780**

Promise to fulfil an obligation

For a contract by means of which performance is promised in such a way that the mere promise is intended to establish the duty (promise to fulfil an obligation) to be valid, to the extent that no other form is specified, it is necessary for the commitment to be made in writing. The commitment may not be made in electronic form.

#### **Section 781**

Acknowledgement of a debt

For a contract by which the existence of an obligation is acknowledged (acknowledgement of debt) to be valid, the declaration of acknowledgement must be made in writing. The declaration of acknowledgement may not be made in electronic form. If another form is prescribed to create the obligation whose existence is being acknowledged, then the acknowledgement contract requires this form.

#### **Section 782**

No formal requirements for settlement

If a promise to fulfil an obligation or an acknowledgement of a debt is made on the basis of a statement of account or by way of a settlement, then observance of the written form specified in sections 780 and 781 is not required.

## Title 23

### **Order**

#### **Section 783**

Rights derived from an order

If a person delivers to a third party a document in which he instructs another person to furnish money, securities or other fungible things to that third party, then the third party is authorised to collect payment from the drawee in his own name; the drawee is authorised to pay to the payee for the account of the drawer.

#### **Section 784**

Acceptance of the order

(1) If the drawee accepts the order, then he is obliged to pay to the payee; he may only raise against him such objections as relate to the validity of the acceptance or as follow from the contents of the order or the contents of the acceptance or as the drawee is entitled to rely on directly against the payee.

(2) Acceptance is made by a written notation on the order. If the notation is placed on the order prior to its delivery to the payee, then acceptance only becomes effective in relation to the payee upon delivery.

#### **Section 785**

Delivery of the order

The drawee is only obliged to pay in return for delivery of the order.

#### **Section 786**

(repealed)

#### **Section 787**

Order to assume debt

(1) In the case of an order to assume a debt, the drawee is released from the debt by the payment to the extent of its amount.

(2) The drawee is not under a duty to the drawer to accept the order or to perform by paying the payee merely because the drawee is the debtor of the drawer.

#### **Section 788**

Underlying debt relationship

If the drawer issues the order for the purpose of in turn effecting payment to the payee, then the payment, even if the drawee accepts the order, is only effected upon payment by the drawee to the payee.

#### **Section 789**

Duty of payee to notify

If the drawee refuses acceptance of the order prior to the time for payment or if he refuses to make payment, then the payee must notify the drawer without undue delay. The same applies if the payee cannot or will not assert the order.

#### **Section 790**

Revocation of the order

The drawer may revoke the order in relation to the drawee as long as the drawee has neither accepted it in relation to the payee nor has made payment. This also applies if the drawer by the revocation contravenes a duty incumbent upon him in relation to the payee.

### **Section 791**

Death or incapacity to contract of a participant

The order does not lapse as a result of the death or of one of the participants becoming incapable of contracting.

### **Section 792**

Transfer of the order

(1) The payee may transfer the order to a third party by contract with that third party, even if the order has not yet been accepted. The declaration of transfer requires written form. For transfer, delivery of the order to the third party is required.

(2) The drawer may exclude transfer. Exclusion is only effective in relation to the drawee if such exclusion can be derived from the order or if it is notified by the drawer to the drawee before the latter accepts the order or effects payment.

(3) If the drawee accepts the order in relation to the acquirer, then he may not derive objections from the legal relationship existing between him and the payee. Apart from this, provisions applying to assignment of a claim apply with the necessary modifications to transfer of the order.

Title 24

### **Bearer bond**

#### **Section 793**

Rights under a bearer bond

(1) If a person has issued a document in which he promises payment to the bearer (bearer bond), then the holder may demand from him the act of performance in accordance with the promise, unless he is not entitled to dispose of the document. However, the issuer is also released by payment to a non-entitled bearer.

(2) The validity of the signature may be made dependent upon a provision included in the document requiring the observance of a specific form. For signature, a name signature produced by means of mechanical reproduction suffices.

#### **Section 794**

Liability of the issuer

(1) The issuer is obliged under a bearer bond even if it has been stolen from him or is lost or if it otherwise comes into circulation against his will.

(2) It has no bearing on the effectiveness of a bearer bond if the document is issued after the issuer has died or becomes incapable of contracting.

#### **Section 795**

(repealed)

### **Section 796**

#### Objections of the issuer

The issuer may only raise against the bearer of the bond such objections as relate to the validity of the issuing or as follow from the document or as the issuer is directly entitled to in relation to the bearer.

### **Section 797**

#### Duty to pay only in return for delivery

The issuer is only obliged to pay in return for delivery of the bearer bond. Upon delivery, he acquires ownership of the document even if the bearer is not entitled to make use of it.

### **Section 798**

#### Replacement document

If a bearer bond is no longer suitable for circulation due to damage or disfigurement, then the bearer, as long as its essential contents and its distinguishing features can still be recognised with certainty, may demand from the issuer the issue of a new bearer bond in return for delivery of the damaged or disfigured one. He must himself bear and advance the costs.

### **Section 799**

#### Declaration of invalidity

(1) A lost or destroyed bearer bond may, if the opposite is not specified in the document, be declared invalid by way of public notice procedure. Excepted from this are interest coupons, annuity coupons and profit share coupons as well as interest-free bearer bonds payable on sight.

(2) The issuer is obliged to provide the previous bearer, when requested, with information necessary for the public notice procedure or stoppage of payment and to issue the required certificates. The costs of the certificates must be borne and advanced by the previous bearer.

### **Section 800**

#### Effect of the declaration of invalidity

If a bearer bond has been declared invalid, the party that obtained the exclusory order may, without prejudice to the authority to assert the claim under the document, demand issue of a new bearer bond instead of the invalidated one. He must himself bear and advance the costs.

### **Section 801**

#### Extinction; limitation

(1) The claim under a bearer bond is extinguished at the end of thirty years after the occurrence of the time stipulated for payment if the document has not been presented to the issuer for redemption prior to the end of thirty years. If presentation occurs, then the claim is statute-barred in two years from the end of the submission period. Presentation is equivalent to judicial assertion of the claims under the document.

(2) For interest coupons, annuity coupons and profit share coupons, the period for presentation period is four years. The period of time commences at the close of the year in which the time stipulated for payment occurred.

(3) Duration and commencement of the presentation period may be determined differently by the issuer in the document.

#### **Section 802**

##### Stoppage of payment

The commencement and running of the period for presentation, and also limitation, are suspended for the benefit of the applicant by the stoppage of payment. Suspension commences upon the lodging of the application for stoppage of payment; it ends upon the completion of the public notice procedure and, if the stoppage of payment is ordered before the initiation of the procedure, even if, since the removal of the obstacle to initiation, six months have passed and the application was not made previously. The provisions of sections 206, 210 and 211 apply to this period with the necessary modifications.

#### **Section 803**

##### Interest coupons

(1) If interest coupons are issued for a bearer bond, then the coupons, unless they contain a stipulation to the contrary, remain in effect even if the main claim lapses or if the duty to pay interest is cancelled or modified.

(2) If such interest coupons are not returned when the main bearer bond is redeemed, then the issuer is entitled to retain the amount he is obliged to pay for the coupons under subsection (1).

#### **Section 804**

##### Loss of interest coupons or similar coupons

(1) If an interest coupon, annuity coupon or profit share coupon is lost or destroyed and if the previous bearer notifies the issuer of the loss prior to the end of the submission period, then the previous bearer may demand payment from the issuer after the period of time has ended. The claim is excluded if the lost coupon is presented to the issuer for redemption or if the claim from the coupons is asserted by court action, unless the presentation or assertion by court action occurs after the period of time has passed. The claim is statute-barred after four years.

(2) The claim referred to in subsection (1) can be excluded in the interest coupon, annuity coupon or profit share coupon.

### **Section 805**

#### New interest coupons and annuity coupons

New interest coupons and annuity coupons for a bearer bond may not be issued to the bearer of the document authorising receipt of the coupons (renewal coupon) if the bearer of the bond has objected to the issuing. In this case, the coupons are to be delivered to the bearer of the bond if he presents the bond.

### **Section 806**

#### Reregistration under name

The reregistration of a bearer bond as a bond registered in the name of a specified owner may only be done by the issuer. The issuer is not obliged to effect reregistration.

### **Section 807**

#### Bearer tickets and stamps

If tickets, stamps or similar documents in which a creditor is not identified are issued by the issuer in circumstances from which it can be seen that the issuer intends to be obliged to an act of performance for the bearer, then the provisions of sections 793 (1) and 794, 796 and 797 apply with the necessary modifications.

### **Section 808**

#### Registered securities with bearer clause

(1) If a document in which the creditor is named is issued with the stipulation that the act of performance promised in the document can be made to any bearer, then the debtor is released from obligation by performance to the bearer of the document. The bearer is not entitled to demand performance.

(2) The debtor is obliged to pay only in return for presentation of the document. If the document has been lost or destroyed, then if not otherwise provided, it may be declared invalid by way of public notice procedure. The provisions of section 802 on limitation apply.

Title 25

### **Presentation of things**

### **Section 809**

#### Inspection of a thing

A person who has a claim in respect of a thing against its possessor or wishes to obtain certainty as to whether he has such a claim may, if inspection of the thing is of interest to him for this reason, demand that the possessor presents the thing to him for inspection or permits inspection.



## **Section 810**

Right to inspect documents

A person who has a legal interest in inspecting a document in the possession of another person may demand from its possessor permission to inspect it if the document was drawn up in his interests or if in the document a legal relationship existing between himself and another is documented or if the document contains negotiations on a legal transaction that were engaged in between him and another person or between one of the two of them and a joint intermediary.

## **Section 811**

Place of presentation, risk and costs

(1) Presentation must, in the cases of sections 809 and 810, be made at the place where the thing to be presented is located. Each party may demand to have it presented at another place if there is a compelling reason for doing so.

(2) Risk and costs must be borne by the person demanding presentation. The possessor may refuse presentation until the other party advances the costs and provides security for the risk.

Title 26

## **Unjust enrichment**

### **Section 812**

Claim for restitution

(1) A person who obtains something as a result of the performance of another person or otherwise at his expense without legal grounds for doing so is under a duty to make restitution to him. This duty also exists if the legal grounds later lapse or if the result intended to be achieved by those efforts in accordance with the contents of the legal transaction does not occur.

(2) Performance also includes the acknowledgement of the existence or non-existence of an obligation.

### **Section 813**

Performance notwithstanding defence

(1) Restitution of performance rendered to perform an obligation may also be demanded if the claim was subject to a defence by means of which assertion of the claim has been permanently excluded. The provisions of section 214 (2) are unaffected.

(2) If an obligation due on a specific date is performed early, then the claim for return is excluded and reimbursement of interim interest may not be demanded.

### **Section 814**

Knowledge that debt is not owed

Restitution of performance rendered for the purpose of performing an obligation may not be demanded if the person who rendered the performance knew that he was not obliged to do so or if the performance complied with a moral duty or consideration of decency.

### **Section 815**

#### Non-occurrence of result

A claim for return for the non-occurrence of a result intended by an act of performance is excluded if the occurrence of the result was impossible from the outset and the person who rendered the performance prevented the result from occurring in bad faith.

### **Section 816**

#### Disposition by an unauthorised person

(1) If an unauthorised person disposes of an object and the decision is effective against the authorised person, then he is obliged to make restitution to the authorised person of what he gains by the disposal. If the disposition is gratuitous, then the same duty applies to a person who as a result of the disposition directly gains a legal advantage.

(2) If performance is rendered to an unauthorised person that is effective in relation to the authorised person, then the unauthorised person is under a duty to make restitution of the performance.

### **Section 817**

#### Breach of law or public policy

If the purpose of performance was determined in such a way that that the receiver, in accepting it, was violating a statutory prohibition or public policy, then the receiver is obliged to make restitution. A claim for return is excluded if the person who rendered performance was likewise guilty of such a breach, unless the performance consisted in entering into an obligation; restitution may not be demanded of any performance rendered in fulfilment of such an obligation.

### **Section 818**

#### Scope of the claim to enrichment

(1) The duty to make restitution extends to emoluments taken as well as to whatever the receiver acquires by reason of a right acquired or in compensation for destruction, damage or deprivation of the object obtained.

(2) If restitution is not possible due to the quality of the benefit obtained, or if the receiver is for another reason unable to make restitution, then he must compensate for its value.

(3) The liability to undertake restitution or to reimburse the value is excluded to the extent that the receiver is no longer enriched.

(4) From the time when the action is pending onwards, the receiver is liable under the general provisions of law.

### **Section 819**

Increased liability in case of knowledge and breaches of law or public policy

(1) If the receiver, at the time of receipt, knows of the defect in the legal basis or if he learns of it later, then he is obliged to make restitution from the moment of receipt or of obtaining knowledge of the defect to make restitution as if the claim for restitution had been pending from this time on.

(2) If the receiver, in accepting the performance, violates a statutory prohibition or public policy, then he is likewise under the same obligation from receipt of payment onwards.

### **Section 820**

Increased liability where the result is uncertain

(1) If the performance was intended to produce a result whose occurrence, according to the contents of the legal transaction, was regarded as uncertain, then, if the result does not occur, the receiver is under a duty of restitution in the same way as if the claim for restitution had been pending at the time of receipt. The same applies if the performance has been rendered for a legal reason which according to the contents of the legal transaction was regarded as likely to lapse and the legal reason ceases to exist.

(2) The receiver must only pay interest from the time when he learns that the result has not occurred or that the legal reason has ceased to exist; he is not obliged to make restitution of emoluments to the extent that he is no longer enriched at this time.

### **Section 821**

Enrichment defence

A person who enters into an obligation without legal grounds to do so may also refuse fulfilment if the claim to release from the obligation is statute-barred.

### **Section 822**

Restitution duty of third parties

If the receiver bestows the gains on a third person at no charge, then that third person is obliged to make restitution as if he had received the disposition from the creditor without legal grounds, to the extent that as a result of the bestowal the duty of the receiver to make restitution of the enrichment is excluded.

Title 27

## **Torts**

### **Section 823**

Liability in damages

(1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.

(2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

### **Section 824**

Endangering credit

(1) A person who untruthfully states or disseminates a fact that is qualified to endanger the credit of another person or to cause other disadvantages to his livelihood or advancement must compensate the other for the damage caused by this even if, although he does not know that the fact is untrue, he should have known.

(2) A person who makes a communication and is unaware that it is untrue is not obliged to pay damages if he or the receiver of the communication has a justified interest in the communication.

### **Section 825**

Inducing others to sexual acts

A person who induces another person to undertake or acquiesce in sexual acts by cunning, duress or abuse of a dependency relationship is liable to him for the resulting damage incurred.

### **Section 826**

Intentional damage contrary to public policy

A person who, in a manner contrary to public policy, intentionally inflicts damage on another person is liable to the other person to make compensation for the damage.

### **Section 827**

Exclusion and reduction of responsibility

A person who, in a state of unconsciousness or in a state of pathological mental disturbance precluding free exercise of will, inflicts damage on another person is not responsible for such damage. If he has temporarily induced such a state in himself with alcoholic beverages or similar means, he is then responsible for damage that he unlawfully causes in this state as if he were responsible because of negligence; responsibility does not ensue if he came into this state without fault.

## **Section 828**

### Minors

(1) A person who has not reached the age of seven is not responsible for damage caused to another person.

(2) A person who has reached the age of seven but not the age of ten is not responsible for damage that he inflicts on another party in an accident involving a motor vehicle, a railway or a suspension railway. This does not apply if he intentionally caused the injury.

(3) A person who has not yet reached the age of eighteen is, to the extent that his responsibility is not excluded under subsection (1) or (2), not responsible for damage he inflicts on another person if, when committing the damaging act, he does not have the insight required to recognise his responsibility.

## **Section 829**

### Liability in damages for reasons of equity

A person who, for reasons cited in sections 827 and 828, is not responsible for damage he caused in the instances specified in sections 823 to 826 must nonetheless make compensation for the damage, unless damage compensation can be obtained from a third party with a duty of supervision, to the extent that in the circumstances, including without limitation the circumstances of the parties involved, equity requires indemnification and he is not deprived of the resources needed for reasonable maintenance and to discharge his statutory maintenance duties.

## **Section 830**

### Joint tortfeasors and persons involved

(1) If more than one person has caused damage by a jointly committed tort, then each of them is responsible for the damage. The same applies if it cannot be established which of several persons involved caused the damage by his act.

(2) Instigators and accessories are equivalent to joint tortfeasors.

## **Section 831**

### Liability for vicarious agents

(1) A person who uses another person to perform a task is liable to make compensation for the damage that the other unlawfully inflicts on a third party when carrying out the task. Liability in damages does not apply if the principal exercises reasonable care when selecting the person deployed and, to the extent that he is to procure devices or equipment or to manage the business activity, in the procurement or management, or if the damage would have occurred even if this care had been exercised.

(2) The same responsibility is borne by a person who assumes the performance of one of the transactions specified in subsection (1) sentence 2 for the principal by contract.

### **Section 832**

Liability of a person with a duty of supervision

(1) A person who is obliged by operation of law to supervise a person who requires supervision because he is a minor or because of his mental or physical condition is liable to make compensation for the damage that this person unlawfully causes to a third party. Liability in damages does not apply if he fulfils the requirements of his duty to supervise or if the damage would likewise have been caused in the case of proper conduct of supervision.

(2) The same responsibility applies to any person who assumes the task of supervision by contract.

### **Section 833**

Liability of animal keeper

If a human being is killed by an animal or if the body or the health of a human being is injured by an animal or a thing is damaged by an animal, then the person who keeps the animal is liable to compensate the injured person for the damage arising from this. Liability in damages does not apply if the damage is caused by a domestic animal intended to serve the occupation, economic activity or subsistence of the keeper of the animal and either the keeper of the animal in supervising the animal has exercised reasonable care or the damage would also have occurred even if this care had been exercised.

### **Section 834**

Liability of animal minder

A person who by contract assumes the supervision of an animal for the keeper of the animal is responsible for the damage inflicted by the animal on a third party in the manner specified in section 833. The responsibility does not apply if he exercises reasonable care in supervision or if the damage would also have occurred even if such care had been exercised.

### **Section 835**

(repealed)

### **Section 836**

Liability of the owner of a plot of land

(1) If a human being is killed or if the body or the health of a human being is injured or a thing is damaged by the collapse of a building or any other structure attached to a plot of land or by parts of the building or structure breaking off, then the possessor of the plot of land is liable to make compensation to the injured person for damage resulting from this, to the extent that the collapse or severing is a consequence of defective construction or inadequate upkeep. Liability in damages does not apply if the possessor has observed reasonable care for the purpose of avoiding danger.

(2) A previous possessor of the plot of land is responsible for the damage if the collapse or breaking off occurs within one year after he vacated possession, unless during his period of possession he exercised reasonable care or a later possessor would have been able to avoid the danger by observing this care.

(3) The possessor within the meaning of these provisions is the owner-occupier.

### **Section 837**

Liability of building possessor

If anyone, in exercise of a right, possesses a building or another structure on the plot of land of another person, then the responsibility specified in section 836 applies to him instead of the possessor of the plot of land.

### **Section 838**

Liability of the person with a duty of maintenance of a building

A person who assumes the maintenance of a building or of a structure attached to a plot of land for the possessor or has to maintain the building or the other structure by virtue of a right of use to which he is entitled is responsible in the same way as the possessor for the damage caused by the collapse or the breaking off of parts of the building.

### **Section 839**

Liability in case of breach of official duty

(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way.

(2) If an official breaches his official duties in a judgment in a legal matter, then he is only responsible for any damage arising from this if the breach of duty consists in a criminal offence. This provision is not applicable to refusal or delay that is in breach of duty in exercising a public function.

(3) Liability for damage does not arise if the injured person has intentionally or negligently failed to avert the damage by having recourse to appeal.

### **Section 839a**

Liability of court-appointed expert

(1) If an expert appointed by the court intentionally or by gross negligence submits a false expert opinion, then he is liable to make compensation for the damage incurred by a party to the proceedings as a result of a court decision based on this expert opinion.

(2) Section 839 (3) applies with the necessary modifications.

### **Section 840**

Liability of more than one person

(1) If more than one person is responsible for damage arising from a tort, then they are jointly and severally liable.

(2) If besides the person who is obliged to make compensation for damage caused by another person under sections 831 and 832 the other person is also responsible for the damage, then in their internal relationship the other is obliged alone, and in the case specified in section 829 the person with a duty of supervision is obliged alone.

(3) If besides the person who is obliged to make compensation for damage under sections 833 to 838 a third party is responsible, then the third party is solely obliged in their internal relationship.

### **Section 841**

Compensation for liability of a public official

If an official who by virtue of his official duty must appoint another person for management for a third party or must supervise such management or participate in it by ratifying legal transactions is responsible together with the other person, as a result of violating these duties, for the damage caused by the other, then the other person is solely liable in their internal relationship.

### **Section 842**

Extent of liability in damages when a person is injured

Liability to compensate for damage resulting from a tort directed against the person extends to the disadvantages the tort produces for the livelihood or advancement of the injured person.



### **Section 843**

Annuity in money or lump sum settlement

(1) If the earning capacity of the injured person is eliminated or reduced as the result of an injury to body or health or if his needs are increased, then the injured person is to be given damages by payment of an annuity.

(2) The provisions of section 760 apply to the annuity. Whether the person liable in damages must provide security and in what kind and in what amount is determined by the circumstances.

(3) In lieu of the annuity, the injured person may demand a lump sum settlement if there is a compelling reason for doing so.

(4) The claim is not excluded by the fact that another person must provide the injured person with maintenance.

### **Section 844**

Third-party compensation claims in the case of death

(1) In cases where death is caused, the person liable in damages must reimburse the costs of a funeral to the person under a duty to bear these costs.

(2) If the person killed, at the time of the injury, stood in a relationship to a third party on the basis of which he was obliged or might become obliged by operation of law to provide maintenance for that person and if the third party has as a result of the death been deprived of his right to maintenance, then the person liable in damages must give the third party damages by payment of an annuity to the extent that the person killed would have been obliged to provide maintenance for the presumed duration of his life; the provisions of section 843 (2) to (4) apply with the necessary modifications.

Liability in damages also arises where the third party at the time of injury had been conceived but not yet born.

### **Section 845**

Compensation claims for lost services

In the case of death or injury to body or health, or in the case of deprivation of liberty, the person liable in damages must give a third party compensation for loss of services by payment of an annuity if the injured person by operation of law was under a duty to the third party to render services in the household or business of the latter. The provisions of section 843 (2) to (4) apply with the necessary modifications.

### **Section 846**

Contributory negligence of the injured person

In the cases of sections 844 and 845, if fault on the part of the injured person contributed to the genesis of the damage suffered by the third party, then the provisions of section 254 are applicable to the claim of the third party.

### **Section 847**

(repealed)

### **Section 848**

Liability for chance in connection with deprivation of a thing

A person who is obliged to return a thing of which he has deprived another person by a tort is also responsible for accidental loss, for a chance impossibility of restitution for another reason or for accidental deterioration of the thing, unless such loss, other impossibility of restitution or deterioration would have occurred even without the deprivation.

### **Section 849**

Interest on the compensation sum

If compensation is to be paid for the value of a thing of which a person has been deprived, or if compensation is to be paid for the decrease in value of a thing as a result of damage, then the injured person may demand interest on the amount to be paid in compensation from the date on which the determination of the value is based.

### **Section 850**

Reimbursement of outlays

If the person liable for restitution of a thing another person has been deprived of makes outlays on the thing, then in relation to the injured person he has the rights that a possessor has against the owner for outlays.

### **Section 851**

Compensation payment to unauthorised parties

If the person liable to pay damages for the deprivation of a person or for damage to a movable thing pays compensation to the person in whose possession the thing was at the time when the deprivation or damage occurred, then by this payment of compensation he is released, even if a third party was the owner of the thing or had another right in the thing, unless he knows of the right of the third party or his lack of knowledge results from gross negligence.

### **Section 852**

Claim for restitution after end of limitation period

If by a tort the person liable to pay compensation obtains something at the cost of the injured person, then even after the claim to compensation for the damage arising from a tort is statute-barred he is obliged to make restitution under the provisions on the return of unjust enrichment. This claim is statute-barred ten years after it arises, or, notwithstanding the date on which it arises, thirty years after the date on which the act causing the injury was committed or after the other event that triggered the loss.

### **Section 853**

Defence of bad faith

If someone obtains a claim against the injured person by a tort committed by him, the injured person may refuse performance even if the claim to cancellation of the claim is by then statute-barred.

Book 3

## **Law of Property**

Division 1

### **Possession**

#### **Section 854**

Acquisition of possession

(1) Possession of a thing is acquired by obtaining actual control of the thing.

(2) Agreement between the previous possessor and the acquirer is sufficient for acquisition if the acquirer is in a position to exercise control over the thing.

#### **Section 855**

Agent in possession

If a person exercises actual control over a thing for another in the other's household or in the other's trade or business or in a similar relationship, by virtue of which he has to follow instructions from the other that relate to the thing, only the other shall be the possessor.

#### **Section 856**

Ending of possession

(1) Possession comes to an end as a result of the possessor giving up actual control of the thing or losing actual control in another way.

(2) Possession does not come to an end as a result of the possessor being prevented in a way that is temporary in nature from exercising control.

#### **Section 857**

Inheritability

Possession passes to the heir.

#### **Section 858**

Unlawful interference with possession

(1) A person who, against the will of the possessor, deprives the possessor of possession or interferes with the possessor's possession acts, except where the deprivation or the interference is permitted by law, unlawfully (unlawful interference with possession).

(2) The possession obtained as a result of unlawful interference is defective. The successor in possession must allow the defectiveness to be asserted against him if he is the heir of the possessor or he knows when he acquires possession that the possession of his predecessor was defective.

### **Section 859**

Self-help by the possessor

- (1) The possessor may use force to defend himself against unlawful interference.
- (2) If a movable thing is taken away from the possessor by unlawful interference, the possessor may use force to remove it from the interferer who is caught in the act or pursued.
- (3) If the possessor of a plot of land is deprived of possession by unlawful interference, the possessor may recover possession immediately after the deprivation of possession by removing the interferer.
- (4) The possessor has the same rights against a person who under section 858 (2) above must allow the defectiveness of the possession to be asserted against himself.

### **Section 860**

Self-help by the agent in possession

The rights to which the possessor is entitled under section 859 above may also be exercised by the person who exercises actual control for the possessor under section 855.

### **Section 861**

Claim on account of deprivation of possession

- (1) If the possessor is deprived of possession by unlawful interference, the possessor may require possession to be restored by the person who is in defective possession in relation to him.
- (2) The claim is excluded if the possession that was removed was defective in relation to the present possessor or his predecessor in title and was obtained in the last year before the deprivation of possession.

### **Section 862**

Claim on account of interference with possession

- (1) If the possessor is disturbed in his possession by unlawful interference, he may require the disturber to remove the disturbance. If further disturbances are to be feared, the possessor may seek a prohibitory injunction.
- (2) The claim is excluded if the possessor possesses the property defectively in relation to the disturber or the predecessor in title of the disturber and the possession was obtained in the last year before the disturbance.

### **Section 863**

Objections of the remover or disturber

In response to the claims set out in sections 861 and 862 above, a right of possession or to act in disturbance of possession may be asserted only to justify the submission that the deprivation or disturbance of possession is not unlawful interference.

### **Section 864**

Extinction of claims to possession

(1) A claim based on sections 861 or 862 is extinguished at the end of one year after the act of unlawful interference, unless the claim is asserted in a legal action before this date.

(2) Extinction also occurs if it is established by a final and absolute judgment, after the act of unlawful interference takes place, that the interferer has a right to the property by virtue of which he may require a possessory status corresponding to his manner of acting to be established.

### **Section 865**

Part possession

The provisions of sections 858 to 864 above also apply in favour of a person who possesses only part of a thing, in particular separate residential space or other space.

### **Section 866**

Co-possession

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.

### **Section 867**

Right of pursuit of the possessor

If a thing leaves the control of the possessor and arrives on a plot of land in the possession of another, the possessor of the plot of land must permit the possessor of the thing to find and remove the thing, unless possession has meanwhile been taken of the thing. The possessor of the plot of land may require compensation for the damage caused by the finding and removal. Where it is to be feared that damage will be caused, the possessor of the land may refuse permission until he is given security; it is inadmissible to refuse permission if delay entails danger.

### **Section 868**

Indirect possession

If a person possesses a thing as a usufructuary, a pledgee, a usufructuary lessee, a lessee, a depositary or in a similar relationship by virtue of which he is, in relation to another, entitled to possession or obliged to have possession for a period of time, the other person shall also be a possessor (indirect possession).

### **Section 869**

Claims of the indirect possessor

If there is unlawful interference with the possessor's possession, the indirect possessor also has the claims set out in sections 861 and 862 above. If the possessor is deprived of possession, the indirect possessor is entitled to require possession to be restored to the previous possessor; if the latter cannot or does not wish to retake possession, the indirect possessor may require that possession is

granted to the indirect possessor himself. Under the same condition, the indirect possessor, in the case set out in section 867, may require that he himself is permitted to find and remove the thing.

#### **Section 870**

Transfer of indirect possession

Indirect possession may be transferred to another by assigning to the other the claim to return of the thing.

#### **Section 871**

Multilevel indirect possession

If the indirect possessor is in a relationship with a third party of the nature set out in section 868 above, the third party is also an indirect possessor.

#### **Section 872**

Proprietary possession

A person who possesses a thing as belonging to him is a proprietary possessor.

Division 2

### **General provisions on rights in land**

#### **Section 873**

Acquisition by agreement and registration

(1) The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require agreement between the person entitled and the other person on the occurrence of the change of rights and the registration of the change of rights in the Land Register, except insofar as otherwise provided by law.

(2) Before the registration, the parties are bound by the agreement only if the declarations are notarially recorded, or made before the Land Registry, or submitted to the Land Registry, or if the person entitled has delivered to the other person an approval of registration that satisfies the provisions of the Land Register Act [Grundbuchordnung].

#### **Section 874**

Reference to approval of registration

On the registration of a right, which encumbers a plot of land, reference may be made, for a more detailed description of the contents of the right, to the approval of registration, to the extent that the law does not provide otherwise.

### **Section 875**

#### Cancellation of a right

(1) The cancellation of a right in a plot of land, except insofar as otherwise provided by law, requires a declaration by the person entitled that he surrenders the right, and the deletion of the right in the Land Register. The declaration must be made to the Land Registry or to the person for whose benefit it is made.

(2) Before the deletion, the person entitled is obliged by his declaration only if he has made it to the Land Registry or has delivered to the person for whose benefit it is made an approval of the deletion that complies with the provisions of the Land Register Act [Grundbuchordnung].

### **Section 876**

#### Cancellation of an encumbered right

If a right in a plot of land is encumbered with the right of a third party, the cancellation of the encumbered right requires the approval of the third party. Where the right to be cancelled is that of the current owner of another plot of land, then, if that plot of land is encumbered with the right of a third party, the approval of the third party is necessary, unless the right of the third party is not affected by the cancellation. The approval must be declared to the Land Registry or to the person for whose benefit it is made; it is irrevocable.

### **Section 877**

#### Alterations of rights

The provisions of sections 873, 874 and 876 also apply to alterations of the contents of a right in a plot of land.

### **Section 878**

#### Subsequent restrictions on disposition

A declaration by the person entitled made under sections 873, 875 or 877 does not become ineffective as a result of the person entitled being restricted in disposition after the declaration has a binding effect for him and the application for registration has been made to the Land Registry.

### **Section 879**

#### Order of priority of more than one right

(1) The order of priority of more than one right with which a plot of land is encumbered is determined, if the rights are entered in the same section of the Land Register, by the sequence of the entries. If the rights are entered in different sections, the right entered stating an earlier date has priority; rights that are entered stating the same date have the same priority.

(2) The entry is conclusive as to the order of priority even if the agreement required under section 873 above for the acquisition of the right was reached only after the entry.

(3) An arrangement of the order of priority that deviates from this must be registered in the Land Register.

## **Section 880**

### Change of priority

- (1) The order of priority may be altered subsequently.
- (2) For the change of priority, the agreement of the person taking lower priority and of the person taking higher priority and the registration of the change in the Land Register are necessary; the provisions in section 873 (2) and section 878 above apply. If a mortgage, a land charge, or an annuity land charge is to take lower priority, the approval of the owner is also necessary. Approval must be declared to the Land Registry or one of the persons involved; it is irrevocable.
- (3) If the right taking lower priority is encumbered with the right of a third party, the provisions in section 876 apply with the necessary modifications.
- (4) The priority accorded to the right that takes higher priority is not lost as a result of the right that takes lower priority being cancelled by legal transaction.
- (5) Rights whose priority is between that of the right taking lower priority and the right taking higher priority are not affected by the change of priority.

## **Section 881**

### Reservation of priority

- (1) Upon the encumbrance of the plot of land with a right, the owner may reserve the power to have another right whose scope is defined registered with priority before that right.
- (2) The reservation must be registered in the Land Registry; the registration must be made under the right that is to take lower priority.
- (3) If the plot of land is disposed of, the reserved power passes to the acquirer.
- (4) If the plot of land, before the entry of the right which is given priority, is encumbered with a right without such a reservation, the priority has no effect to the extent that the right registered subject to the reservation would, as a result of the encumbrance effected in the interim period, suffer an encroachment exceeding the reservation.

## **Section 882**

### Maximum amount of compensation for lost value

Where a plot of land is encumbered with a right for which, under the provisions applying to compulsory auction, if the right is extinguished by the acceptance of the bid, the person entitled is to be compensated from the proceeds of sale, the maximum amount of compensation may be determined. The determination must be registered in the Land Register.



### **Section 883**

Requirements and effect of priority notice

(1) To secure a claim to the grant or cancellation of a right in a plot of land or in a right encumbering the plot of land or to the alteration of the contents or the priority of such a right, a priority notice may be entered in the Land Register. The registration of a priority notice is also admissible to secure a future or a conditional claim.

(2) A disposition that is made, after the registration of the priority notice, of the plot of land or of the right, is ineffective to the extent that it would defeat or adversely affect the claim. This also applies if the disposition is made by way of compulsory execution or enforcement of an attachment order or by the administrator in insolvency proceedings.

(3) The priority of the right to the grant of which the claim relates is determined according to the registration of the priority notice.

### **Section 884**

Effect in relation to heirs

To the extent that the claim is secured by the priority notice, the heir of the person under an obligation may not rely on the restriction of his liability.

### **Section 885**

Requirement for the registration of the priority notice

(1) The registration of a priority notice is made on the basis of an interim injunction or on the basis of the approval of the person whose plot of land or whose right is affected by the priority notice. For the issuing of the interim injunction it is not necessary for an endangerment of the claim to be secured to be credibly established.

(2) When the registration is made, for a more detailed description of the claim to be secured, reference may be made to the interim injunction or to the approval of registration.

### **Section 886**

Claim for removal

If the person whose plot of land or whose right is affected by the priority notice has a defence that permanently excludes the assertion of the claim secured by the priority notice, the person may require the priority notice claimant to have the priority notice removed.

### **Section 887**

Public notice of the priority notice claimant

Where the person whose claim is secured by the priority notice is unknown, his right may be excluded by way of public notice procedure if the requirements for the exclusion of a mortgage creditor laid down in section 1170 are satisfied. When the exclusory order comes into legal effect, the effect of the priority notice is extinguished.

### **Section 888**

Claim to approval of the person entitled to the priority notice

(1) To the extent that the acquisition of a registered right or of a right to such a right is ineffective against the person for whose benefit the priority notice exists, this person may require from the acquirer the approval of the registration or the deletion that is necessary to realise the claim secured by the priority notice.

(2) The same applies if the claim is secured by a prohibition on disposal.

### **Section 889**

Exclusion of merger for real rights

A right in a plot of land belonging to another does not expire by reason of the owner of the plot of land acquiring the right in the plot of land or the person entitled acquiring the ownership of the plot of land.

### **Section 890**

Union of plots of land; addition

(1) More than one plot of land may be united as one plot of land by the owner having them registered in the Land Register as one plot of land.

(2) A plot of land may be made part of another plot of land by the owner having it added to the latter in the Land Register.

### **Section 891**

Statutory presumption

(1) If a right has been entered in the Land Register for a person, it is presumed that the person is entitled to this right.

(2) If a right entered in the Land Register is deleted, it is presumed that the right does not exist.

### **Section 892**

Presumption of the accuracy of the contents of the Land Register

(1) In favour of the person who acquires a right in a plot of land or a right in such a right by legal transaction, the contents of the Land Register are presumed to be correct, unless an objection to the accuracy is registered or the inaccuracy is known to the acquirer. Where the person entitled is restricted in favour of a particular person in his disposition of a right entered in the Land Register, the restriction is effective in relation to the acquirer only if it is apparent from the Land Register or known to the acquirer.

(2) Where registration is necessary for the acquisition of the right, the knowledge of the acquirer at the date when the application for registration is made or, if the agreement required under section 873 is reached only later, the date of agreement is conclusive.

### **Section 893**

Legal transaction with the person registered

The provision in section 892 applies with the necessary modifications if performance on the basis of this right is made to the person for whom a right has been registered in the Land Register or if between this person and another person, on the basis of this right, a legal transaction that does not fall under the provision of section 892 is entered into and this legal transaction contains a disposition of the right.

### **Section 894**

Correction of the Land Register

If the contents of the Land Register are not consistent with the actual legal position with regard to a right in the plot of land, a right in such a right or a restriction of disposition of the kind set out in section 892 (1), the person whose right is not registered or not correctly registered or is disadvantaged by the registration of an encumbrance or restriction that does not exist may require approval of the correction of the Land Register from the person whose right is affected by the correction.

### **Section 895**

Prior registration of the person obliged

If the correction of the Land Register can be made only after the right of the person obliged under section 894 has been registered, that person must on request have his right registered.

### **Section 896**

Submission of certificate

If in order to correct the Land Register it is necessary to submit a mortgage certificate, a land charge certificate, or an annuity land charge certificate, the person in whose favour the correction is to be made may require the holder of the certificate to have the certificate submitted to the Land Registry.

### **Section 897**

Costs of correction

The costs of the correction of the Land Register and of the declarations necessary for this purpose must be borne by the person who requires the correction, except where a legal relationship existing between this person and the person obliged leads to a different conclusion.

### **Section 898**

Claims to correction not subject to the statute of limitations

The claims set out in sections 894 to 896 are not subject to the statute of limitations.

### **Section 899**

#### Registration of an objection

(1) In the cases in section 894, an objection challenging the accuracy of the Land Register may be registered.

(2) The registration is made on the basis of an interim injunction or on the basis of consent from the person whose right is affected by the correction of the Land Register. For the issuing of the interim injunction it is not necessary for an endangerment of the right of the person objecting to be credibly established.

### **Section 900**

#### Acquisition by prescription following registration

(1) A person who is registered as the owner of a plot of land in the Land Register without having acquired ownership acquires ownership if the registration has existed for thirty years and he has had the plot of land in proprietary possession in this period. The thirty-year period is calculated in the same way as the period for acquiring a movable thing by prescription. The running of the period is suspended as long as an objection to the accuracy of the registration is entered in the Land Register.

(2) These provisions apply with the necessary modifications if there is a registration in the Land Register for a person of another right to which that person is not entitled and this right entitles that person to possess the plot of land or the exercise of this right is protected under the provisions governing possession. Registration is conclusive for the priority of the right.

### **Section 901**

#### Extinction of unregistered rights

Where a right in a plot of land belonging to another is wrongly deleted in the Land Register, it is extinguished if the claim of the person entitled in relation to the owner becomes statute-barred. The same applies if a right to a plot of land belonging to another that comes into existence by operation of law has not been registered in the Land Register.

### **Section 902**

#### Registered rights not subject to the statute of limitations

(1) The claims arising from registered rights are not subject to the statute of limitations. This does not apply to claims that relate to arrears in recurrent payments or to damages.

(2) A right in connection with which an objection challenging the accuracy of the Land Register has been registered is equivalent to a registered right

Division 3

## **Ownership**

Title 1

### **Subject matter of ownership**

#### **Section 903**

Powers of the owner

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. The owner of an animal must, when exercising his powers, take into account the special provisions for the protection of animals.

#### **Section 904**

Necessity

The owner of a thing is not entitled to prohibit the influence of another person on the thing if the influence is necessary to ward off a present danger and the imminent damage is disproportionately great in relation to the damage suffered by the owner as a result of the influence. The owner may require compensation for the damage incurred by him.

#### **Section 905**

Restriction of ownership

The right of the owner of a plot of land extends to the space above the surface and to the subsoil under the surface. However, the owner may not prohibit influences that are exercised at such a height or depth that he has no interest in excluding them.

#### **Section 906**

Introduction of imponderable substances

(1) The owner of a plot of land may not prohibit the introduction of gases, steam, smells, smoke, soot, warmth, noise, vibrations and similar influences emanating from another plot of land to the extent that the influence does not interfere with the use of his plot of land, or interferes with it only to an insignificant extent. An insignificant interference is normally present if the limits or targets laid down in statutes or by statutory orders are not exceeded by the influences established and assessed under these provisions. The same applies to values in general administrative provisions that have been issued under section 48 of the Federal Environmental Impact Protection Act [Bundes-Immissionsschutzgesetz] and represent the state of the art.

(2) The same applies to the extent that a material interference is caused by a use of the other plot of land that is customary in the location and cannot be prevented by measures that are financially reasonable for users of this kind. Where the owner is obliged to tolerate an influence under these provisions, he may require from the user of the other plot of land reasonable compensation in money if the influence impairs a use of the owner's plot of land that is customary in the location or its income beyond the degree that the owner can be expected to tolerate.

(3) Introduction through a special pipe or line is impermissible.

#### **Section 907**

Facilities threatening danger

(1) The owner of a plot of land may require that on the neighbouring plot of land no facilities may be produced or kept of which it can be predicted with certainty that their existence or use have an impermissible influence on the owner's plot of land. Where an installation satisfies the provisions of Land law that prescribe a specific distance from the boundary or other protective measures, then the removal of the installation may be required only if the impermissible influence actually occurs.

(2) Trees and bushes are not facilities within the meaning of these provisions.

#### **Section 908**

Imminent collapse of building

If a plot of land is subject to the risk that it is damaged as the result of the collapse of a building or of another structure that is connected to a neighbouring plot of land, or of the breaking away of parts of the building or of the structure, the owner may require of the person who would be responsible for the damage occurring under section 836 (1) or sections 837 and 838 that this person takes the precaution necessary to ward off the danger.

#### **Section 909**

Excavation

A plot of land may not be excavated in such a way that the ground of the neighbouring plot of land loses its necessary support, unless care has been taken to provide a sufficient reinforcement of another kind.

#### **Section 910**

Overhang

(1) The owner of a plot of land may cut off and keep roots of a tree or of a bush that have intruded from a neighbouring plot of land. The same applies to projecting branches if the owner has laid down a reasonable period for the possessor of the neighbouring plot of land to remove them and the removal does not take place within the period.

(2) The owner does not have this right if the roots or the branches do not adversely affect the use of the plot of land.

#### **Section 911**

Falling fruit

Fruit that falls from a tree or a bush onto a neighbouring plot of land is deemed to be the fruit of this plot of land. This provision does not apply if the neighbouring plot of land is for public use.

### **Section 912**

Encroachment; duty to tolerate

(1) If the owner of a plot of land, when erecting a building, built over the boundary, but this was neither intentional nor the result of gross negligence, the neighbour must tolerate the encroachment, unless the neighbour filed an objection before or immediately after the encroachment across the boundary.

(2) The neighbour must be compensated by periodical payments. The amount of the periodical payments depends on the period of the encroachment across the boundary.

### **Section 913**

Payment of periodical payments for encroachment

(1) The periodical payments for the encroachment must be paid by the owner for the time being of the other plot of land to the owner for the time being of the neighbouring plot of land.

(2) The periodical payments must be paid annually in advance.

### **Section 914**

Priority, registration and extinction of periodical payments

(1) The right to the periodical payments has priority over all rights in the encumbered plot of land, even the older rights. It is extinguished when the encroachment is removed.

(2) The right is not registered in the Land Register. To waive the right and to determine the amount of the periodical payments by contract, registration is necessary.

(3) Apart from this, the provisions that apply to a charge on land existing for the benefit of the owner for the time being of a plot of land shall apply.

### **Section 915**

Purchase

(1) The person entitled to the periodical payments may at any time require that the person liable for the periodical payments, in return for the transfer of ownership of the part of the plot of land built over, reimburse him the value that this part had at the time of the encroachment across the boundary. If he makes use of this power, the rights and duties of both parties are governed by the provisions on sale.

(2) For the period until the transfer of ownership, the periodical payments shall continue to be paid.

### **Section 916**

Adverse effect on heritable building right or servitude

If the encroachment has an adverse effect on a heritable building right or a servitude over the neighbouring plot of land, the provisions in sections 912 to 914 apply with the necessary modifications in favour of the person entitled.

### **Section 917**

#### Right of way of necessity

(1) If a plot of land lacks the connection to a public road necessary for the due use, the owner may require of the neighbours that until the defect is removed they tolerate the use of their plots of land to create the necessary connection. The direction of the right of way of necessity and the scope of the right of use are, if necessary, determined by judicial decision.

(2) The neighbours over whose plots of land the right of way of necessity leads must be compensated by periodical payments. The provisions of section 912 (2) sentence 2 and sections 913, 914 and 916 apply with the necessary modifications.

### **Section 918**

#### Exclusion of the right of way of necessity

(1) The obligation to tolerate the right of way of necessity does not arise if the previous connection of the plot of land with the public road is ended by an arbitrary act of the owner.

(2) If, as a result of the disposal of part of the plot of land, the part sold or the part retained is cut off from the connection with the public road, the owner of the part over which the connection was previously made must tolerate the right of way of necessity. The disposal of one part is equivalent to the disposal of one of more than one plots of land belonging to the same owner.

### **Section 919**

#### Boundary marking

(1) The owner of a plot of land may require from the owner of a neighbouring plot of land that the latter cooperates in erecting fixed boundary markers and, if a boundary marker has moved or become unrecognisable, in the restoration.

(2) The type of marking and the procedure are determined in accordance with Land statutes; if these contain no provisions, local practice decides.

(3) The costs of the boundary marking are to be borne by the parties in equal parts, unless a legal relationship existing between them leads to a different conclusion.

### **Section 920**

#### Confusion of boundaries

(1) If, in the case of a confusion of boundaries, the true boundary cannot be established, the delimitation is determined by possession. If the possession cannot be established, a piece of equal size of the area in dispute must be allocated to each of the plots of land.

(2) If a determination of the boundary under these provisions leads to a result that does not correspond to the circumstances determined, in particular with the fixed size of the plots of land, the boundary shall be drawn in a way that is equitable with regard to these circumstances.



### **Section 921**

#### Joint use of boundary installations

If two plots of land are separated by a space, border, corner, a ditch, a wall, hedge, fence or another structure that benefits both plots of land, it is presumed that the owners of the plots of land are jointly entitled to use the structure, unless outward features indicate that the structure belongs to one of the neighbours alone.

### **Section 922**

#### Manner of use and maintenance

If the neighbours are jointly entitled to use one of the installations set out in section 921, each of them may use them for the purpose indicated by their nature to the extent that the joint use of the other neighbour is not adversely affected. The costs of maintenance are to be borne by the neighbours in equal shares. As long as one of the neighbours has an interest in the continuance of the installation, it may not be removed or altered without his approval. Apart from this, the legal relationship between the neighbours is governed by the provisions on co-ownership.

### **Section 923**

#### Boundary tree

(1) Where there is a tree standing on the boundary, the fruits and, if the tree is felled, the tree itself belong to the neighbours in equal shares.

(2) Each of the neighbours may require the tree to be removed. The costs of the removal are borne by the neighbours in equal shares. The neighbour who requires the removal, however, must bear the costs alone if the other neighbour waives his right to the tree; in this case he acquires sole ownership upon the separation. The claim to removal is excluded if the tree serves as a boundary marker and in view of the circumstances cannot be replaced by another appropriate boundary marker.

(3) These provisions also apply to a bush standing on the boundary.

### **Section 924**

#### Neighbour-law claims not subject to the statute of limitations

The claims arising from sections 907 to 909, 915, 917 (1), 918 (2), 919, 920 and 923 (2) are not subject to the statute of limitations.

## Title 2

### **Acquisition and loss of ownership of plots of land**

#### **Section 925**

##### Declaration of conveyance

(1) The agreement between the alienor and the acquirer (declaration of conveyance) necessary for the transfer of ownership of a plot of land under section 873 must be declared in the presence of both parties before a competent agency. Any notary is competent to receive the declaration of conveyance, notwithstanding the competence of other agencies. A declaration of conveyance may also be made in an in-court settlement or in an insolvency plan that has been finally and non-appealably confirmed.

(2) A declaration of conveyance that is made subject to a condition or a stipulation as to time is ineffective.

#### **Section 925a**

##### Document of land transaction

The declaration of a conveyance should be received only if the document of the contract required under section 311b (1) sentence 1 is submitted or is drawn up at the same time.

#### **Section 926**

##### Accessories of the plot of land

(1) If the alienor and the acquirer agree that the disposal is to include the accessories of the plot of land, the acquirer, together with the ownership of the plot of land, also acquires ownership of the accessories in existence at the time of the acquisition, to the extent that they belong to the alienor. In case of doubt it is to be assumed that the disposal is intended to extend to the accessories.

(2) If the acquirer, on the basis of the disposal, acquires possession of accessories that do not belong to the alienor or that are encumbered with the rights of third parties, the provisions of sections 932 to 936 apply; for the good faith of the acquirer, the time when he acquired possession is conclusive.

## **Section 927**

Public notice procedure

(1) The right of the owner of a plot of land may, if the plot of land has been in the proprietary possession of another for thirty years, be excluded by public notice procedure. The period of possession is calculated in the same way as the period for acquiring a movable thing by prescription. Where the owner is registered in the Land Register, the public notice procedure is admissible only if he is dead or missing and a registration in the Land Register that required the approval of the owner has not been made for thirty years.

(2) The person who obtained the exclusory order obtains ownership by having himself registered in the Land Register as owner.

(3) If, before the exclusory order is pronounced, a third party has been registered as owner or, on the basis of the ownership of a third party, an objection to the accuracy of the Land Register has been registered, the exclusory order has no effect with regard to the third party.

## **Section 928**

Relinquishment of ownership, appropriation by fiscal authority

(1) The ownership of a plot of land may be relinquished by the owner declaring the waiver to the Land Registry and the waiver being registered in the Land Register.

(2) The right to appropriate the relinquished plot of land belongs to the fiscal authority of the Land in which the plot of land is situated. The fiscal authority acquires ownership by having itself registered in the Land Register as owner.

Title 3

## **Acquisition and loss of ownership of movable things**

Subtitle 1

### **Transfer**

#### **Section 929**

Agreement and delivery

For the transfer of the ownership of a movable thing, it is necessary that the owner delivers the thing to the acquirer and both agree that ownership is to pass. If the acquirer is in possession of the thing, agreement on the transfer of the ownership suffices.

#### **Section 929a**

Agreement with regard to unregistered ship

(1) In order to transfer the ownership of a ship that is not registered in the ship register, or of a share in such a ship, delivery is not necessary if the owner and the acquirer are in agreement that the ownership is to pass immediately.

(2) Either party may require that, at his cost, a notarially certified document of the disposal is issued to him.

### **Section 930**

#### Constructive delivery

If the owner is in possession of the thing, the delivery may be replaced by a legal relationship being agreed between the owner and the acquirer by which the acquirer obtains indirect possession.

### **Section 931**

#### Assignment of claim for possession

If a third party is in possession of the thing, delivery may be replaced by the owner assigning to the acquirer the claim to delivery of the thing.

### **Section 932**

#### Good faith acquisition from a person not entitled

(1) As a result of a disposal carried out under section 929, the acquirer becomes the owner even if the thing does not belong to the alienor, unless the alienor is not in good faith at the time when under these provisions he would acquire ownership. In the case of section 929 sentence 2, however, this applies only if the acquirer had obtained possession from the alienor.

(2) The acquirer is not in good faith if he is aware, or as a result of gross negligence he is not aware, that the thing does not belong to the alienor.

### **Section 932a**

#### Good faith acquisition of unregistered ships

Where a ship disposed of under section 929a does not belong to the person disposing, the acquirer becomes the owner if the ship is delivered to him by the alienor, unless he is not in good faith at this time; where a share in a ship is the subject of the disposal, the granting of joint possession of the ship takes the place of delivery.

### **Section 933**

#### Good faith acquisition on constructive delivery

Where a thing alienated under section 930 does not belong to the alienor, the acquirer becomes the owner if the thing is delivered to him by the alienor, unless he is not in good faith at this time.

### **Section 934**

#### Good faith acquisition on assignment of claim for possession

Where a thing alienated under section 931 does not belong to the alienor, the acquirer becomes owner, if the alienor is the indirect possessor of the thing, on the assignment of the claim, or otherwise when the acquirer obtains the possession of the thing from the third party, unless at the time of the assignment or the acquisition of possession he is not in good faith.

### **Section 935**

No good faith acquisition of lost property

(1) The acquisition of ownership under sections 932 to 934 does not occur if the thing was stolen from the owner, is missing or has been lost in any other way. The same applies, where the owner was only the indirect possessor, if the possessor had lost the thing.

(2) These provisions do not apply to money or bearer instruments or to things that are alienated by way of public auction.

### **Section 936**

Extinction of third party rights

(1) If an alienated thing is encumbered with the right of a third party, the right is extinguished on the acquisition of ownership. In the case of section 929 sentence 2, however, this applies only if the acquirer had obtained possession from the alienor. If the disposal is made under section 929a or 930, or if the thing alienated under section 931 was not in the indirect possession of the alienor, the right of the third party is extinguished only when the acquirer obtains possession of the thing as a result of the disposal.

(2) The right of the third party is not extinguished if the acquirer, at the time conclusive under subsection 1 above, is not in good faith with regard to the right.

(3) If, in the case of section 931, the right belongs to the third party possessor, it is not extinguished even with regard to a good faith acquirer.

Subtitle 2

### **Acquisition by prescription**

#### **Section 937**

Requirements, exclusion in the case of knowledge

(1) A person who has a movable thing in his proprietary possession for ten years acquires the ownership (acquisition by prescription).

(2) Acquisition by prescription is excluded if the acquirer on acquiring the proprietary possession is not in good faith or if he later discovers that he is not entitled to the ownership.

#### **Section 938**

Presumption of proprietary possession

If a person had a thing in his proprietary possession at the beginning and at the end of a period of time, it is presumed that his proprietary possession also existed in the intermediate period.

### **Section 939**

#### Suspension of prescription

(1) Prescription is suspended if the claim for possession against the proprietary possessor, or in the case of indirect proprietary possession against the possessor who derives his right to possession from the proprietary possessor, is asserted in a manner suitable under sections 203 and 204 to suspend limitation. However, the suspension occurs only for the benefit of the person who causes it.

(2) Prescription is also suspended as long as the limitation of the claim to possession under sections 205 to 207 or its expiry under sections 210 and 211 is suspended.

### **Section 940**

#### Interruption by loss of possession

(1) Prescription is interrupted by the loss of proprietary possession.

(2) The interruption is deemed not to have occurred if the proprietary possessor loses the proprietary possession involuntarily and recovers it within the period of one year or by legal action instituted within this period.

### **Section 941**

#### Interruption by act of execution

Prescription is interrupted by undertaking or applying for a judicial or official act of execution. Section 212 (2) and (3) applies with the necessary modifications.

### **Section 942**

#### Effect of interruption

If the prescription period is interrupted, the time that passed before the interruption is disregarded; a new prescription period may begin only after the termination of the interruption.

### **Section 943**

#### Acquisition by prescription and succession in title

If as a result of succession in title the thing enters the proprietary possession of a third party, the prescription period that has passed in the possession of the predecessor in title benefits the third party.

### **Section 944**

#### Possessor of an inheritance

The prescription period that has passed for the benefit of a possessor of an inheritance counts in favour of the heir.

### **Section 945**

#### Extinction of third party rights

On the acquisition of ownership by prescription, the third-party rights in the thing that arose before the acquisition of proprietary possession are extinguished, unless the proprietary possessor is not in good faith with regard to these rights on the acquisition of proprietary possession or he learns of their existence only later. The period of prescription must be completed with regard to the third-party right too; the provisions of sections 939 to 944 apply with the necessary modifications.

#### Subtitle 3

### **Combination, intermixture, processing**

#### **Section 946**

##### Combination with a plot of land

If a movable thing is combined with a plot of land in such a way that it becomes an essential part of the plot of land, the ownership of the plot of land extends to this movable thing.

#### **Section 947**

##### Combination with movable things

(1) If movable things are combined with each other in such a way that they become essential parts of a uniform thing, the previous owners become co-owners of this thing; the shares are determined by the relationship of the value that the things have at the time of combination.

(2) If one of the things is to be seen as the main thing, its owner acquires sole ownership.

#### **Section 948**

##### Intermixture

(1) If movable things are inseparably intermixed or mingled with each other, the provisions of section 947 apply with the necessary modifications.

(2) The situation is equivalent to inseparability if the separation of the intermixed or mingled things would entail disproportionately high costs.

#### **Section 949**

##### Extinction of third party rights

If, under sections 946 to 948, the ownership of a thing is extinguished, the other rights in the thing are also extinguished. If the owner of the encumbered thing acquires co-ownership, the rights in the share that takes the place of the thing continue in existence. If the owner of the encumbered thing becomes the sole owner, the rights extend to the joined thing.

## **Section 950**

### Processing

(1) A person who, by processing or transformation of one or more substances, creates a new movable thing acquires the ownership of the new thing, except where the value of the processing or the transformation is substantially less than the value of the substance. Processing also includes writing, drawing, painting, printing, engraving or a similar processing of the surface.

(2) On the acquisition of ownership of the new thing, the existing rights in the substance are extinguished.

## **Section 951**

### Compensation for loss of rights

(1) A person who, as a result of the provisions of sections 946 to 950, suffers a loss of rights may require from the person to whose benefit the change of rights occurs payment in money under the provisions on the return of unjust enrichment. The restoration of the former state cannot be required.

(2) The provisions on the obligation to pay damages for torts and the provisions on the reimbursement of outlays made and on the right of removal of an installation are unaffected. In the cases of sections 946 and 947, the removal under the provisions applying to the right of removal of the possessor in relation to the owner is admissible even if the combination was not made by the possessor of the main thing.

## **Section 952**

### Ownership of documents of debt

(1) The creditor shall be entitled to the ownership of a certificate of indebtedness issued with regard to a claim. The right of a third party to the claim extends to the certificate of indebtedness.

(2) The same applies to documents on other rights under which performance may be requested, in particular for mortgage, land charge and annuity land charge certificates.

### Subtitle 4

## **Acquisition of products and other components of a thing**

### **Section 953**

#### Ownership of separated products and components

Products and other components of a thing, even after separation, belong to the owner of the thing, unless sections 954 to 957 lead to a different conclusion.

### **Section 954**

#### Acquisition by person with real right

A person who, by reason of a right in a thing belonging to another, is entitled to appropriate products or other components of the thing, acquires the ownership of them, notwithstanding the provisions of sections 955 to 957, upon the separation.



### **Section 955**

Acquisition by proprietary possessor in good faith

(1) A person who has a thing in his proprietary possession acquires the ownership of the products and other components that are among the fruits of the thing, notwithstanding the provisions of sections 956 and 957, on the separation. Acquisition is excluded if the proprietary possessor is not entitled to proprietary possession or another person, by reason of a right in the thing, is entitled to receive the fruits and the proprietary possessor is not in good faith when he acquires proprietary possession or learns of the legal defect before the separation.

(2) Equivalent to the proprietary possessor is the person who possesses the thing for the purpose of exercising a right of use of it.

(3) Proprietary possession and possession equivalent to proprietary possession are governed by the provision of section 940 (2) with the necessary modifications.

### **Section 956**

Acquisition by person entitled in personam

(1) Where the owner permits another person to appropriate to himself products or other components of the thing, the other person acquires the ownership of them, if the possession of the thing is entrusted to him, on separation, or otherwise on taking possession. If the owner is obliged to permit this, he may not revoke it as long as the other person is still in the possession of the thing that he was permitted.

(2) The same applies if the permission comes not from the owner but from another person to whom products or other components of a thing belong after separation.

### **Section 957**

Permission by the person not entitled

The provision of section 956 applies even where the person who permits another to appropriate is not authorised to do this, unless the other person, if he is entrusted with the possession of the thing, is not in good faith when the thing is entrusted to him, or otherwise when he takes possession of the products or the other components, or if he learns of the legal defect before separation.

Subtitle 5

### **Appropriation**

#### **Section 958**

Acquisition of ownership of ownerless movable things

(1) A person who takes proprietary possession of an ownerless movable thing acquires ownership of the thing.

(2) The ownership is not acquired if the appropriation is prohibited by law or if the taking possession injures the right of appropriation of another.

### **Section 959**

#### Abandonment of ownership

A movable thing becomes ownerless if the owner, in the intention of waiving ownership, gives up the possession of the thing.

### **Section 960**

#### Wild animals

(1) Wild animals are ownerless as long as they are free. Wild animals in zoos and fish in ponds or other self-contained private waters are not ownerless.

(2) Where a captured wild animal regains freedom, it becomes ownerless if the owner fails to pursue the animal without undue delay or if he gives up the pursuit.

(3) A tamed animal becomes ownerless if it gives up the habit of returning to the place determined for it.

### **Section 961**

#### Loss of ownership of bee swarms

Where a swarm of bees takes flight, it becomes ownerless if the owner fails to pursue it without undue delay or if he gives up the pursuit.

### **Section 962**

#### Right of pursuit of the owner

The owner of the swarm of bees may, in pursuit, enter on plots of land belonging to others. If the swarm has entered an unoccupied beehive belonging to another, the owner of the swarm, for the purpose of capturing it, may open the hive and remove or break out the combs. He must make compensation for the damage caused.

### **Section 963**

#### Merging of bee swarms

If bee swarms of more than one owner that have moved out merge, the owners who have pursued their swarms become co-owners of the total swarm captured; the shares are determined according to the number of swarms pursued.

### **Section 964**

#### Intermixture of bee swarms

If a bee swarm has moved into an occupied beehive belonging to another, the ownership and the other rights in the bees that were occupying the beehive extend to the swarm that has moved in. The ownership and the other rights in the swarm that has moved in are extinguished.

## Subtitle 6

### **Finding**

#### **Section 965**

##### Duty of the finder to notify

(1) A person who finds a lost thing and takes possession of it must without undue delay notify the loser or the owner or another person entitled to receive.

(2) If the finder does not know the person entitled to receive or does not know that person's whereabouts, the finder must without undue delay notify the competent authority of the finding and the circumstances that may be material to determine the person entitled to receive. If the thing is not worth more than ten euros, no notification is necessary.

#### **Section 966**

##### Duty of safekeeping

(1) The finder has a duty to keep the thing in safe custody.

(2) If spoilage of the thing is to be feared, or if safekeeping is associated with disproportionately great costs, the finder must have the thing publicly auctioned. Before the auction, the competent authority must be notified. The proceeds of sale take the place of the thing.

#### **Section 967**

##### Duty to deliver

The finder is entitled and on the order of the competent authority obliged to deliver the thing or the auction proceeds to the competent authority.

#### **Section 968**

##### Extent of liability

The finder is responsible only for intent and gross negligence.

#### **Section 969**

##### Return to the loser

By the return of the thing to the loser, the finder is also released from liability in relation to the other persons entitled to receive it.

#### **Section 970**

##### Reimbursement of expenses

If the finder, for the purpose of safe custody or preservation of the thing or for the purpose of tracing a person entitled to receive it, incurs expenses which he may in the circumstances regard as necessary, he may require reimbursement from the person entitled to receive.

### **Section 971**

#### Finder's reward

(1) The finder may require a finder's reward from the person entitled to receive. The finder's reward is five per cent of the value of the thing up to five hundred euros, three per cent of the value above this, and three per cent in the case of animals. If the thing is of value only for the person entitled to receive, the finder's reward is to be determined as appears just.

(2) The claim is excluded if the finder violates the duty of notification or conceals the finding on being questioned.

### **Section 972**

#### Right of retention of the finder

The claims defined in sections 970 and 971 are governed by the provisions applying to the claims of the possessor against the owner for outlays in sections 1000 to 1002, with the necessary modifications.

### **Section 973**

#### Acquisition of ownership by the finder

(1) On the expiry of six months after the notification of the finding to the competent authority, the finder acquires the ownership of the thing, unless before this a person entitled to receive has become known to the finder or has notified the competent authority of his right. On the acquisition of ownership the other rights in the thing are extinguished.

(2) If the thing is worth no more than ten euros, the six-month period begins on the finding. The finder does not acquire ownership if he conceals the finding on being questioned. The notification of a right to the competent authority does not conflict with the acquisition of ownership.

### **Section 974**

#### Acquisition of ownership after concealment

If, before the expiry of the six-month period, persons entitled to receive have become known to the finder or if, in the case of a thing that is worth more than ten euros, they have notified their rights to the competent authority in good time, the finder may require the persons entitled to receive under the provision of section 1003 to make a statement on the claims to which the finder is entitled under sections 970 to 972. On the expiry of the period laid down for the statement, the finder acquires the ownership and the other rights in the thing expire, unless the persons entitled to receive state in good time that they are prepared to satisfy the claims.

### **Section 975**

#### Rights of the finder after delivery

The delivery of the thing or of the proceeds of the auction to the competent authority does not affect the rights of the finder. If the competent authority has the thing auctioned, the proceeds take the place of the thing. The competent authority may hand over the thing or the proceeds to a person entitled to receive only with the approval of the finder.

### **Section 976**

#### Acquisition of ownership by the municipality

(1) If the finder waives in relation to the competent authority the right to acquire the ownership of the thing, the finder's right passes to the municipality of the location of the finding.

(2) If, after delivering the thing or the proceeds of auction to the competent authority under the provisions of sections 973 and 974, the finder has acquired ownership, the ownership passes to the municipality of the location of the finding unless the finder, before the expiry of a period granted to him by the competent authority, requests the return.

### **Section 977**

#### Claim in enrichment

A person who, under the provisions of sections 973, 974 and 976, suffers a loss of rights, may require, in the cases of sections 973 and 974 from the finder, in the cases of section 976 from the municipality of the location of the finding, the return of the property acquired as a result of the change of rights, under the provisions on the return of unjust enrichment. The claim is extinguished on the expiry of three years after the ownership passes to the finder or the municipality, unless it is judicially asserted prior to this.

### **Section 978**

Finding in public authority or transport agency

(1) A person who finds a thing on the business premises or in the means of transport of a public authority or a transport agency serving public transport and takes possession of the thing must without undue delay deliver the thing to the authority or the transport agency or to one of their employees. The provisions of sections 965 to 967 and 969 to 977 do not apply.

(2) If the thing is worth no less than fifty euros, the finder may require a finder's reward from the person entitled to receive it. The finder's reward consists of half the amount that would result from applying section 971 (1) sentences 2 and 3. The claim is excluded if the finder is an employee of the authority or the transport agency or the finder violates the duty to deliver. The provision of section 1001, which applies to the claims of the possessor against the owner for outlays, applies with the necessary modifications to the claim to a finder's reward. If there is a claim to a finder's reward, the authority or the transport agency must notify the finder of the return of the thing to the person entitled to receive.

(3) If the proceeds of auction or the money found passes to the person entitled under section 981 (1), there is a claim to a finder's reward under (2) sentences 1 to 3 above against the person entitled. The claim is extinguished on the expiry of three years after it arises against the person entitled under sentence 1.

### **Section 979**

Public auction

(1) The authority or the transport agency may have the thing delivered to it publicly auctioned. The public authorities and the transport agency of the [Reich], the states [Bundesstaat] and the municipalities may have the auction carried out by one of their officials.

(2) The proceeds of sale take the place of the thing.

### **Section 980**

Public notice of the finding

(1) The auction is admissible only after the persons entitled to receive have been called on in a public notice of the finding which stipulates a time limit to notify their rights, and the time limit has passed; it is inadmissible if notification was made in good time.

(2) The notice is not necessary if the spoilage of the thing is to be feared, or if safekeeping is associated with disproportionate costs.

### **Section 981**

Receipt of the proceeds of auction

(1) If since the expiry of the time limit stipulated in the public notice three years have passed, the proceeds of the auction, unless a person entitled to receive has notified his right, in the case of [Reich] authorities and [Reich] transport utilities fall to the [Reich] fiscal authorities, in the case of Land authorities and Land transport agencies fall to the fiscal authorities of the state [Bundesstaat], in the case of municipalities and municipality transport agencies fall to the municipality, in the case of transport agencies that are operated by a private person, fall to the private person.

(2) If the auction takes place without the public notice, the three-year period only begins after the persons entitled to receive have been called on in a public notice of the finding to notify their rights.

The same applies if found money has been delivered.

(3) The costs are deducted from the amount to be returned.

### **Section 982**

Provisions for implementation

The public notice prescribed in sections 980 and 981 is made in the case of [Reich] authorities and [Reich] agencies under the provisions enacted by the Federal Council [Bundesrat], and in the other cases under the provisions issued by the central authority of the state [Bundesstaat].

### **Section 983**

Undeliverable things in the possession of authorities

Where a public authority is in possession of a thing that it is obliged to return, and the obligation is not contractual, then if the authority is unaware of the person entitled to receive or of the whereabouts of that person the provisions of sections 979 to 982 apply with the necessary modifications.

### **Section 984**

Treasure trove

If a thing that has lain hidden for so long that the owner can no longer be established (treasure) is discovered and as a result of the discovery it is taken into possession, one half of the ownership is acquired by the discoverer, and the other half by the owner of the thing in which the treasure was hidden.

## Title 4

### Claims arising from ownership

#### Section 985

##### Claim for restitution

The owner may require the possessor to return the thing.

#### Section 986

##### Objections of the possessor

(1) The possessor may refuse to return the thing if he or the indirect possessor from whom he derives his right of possession is entitled to possession as against the owner. If the indirect possessor is not authorised in relation to the owner to permit the possessor to have possession, the owner may require the possessor to deliver the thing to the indirect possessor or, if the indirect possessor cannot or does not wish to take possession again, to the owner himself.

(2) The possessor of a thing that has been alienated under section 931 by assignment of the claim for return may raise against the new owner the objections that he is entitled to use against the claim assigned.

#### Section 987

##### Emoluments after litigation is pending

(1) The possessor must return to the owner the emoluments that he receives after litigation is pending.

(2) If after litigation is pending the possessor fails to take emoluments that he could take under the rules of proper management, he is obliged to reimburse the owner to the extent that he is at fault.

#### Section 988

##### Emoluments of the possessor who makes no payment

If a possessor who possesses the thing as belonging to himself or for the purpose of exercising a right of use to which he is not in reality entitled has obtained possession without payment, he is obliged in relation to the owner to return the emoluments that he takes before litigation is pending, under the provisions on the return of unjust enrichment.

#### Section 989

##### Damages after litigation is pending

The possessor is, from the date when litigation is pending on, liable to the owner for the damage that occurs because as a result of the possessor's fault the thing deteriorates, is destroyed, or for another reason he cannot return it.



### **Section 990**

Liability of possessor with knowledge

(1) If the possessor, when he obtained possession, was not in good faith, he is liable to the owner starting from the date of the acquisition under sections 987 and 989. If the possessor later discovers that he is not entitled to possession, he is liable in the same way from the date when he obtained the knowledge on.

(2) This does not affect a more extensive liability of the possessor for default.

### **Section 991**

Liability of intermediary possessor in the case of indirect possession

(1) Where the possessor derives the right to possession from an indirect possessor, the provision of section 990 with regard to emoluments applies only if the requirements of section 990 are also satisfied by the indirect possessor or litigation is pending against the indirect possessor.

(2) If the possessor, on gaining possession, was in good faith, he is nevertheless responsible to the owner for the damage set out in section 989 starting from the date of the acquisition to the extent that he is liable to the indirect possessor.

### **Section 992**

Liability of the wrongful possessor

If the possessor obtained possession by unlawful interference with possession or by a criminal offence, the possessor is liable to the owner under the provisions on damages in tort.

### **Section 993**

Liability of the possessor in good faith

(1) If the requirements set out in sections 987 to 992 are not satisfied, the possessor must return the fruits taken, insofar as by the rules of proper management they are not to be seen as the income of the thing, under the provisions on the return of unjust enrichment; apart from this, the possessor is obliged neither to return emoluments nor to pay damages.

(2) For the time for which the emoluments remain due to the possessor he is subject to the provision of section 101.

### **Section 994**

Necessary outlays

(1) The possessor may require from the owner reimbursement of the necessary outlays made on the thing. However, for the period for which the emoluments remain due to him, the customary maintenance costs are not to be reimbursed him.

(2) If the possessor, after litigation is pending or after the beginning of the liability set out in section 990, makes necessary outlays, the duty of the owner to reimburse is governed by the provisions on agency without specific authorisation.

### **Section 995**

#### Charges

The necessary outlays in the meaning of section 994 also include the expenses incurred by the possessor in paying charges on the thing. For the period for which the emoluments remain due to the possessor, he is to be reimbursed only for the expenses of extraordinary charges that are to be seen as based on the original value of the thing.

### **Section 996**

#### Useful outlays

For outlays that are not necessary outlays, the possessor may require reimbursement only to the extent that they were incurred before litigation was pending and before the beginning of the liability defined in section 990 and the value of the thing is still increased by them at the time when the owner recovers possession of the thing.

### **Section 997**

#### Right of removal

(1) If the possessor has combined with the thing another thing as an essential part, the possessor may separate the thing and take possession of it. The provision of section 258 applies.

(2) The right to separate is excluded if the possessor may not require reimbursement of the outlay under section 994 (1) sentence 2 or the separation is not of benefit for him or he is reimbursed at least the value that the component would have for him after separation.

### **Section 998**

#### Farming costs for agricultural plot of land

If possession of an agricultural plot of land is to be surrendered, the owner must reimburse the costs that the possessor incurred in connection with the fruits that are not yet separated but under the rules of proper management are to be separated before the end of the business year to the extent that they comply with proper management and do not exceed the value of these fruits.

### **Section 999**

#### Reimbursement of outlays of predecessor in title

(1) The possessor may require reimbursement of the outlays of a previous possessor whose successor in title he is to the same extent as the previous possessor could require reimbursement if the previous possessor had to return the thing.

(2) The obligation of the owner to reimburse outlays also extends to the expenses that were incurred before he obtained ownership.

### **Section 1000**

#### Right of retention of the possessor

The possessor may refuse the return of the thing until he is reimbursed the outlays due to him. He is not entitled to the right of retention if he obtained the thing by an intentionally committed tort.

### **Section 1001**

#### Action for reimbursement of outlays

The possessor may assert the claim to reimbursement of outlays only if the owner regains possession of the thing or ratifies the outlays. Until the outlays are ratified, the owner may release himself from the claim by returning the thing whose possession he has regained. The ratification is deemed to have been made if the owner accepts the thing offered to him by the possessor, who reserves the claim.

### **Section 1002**

#### Extinction of the claim for outlays

(1) If the possessor returns the thing to the owner, the claim to reimbursement of outlays is extinguished on the expiry of a one-month period, in the case of a plot of land on the expiry of a six-month period, after the return, unless prior to this the claim is asserted in judicial proceedings or the owner ratifies the outlays.

(2) These periods are governed by the provisions applying to limitation of sections 206, 210 and 211, with the necessary modifications.

### **Section 1003**

#### Right to satisfaction of the possessor

(1) The possessor may, notifying the amount required as reimbursement, require the owner to state, within a reasonable period determined by the possessor, whether he ratifies the outlays. After the expiry of the period, the possessor is entitled to seek satisfaction from the thing under the provisions on the sale of a pledged item, and in the case of a plot of land under the provisions on execution of judgment on immovable property, if the ratification is not made in good time.

(2) Where the owner denies the claim before the expiry of the period, the possessor may satisfy himself from the thing only when, after the amount of the outlays has been finally and non-appealably established, he has called on the owner, laying down a reasonable period of time, to make a statement, and the period has passed; the right to satisfaction from the thing is excluded if the ratification is made in good time.

### **Section 1004**

#### Claim for removal and injunction

(1) If the ownership is interfered with by removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction.

(2) The claim is excluded if the owner is obliged to tolerate the interference.

### **Section 1005**

#### Right of pursuit

If a thing is on a plot of land that is in the possession of a person other than the owner of the thing, the owner of the plot of land has the claim defined in section 867 against the possessor of the plot of land.

### **Section 1006**

#### Presumption of ownership for possessor

(1) It is presumed in favour of the possessor of a movable thing that he is the owner of the thing.

However, this does not apply in relation to a former possessor from whom the thing was stolen or who lost it or whose possession of it ended in another way, unless the thing is money or bearer instruments.

(2) It is presumed in favour of a former possessor that during the period of his possession he was the owner.

(3) In the case of indirect possession, the presumption is in favour of the indirect possessor.

### **Section 1007**

#### Claims of the former possessor, exclusion in the case of knowledge

(1) A person who has had a movable thing in his possession may require the possessor to return the thing if the possessor was not in good faith when he acquired possession.

(2) If the thing was stolen from the former possessor or the former possessor lost it or his possession of it ended in another way, the former possessor may require return even from a possessor in good faith, unless the possessor in good faith is the owner of the thing or he had lost possession of the thing before the time when the former possessor had possession. This provision does not apply to money and bearer instruments.

(3) The claim is excluded if the former possessor was not in good faith on the acquisition of possession or if he has given up possession. Apart from this, the provisions of sections 986 to 1003 apply with the necessary modifications.

## Title 5

### **Co-ownership**

#### **Section 1008**

Co-ownership by fractional shares

If the ownership of a thing is shared between more than one owner by fractional shares, the provisions of sections 1009 to 1011 apply.

#### **Section 1009**

Encumbrance in favour of a co-owner

- (1) The co-owned thing may also be encumbered in favour of a co-owner.
- (2) The encumbrance of a co-owned plot of land in favour of the owner for the time being of another plot of land and the encumbrance of another plot of land in favour of the owners for the time being of the co-owned plot of land are not excluded by reason of the other plot of land belonging to a co-owner of the co-owned plot of land.

#### **Section 1010**

Successor in interest of a co-owner

- (1) Where the co-owners of a plot of land have arranged the management and use or excluded permanently or for a period of time the right to require the co-ownership to be dissolved, or have laid down a notice period, the provision agreed on has effect against the successor in interest of a co-owner only if it is registered in the Land Register as an encumbrance of the share.
- (2) The claims set out in sections 755 and 756 may be asserted against the successor in interest of a co-owner only if they are registered in the Land Register.

#### **Section 1011**

Claims arising from co-ownership

Each co-owner may assert the claims arising from the ownership against third parties with regard to the thing as a whole, but the claim to return only in accordance with section 432.

#### **Sections 1012 - 1017**

(repealed)

Division 4

## **Servitudes**

Title 1

### **Easements**

#### **Section 1018**

Statutory definition of easement

A plot of land may be encumbered in favour of the owner for the time being of another plot of land in such a way that the latter may use the plot of land in specific connections or that particular acts may not be undertaken on the plot of land or that the exercise of a right towards the other plot of land that arises from the ownership of the encumbered plot of land is excluded (easement).

#### **Section 1019**

Benefit of the dominant plot of land

An easement may consist only in an encumbrance that offers a benefit for the use of the plot of land of the person entitled. The definition of the easement cannot be extended beyond the degree resulting from this.

#### **Section 1020**

Considerate use

When using an easement, the person entitled must if possible observe the interest of the owner of the servient plot of land. If he maintains an installation on the servient plot of land in order to use the easement, he must keep the installation in a proper condition to the extent that the interest of the owner requires this.

#### **Section 1021**

Agreed duty of maintenance

(1) If, in order to use an easement, there is an installation on the servient plot of land, it may be determined that the owner of this plot of land must maintain the installation, to the extent that the interest of the person entitled requires this. If the owner has the right to share the use of the installation, it may be determined that the person entitled must maintain the installation, to the extent that this is necessary for the owner's right of use.

(2) Such a duty of maintenance is governed by the provisions on charges on land with the necessary modifications.

#### **Section 1022**

Installations on building structures

If the easement consists in the right to maintain a building structure on a building structure of the servient plot of land, then, unless otherwise provided, the owner of the servient plot of land must maintain his structure, to the extent that the interest of the person entitled requires this. The provision of section 1021 (2) also applies to this duty of maintenance.

### **Section 1023**

#### Moving the use

(1) Where the use of an easement for the time being is restricted to part of the servient plot of land, the owner may require the use to be moved to another place that is equally suitable for the person entitled, if the use in the previous place is particularly arduous for him; he must bear and advance the costs of moving. This also applies if the part of the plot of land to which the use is restricted is determined by legal transaction.

(2) The right to move the use may not be excluded or restricted by legal transaction.

### **Section 1024**

#### Coincidence of more than one right of use

If an easement coincides with another easement or another right of use of the plot of land in such a way that the rights cannot concurrently be exercised or fully exercised, and if the rights are of the same priority, each person entitled may require arrangements for the use that observe the interests of all persons entitled as appears just.

### **Section 1025**

#### Division of the dominant plot of land

If the plot of land of the person entitled is divided, the easement continues in existence for the separate parts; however, the use of the easement is in case of doubt admissible only in such a way that it does not become more burdensome for the owner of the servient plot of land. If the easement benefits only one of the parts, it is extinguished for the other parts.

### **Section 1026**

#### Division of the servient plot of land

Where the servient plot of land is divided, then, if the use of the easement is restricted to a particular part of the servient plot of land, the parts that lie outside the area of use are released from the easement.

### **Section 1027**

#### Interference with easement

If an easement is interfered with, the person entitled has the rights set out in section 1004.

### **Section 1028**

#### Limitation

(1) Where an installation has been erected on the servient plot of land that interferes with the easement, the claim of the person entitled to the removal of the interference is subject to limitation even if the easement is registered in the Land Register. On the expiry of the claim by limitation, the easement is extinguished to the extent that the existence of the installation conflicts with it.

(2) The provision of section 892 does not apply.

## **Section 1029**

Protection of possession of the lawful possessor

Where the possessor of a plot of land is disturbed in the use of an easement registered in the Land Register for the owner, the provisions applying to the protection of possession are applied with the necessary modifications if the easement was used within one year before the interference, even if only once.

Title 2

## **Usufruct**

Subtitle 1

### **Usufruct in things**

#### **Section 1030**

Statutory definition of usufruct in things

(1) A thing can be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to take the emoluments of the thing (usufruct).

(2) The usufruct may be restricted by the exclusion of individual emoluments.

#### **Section 1031**

Application to accessories

Together with the usufruct in a plot of land, the usufructuary acquires the usufruct in the accessories under the provisions of section 926 governing the acquisition of ownership.

#### **Section 1032**

Creation of usufruct in movable things

For the creation of usufruct in a movable thing, it is necessary that the owner delivers the thing to the acquirer and both agree that the usufruct is to pass to the acquirer. The provisions of sections 929 sentence 2, 930 to 932 and 933 to 936 apply with the necessary modifications; in the cases of section 936, the only effect that arises is that the usufruct takes priority over the third party's right.

#### **Section 1033**

Acquisition by prescription

Usufruct in a movable thing may be acquired by prescription. The provisions governing the acquisition of ownership by prescription apply with the necessary modifications.

#### **Section 1034**

Determination of the condition

The usufructuary may have the condition of the thing determined by experts at his own cost. The owner has the right to do this too.



### **Section 1035**

Usufruct in aggregate of things; itemised list

In the case of usufruct in an aggregate of things, the usufructuary and the owner have the mutual duty to cooperate in making an itemised list of the things. The itemised list must state the date of entry and be signed by both parties; each party may require the signatures to be notarially certified. Each party may also require the itemised list to be made by the competent authority or by a competent official or notary. The costs must be borne and advanced by the person who requires the making or the certification of the list.

### **Section 1036**

Right of possession; exercise of usufruct

- (1) The usufructuary is entitled to possess the thing.
- (2) In exercising the right of use, he must retain the previous economic purpose of the thing and must proceed in compliance with the rules of proper management.

### **Section 1037**

Transformation

- (1) The usufructuary is not entitled to transform the thing or substantially change it.
- (2) The usufructuary of a plot of land may erect new facilities to extract stone, gravel, sand, loam, clay, marl, peat and other components of the ground, except where the economic purpose of the plot of land is materially altered as a result.

### **Section 1038**

Economic plan for forests and mines

- (1) If a forest is the subject of usufruct, both the owner and the usufructuary may require that the degree of use and the nature of the economic treatment are laid down in an economic plan. If a substantial change of circumstances occurs, each party may require a corresponding change of the economic plan. Each party must bear one half of the costs.
- (2) The same applies if a mine or another installation designed to extract components of the ground is the subject of usufruct.

### **Section 1039**

#### Excessive taking of fruits

(1) The usufructuary also acquires the ownership of such fruits as he takes contrary to the rules of proper management or such fruits as he takes in excess because this has become necessary as the result of a particular event. However, notwithstanding his responsibility for fault, he is obliged to reimburse the owner the value of the fruits at the end of the usufruct and to provide security for the fulfilment of this obligation. Both the owner and the usufructuary may require that the amount to be reimbursed is used to restore the thing to the extent that this complies with proper management.

(2) If the outlay is not required to restore the thing, the duty to reimburse ends to the extent that the emoluments due to the usufructuary are adversely affected by the improper or excessive taking of emoluments.

### **Section 1040**

#### Treasure

The right of the usufructuary does not extend to the share of the owner in a treasure that is found in the thing.

### **Section 1041**

#### Maintenance of the thing

The usufructuary must provide for the maintenance of the thing in its economic condition. He is obliged to carry out repairs and renovations only to the extent that they are part of the normal maintenance of the thing.

### **Section 1042**

#### Duty of notification by the usufructuary

If the thing is destroyed or damaged or if an extraordinary repair or renovation of the thing or a precaution for protection of the thing against a danger that was not foreseen becomes necessary, the usufructuary must notify the owner without undue delay. The same applies if a third party claims for himself a right in the thing.

### **Section 1043**

#### Repair or renovation

If the usufructuary of a plot of land undertakes an extraordinary repair or renovation that has become necessary himself, he may for this purpose, within the limits of proper management, also use components of the plot of land that are not part of the fruits due to him.

### **Section 1044**

#### Toleration of repairs

Where the usufructuary does not undertake a repair or reparation of the thing that has become necessary himself, he must permit the owner to undertake it and, if a plot of land is the subject of the usufruct, permit the use of the components of the plot of land set out in section 1043.

### **Section 1045**

Obligation of the usufructuary to insure

(1) The usufructuary must insure the thing for the duration of the usufruct against damage by fire and other accidents at his own cost, if the insurance corresponds to proper management. The insurance must be taken out in such a way that the claim against the insurer belongs to the owner.

(2) If the thing is already insured, the payments to be paid for the insurance are borne by the usufructuary for the duration of the usufruct to the extent that he would be obliged to insure.

### **Section 1046**

Usufruct in an insurance claim

(1) The usufructuary has the usufruct in a claim against an insurer under the provisions that govern usufruct in an outstanding claim that bears interest.

(2) If damage covered by the insurance occurs, both the owner and the usufructuary may require that the amount insured is used to restore the thing or to obtain a replacement to the extent that corresponds to proper management. The owner may arrange for the use himself or leave it to the usufructuary.

### **Section 1047**

Bearing of charges

The usufructuary is obliged to the owner to bear for the duration of the usufruct the public charges to which the thing is subject, with the exclusion of the extraordinary charges that are to be seen as based on the original value of the thing, and the private-law charges to which the thing was already subject at the date when the usufruct in the thing was created, in particular the interest on mortgage claims and land charges and the payment to be made on the basis of an annuity land charge.

### **Section 1048**

Usufruct in plot of land with stock

(1) If a plot of land together with its stock is the subject of usufruct, then the usufructuary may dispose of the individual items of the stock within the limits of proper management. He must obtain replacements for the normal loss by wastage and for the items eliminated under the rules of proper management; the items acquired by him, on being incorporated into the stock, become the property of the person to whom the stock belongs.

(2) If the usufructuary acquires the stock at an estimated value with the obligation to return it at the end of the usufruct at the estimated value, the provisions of section 582a apply with the necessary modifications.

### **Section 1049**

Reimbursement of outlays

- (1) If the usufructuary makes outlays on the thing which he is not obliged to incur, the duty of the owner to reimburse him is governed by the provisions on agency without specific authorisation.
- (2) The usufructuary is entitled to remove an installation with which he has provided the thing.

### **Section 1050**

Wear and tear

The usufructuary is not responsible for alterations or deterioration of the thing that are caused by the proper exercise of the usufruct.

### **Section 1051**

Provision of security

If the conduct of the usufructuary gives rise to fear of a material injury to the rights of the owner, the owner may require security.

### **Section 1052**

Judicial management in the absence of security

- (1) If the usufructuary is finally and non-appealably ordered to provide security, the owner may, instead of the security, require the exercise of the usufruct for the account of the usufructuary to be transferred to an administrator to be appointed by the court. A judicial order of administration is admissible only if, on the application of the owner, the court has laid down a period for the usufructuary to provide security and the period has expired; it is inadmissible if the security is provided before the expiry of the period.
- (2) The administrator is under the supervision of the court in the same way as an administrator appointed for the judicially enforced administration of a plot of land. The owner may also be the administrator.
- (3) The administration must be terminated if the security is subsequently provided.

### **Section 1053**

Application for a prohibitory injunction in the case of unauthorised use

If the usufructuary uses the thing in a way in which he is not authorised, and if he continues the use notwithstanding a warning notice from the owner, the owner may seek a prohibitory injunction.

### **Section 1054**

Judicial administration on the basis of breach of duty

If the usufructuary violates the rights of the owner to a substantial degree, and if he continues the injuring conduct notwithstanding a warning notice from the owner, the owner may require administration to be judicially ordered under section 1052.

### **Section 1055**

#### Duty of return of the usufructuary

- (1) The usufructuary is obliged to return the thing to the owner after the end of the usufruct.
- (2) In the case of usufruct in an agricultural plot of land, the provisions of section 596 (1) and section 596a, and in the case of usufruct in an agricultural estate the provisions of sections 596 (1), 596a and 596b, apply with the necessary modifications.

### **Section 1056**

#### Leases and usufructuary leases at the end of the usufruct

- (1) If the usufructuary has leased a plot of land, on a lease or a usufructuary lease, beyond the term of the usufruct, then after the end of the usufruct, the provisions of sections 566, 566a, 566b (1), and also sections 566c to 566e and 567b governing the disposal of leased residential space apply with the necessary modifications.
- (2) The owner is entitled to terminate the lease or usufructuary lease, complying with the statutory notice period. If the usufructuary waives the usufruct, the termination is admissible only from the time on at which the usufruct would be extinguished without the waiver.
- (3) The lessee or usufructuary lessee is entitled to request the owner, laying down a reasonable notice period, to state whether the owner intends to exercise his right of termination. Notice of termination may be given only until the expiry of the notice period.

### **Section 1057**

#### Limitation of compensation claims

The claims for compensation of the owner for alterations or deterioration of the thing and the claims of the usufructuary to reimbursement of outlays or to permission to remove an installation are subject to a six-month limitation period. The provision of section 548 (1) sentence 2 and 3, (2) applies with the necessary modifications.

### **Section 1058**

#### Grantor as owner

In the relation between the usufructuary and the owner, in favour of the usufructuary the grantor is deemed to be the owner, unless the usufructuary knows that the grantor is not the owner.

### **Section 1059**

#### Non-transferability; permission of exercise

Usufruct is not transferable. The exercise of usufruct may be ceded to another.

### **Section 1059a**

Transferability in the case of legal person or partnership having legal personality

(1) If a usufruct is held by a legal person, it is transferable under the following provisions:

1. Where the property of the legal person, by way of universal succession, passes to another, the usufruct too passes to the successor in title, unless passing is expressly excluded.
2. Where another enterprise operated by a legal person or a part of such an enterprise is transferred to another, a usufruct may also be transferred to the acquirer if it is suitable to serve the purposes of the enterprise or of the part of the enterprise. Whether these requirements are satisfied is established by a declaration of the competent Land authority. The declaration binds the courts and the administrative authorities. The Land governments specify the competent Land authority by statutory order. The Land governments may, by statutory order, transfer the authorisation to the Land justice administration authorities.

(2) A partnership having legal personality is equivalent to a legal person.

### **Section 1059b**

Non-distrainability

A usufruct may, by reason of the provision of section 1059a, neither be seized, nor pledged, nor encumbered by a usufruct.

### **Section 1059c**

Passing or transfer of usufruct

(1) In the case of the passing or transfer of the usufruct, the acquirer, in place of the person previously entitled, enters into the rights and obligations associated with the usufruct in relation to the owner. If, in view of these rights and duties, agreements have been made between the owner and the person entitled, these also take effect in favour of and against the acquirer.

(2) The passing or the transfer of the usufruct creates a claim to damages neither for the owner nor for other persons with real rights.

### **Section 1059d**

Leases and usufructuary leases on the transfer of the usufruct

If the person previously entitled has leased the plot of land encumbered with the usufruct, on a lease or a usufructuary lease, beyond the term of the usufruct, then after the transfer of the usufruct, the provisions of sections 566 to 566e, 567a and 567b governing the disposal of leased residential space apply with the necessary modifications.

### **Section 1059e**

Claim to grant of the usufruct

If a legal person or a partnership having legal personality has a claim to be granted a usufruct, the provisions of sections 1059a to 1059d apply with the necessary modifications.

### **Section 1060**

Coincidence of more than one right of use

If a usufruct coincides with another usufruct or with another right of use of the thing in such a way that the rights cannot concurrently be exercised or fully exercised, and if the rights are of the same priority, the provision of section 1024 applies.

### **Section 1061**

Death of the usufructuary

The usufruct is extinguished with the death of the usufructuary. If the usufruct is due to a legal person or a partnership with legal personality, it is extinguished when the legal person or partnership with legal personality ends.

### **Section 1062**

Extension of termination to accessories

If the usufruct in a plot of land is terminated by legal transaction, the termination, in case of doubt, extends to the usufruct in the accessories.

### **Section 1063**

Coincidence with ownership

(1) The usufruct in a movable thing is extinguished if it coincides with ownership in the same person.

(2) The usufruct is deemed not to have been extinguished to the extent that the owner has a legal interest in the continuation of the usufruct.

### **Section 1064**

Termination of usufruct in movable things

In order to terminate by legal transaction usufruct in a movable thing, the declaration of the usufructuary to the owner or the grantor that he is abandoning the usufruct is sufficient.

### **Section 1065**

Adverse effect on right of usufruct

If the right of the usufructuary is adversely affected, the claims of the usufructuary are governed by the provisions applying to claims arising from ownership with the necessary modifications.

### **Section 1066**

Usufruct in the share of a co-owner

(1) If there is a usufruct in the share of a co-owner, the usufructuary exercises the rights that arise from the co-ownership of the co-owners with regard to the administration of the thing and the manner of its use.

(2) The cancellation of the co-ownership may be required only jointly by the co-owners and the usufructuary.

(3) If the co-ownership is cancelled, the usufructuary has a right to the usufruct in the objects that take the place of the share.

## **Section 1067**

### Usufruct in consumable things

(1) If consumable things are the subject of the usufruct, then the usufructuary becomes the owner of the things; after the usufruct ends, he must reimburse the grantor the value that the things had at the time of the creation of usufruct. Both the grantor and the usufructuary may have the value established by experts at their own cost.

(2) The grantor may require the provision of security if the claim to reimbursement of the value is endangered.

### Subtitle 2

## **Usufruct in rights**

### **Section 1068**

#### Statutory definition of usufruct in rights

(1) The subject of the usufruct may also be a right.

(2) Usufruct in rights is governed by the provisions on usufruct in things with the necessary modifications, except to the extent that sections 1069 to 1084 lead to a different conclusion.

### **Section 1069**

#### Creation

(1) The creation of the usufruct in a right is governed by the provisions applying to the transfer of the right.

(2) No usufruct may be created in a right that is non-transferable.

### **Section 1070**

#### Usufruct in a right to performance

(1) If a right under which performance may be required is the subject of usufruct, the legal relationship between the usufructuary and the person obliged is governed by the provisions, with the necessary modifications, that apply to the legal relationship between the acquirer and the person obliged in the case of transfer of the right.

(2) Where the exercise of the usufruct is transferred to an administrator under section 1052, the transfer does not take effect in relation to the person obliged until he obtains knowledge of the judicial order made or if he is served with a notification of the judicial order. The same applies to the termination of the administration.



### **Section 1071**

Termination or alteration of the encumbered right

(1) A right subject to usufruct may be terminated by legal transaction only with the approval of the usufructuary. Approval is to be declared to the person in whose favour it is given; it is irrevocable. The provision of section 876 sentence 3 is unaffected.

(2) The same applies in the case of an alteration of the right, to the extent that this adversely affects the usufruct.

### **Section 1072**

Termination of usufruct

The termination of the usufruct, under the provisions of sections 1063 and 1064, occurs even if the right subject to the usufruct is not a right to a movable thing.

### **Section 1073**

Usufruct in a life annuity

The usufructuary of a life annuity, a retirement security or a similar right is entitled to the individual benefits that may be demanded on the basis of the right.

### **Section 1074**

Usufruct in a claim; notice and collection

The usufructuary of a claim is entitled to collect the claim and, if the due date is dependent on notice by the creditor, to give notice of termination. He must ensure proper collection. He is not entitled to make other dispositions of the claim.

### **Section 1075**

Effect of performance

(1) Upon the performance of the debtor to the usufructuary, the creditor acquires the object provided and the usufructuary acquires the usufruct in the object.

(2) If consumable things are provided, the usufructuary acquires the ownership; the provision of section 1067 applies with the necessary modifications.

### **Section 1076**

Usufruct in claim bearing interest

If an outstanding claim bearing interest is the subject of the usufruct, the provisions of sections 1077 to 1079 apply.

### **Section 1077**

Notice and payment

(1) The debtor may pay the capital only to the usufructuary and the creditor jointly. Each of them may require that payment be made to them jointly; each may require, instead of payment, deposit for both of them.

(2) The usufructuary and the creditor may give notice only jointly. The notice of the debtor is effective only if it is declared to the usufructuary and the creditor.

### **Section 1078**

#### Cooperation in collection

Where the claim is due, the usufructuary and the creditor are obliged to one another to cooperate in collection. If the due date depends on notice, either party may require the cooperation of the other in the notice, if the collection of the debt is necessary by reason of danger to its security under the rules of proper management of assets.

### **Section 1079**

#### Investment of the capital

The usufructuary and the creditor are obliged to each other to cooperate in order that the capital collected is invested with interest under the provisions applying to the investment of money held in trust for a ward and at the same time the usufruct is created for the usufructuary. The nature of the investment is determined by the usufructuary.

### **Section 1080**

#### Usufruct in a land charge or annuity land charge

The provisions on usufruct in a claim also apply to usufruct in a land charge and in an annuity land charge.

### **Section 1081**

#### Usufruct in bearer instruments or instruments made out to order

(1) If a bearer instrument or an instrument made out to order that bears a blank endorsement is the subject of usufruct, the possession of the instrument and of the renewal certificate relating to the instrument belongs to the usufructuary and the owner jointly. The possession of the interest, annuity or dividend coupons relating to the instrument belongs to the usufructuary.

(2) To create the usufruct, the granting of co-possession is sufficient in place of the delivery of the instrument.

### **Section 1082**

#### Deposit

The instrument and the renewal certificate, at the request of the usufructuary or the owner, must be deposited at a depositary institution with the stipulation that delivery may be requested only by the usufructuary and the owner jointly. The usufructuary may also require deposit at the [Reichsbank], at the [Deutsche Zentralgenossenschaftskasse] or at the [Deutsche Girozentrale] ([Deutsche Kommunalbank]).

### **Section 1083**

Cooperation in collection

(1) The usufructuary and the owner of the instrument are obliged to each other to cooperate for the purpose of collecting the capital due, of obtaining new interest, annuity or dividend coupons and of undertaking other measures that are necessary for proper asset management.

(2) In the case of the redemption of the instrument, the provisions of section 1079 apply. A premium paid on redemption is deemed to be part of the capital.

### **Section 1084**

Consumable things

If a bearer instrument or an instrument made out to order that bears a blank endorsement is, under section 92, among consumable things, the provisions of section 1067 apply.

Subtitle 3

### **Usufruct in property**

#### **Section 1085**

Creation of usufruct in property

Usufruct in the assets of a person may be created only in such a way that the usufructuary obtains the usufruct in the individual objects constituting the assets. To the extent that the usufruct has been created, the provisions of sections 1086 to 1088 apply.

#### **Section 1086**

Rights of the creditors of the grantor

The creditors of the grantor may, insofar as their claims arose before the grant, notwithstanding the usufruct, require satisfaction from the objects subject to the usufruct. If the usufructuary has obtained the ownership of consumable things, the claim of the grantor to reimbursement of the value takes the place of the things; the usufructuary is obliged to reimburse the creditors without delay.

#### **Section 1087**

Relationship between usufructuary and grantor

(1) The grantor may, if a claim that arose before the grant is due, require the usufructuary to return the objects necessary to satisfy the creditor. He has the right of selection; however, he may select only the objects that are primarily suitable. To the extent that the objects returned are sufficient, the grantor is obliged in relation to the usufructuary to satisfy the creditor.

(2) The usufructuary may satisfy the obligation by providing the object owed. Where the object owed is not among the assets that are subject to the usufruct, the usufructuary is entitled, for the purpose of satisfying the creditor, to alienate an object among the assets, if it is not possible without risk to await satisfaction by the grantor. He must select an object that is primarily suitable. If he is obliged to reimburse the value of consumable things, he may not undertake a disposal.

### **Section 1088**

#### Liability of the usufructuary

(1) The creditors of the grantor whose claims were already subject to interest at the time of the grant may for the duration of the usufruct also require the interest from the usufructuary. The same applies to other recurrent payments that in the case of proper management are satisfied from the income of the assets, if the claim arose before the usufruct was granted.

(2) The liability of the usufructuary may not be excluded or restricted by agreement between him and the grantor.

(3) The usufructuary is obliged in relation to the grantor to satisfy the creditors with regard to the claims set out in subsection (1). The grantor may require the return of objects for the purpose of satisfaction only if the usufructuary is in default in fulfilling this obligation.

### **Section 1089**

#### Usufruct in an inheritance

The provisions of sections 1085 to 1088 apply with the necessary modifications to usufruct in an inheritance.

#### Title 3

### **Restricted personal easements**

#### **Section 1090**

##### Statutory definition of the restricted personal easement

(1) A plot of land may be encumbered in such a way that the person for whose benefit the encumbrance is made is entitled to use the plot of land in individual respects, or that he is authorised in another way that may form the subject of an easement (restricted personal easement).

(2) The provisions of sections 1020 to 1024, 1026 to 1029 and 1061 apply with the necessary modifications.

#### **Section 1091**

##### Scope

The scope of a restricted personal easement is determined in case of doubt by the personal need of the person entitled.

## **Section 1092**

Non-transferability; permission of exercise

- (1) A restricted personal easement is not transferable. The use of the easement can be ceded to another only if the ceding of the use is permitted.
- (2) If a restricted personal easement or the right to be granted a restricted personal easement is owed to a legal person or a partnership having legal personality, the provisions of sections 1059a to 1059d apply with the necessary modifications.
- (3) If a legal person or a partnership having legal personality has the right to a restricted personal easement that entitles the holder to use a plot of land for facilities to conduct electricity, gas, district heating, water, sewage, oil or raw materials including all associated installations that directly serve the conducting, for telecommunications installations, for installations to transport products between places of management of one or more private or public enterprises or for tram or railway installations, the easement is transferable. The transferability does not include the right to divide the easement according to the elements it authorises. If one of the persons named in sentence 1 has a claim to the grant of such a restricted personal easement, the claim is transferable. The provisions of sections 1059b to 1059d apply with the necessary modifications.

## **Section 1093**

Right of residence

- (1) The right to use a building or part of a building as a residence, excluding the owner, may also be granted as a restricted personal easement. This right is governed by the provisions applying to usufruct of sections 1031, 1034 and 1036, of section 1037 (1) and of sections 1041, 1042, 1044, 1049, 1050, 1057 and 1062 with the necessary modifications.
- (2) The person entitled is authorised to admit into his residence his family and the persons required for service befitting his station and for care.
- (3) If the right is restricted to a part of the building, the person entitled may share the use of the facilities and installations intended for the common use of the occupants.

## Division 5

### **Right of preemption**

#### **Section 1094**

Statutory contents of the real right of preemption

(1) A plot of land may be encumbered in such a manner that the person in whose favour the encumbrance is created has a right of preemption against the owner.

(2) The right of preemption may also be created in favour of the current owner of another plot of land.

#### **Section 1095**

Encumbrance of a fraction

A fraction of a plot of land may be encumbered with a right of preemption only if it consists of the share of a co-owner.

#### **Section 1096**

Application to accessories

The right of preemption may be extended to the accessories that are sold with the plot of land. In case of doubt, it must be presumed that the right of preemption is to extend to these accessories.

#### **Section 1097**

Creation for one or more cases of sale

The right of preemption is restricted to the case of sale by an owner who owns the plot of land at the time of the creation, or by his heir; however, it may also be created for more than one or for all cases of sale.

#### **Section 1098**

Effect of a right of preemption

(1) The legal relationship between the person entitled and the person obliged is governed by the provisions of sections 463 to 473. The right of preemption may also be exercised if the plot of land is sold by the administrator in insolvency proceedings by private agreement.

(2) In relation to third parties, the right of preemption has the effect of a priority notice entered to secure the claim arising from the exercise of the right to transfer ownership.

(3) Where a legal person or a partnership having legal personality is entitled to a right of preemption created under section 1094 (1), the provisions of sections 1059a to 1059d apply with the necessary modifications to the transfer of the right, if there is no agreement on its transferability.

#### **Section 1099**

Notifications

(1) If a third person gains ownership of the plot of land, he may, in the same way as the person obliged, notify the person entitled of the contents of the purchase agreement with the effect specified in section 469 (2).

(2) The person obliged must notify the new owner as soon as the exercise of the right of preemption takes place or is excluded.

### **Section 1100**

#### Rights of the purchaser

The new owner may, if he is the purchaser or a successor in title of the purchaser, refuse to give his approval to the registration of the person entitled as the owner and to the delivery of the plot of land until the purchase price agreed between the person obliged and the purchaser, insofar as it is settled, is paid to him. If the person entitled achieves registration as owner, the former owner may demand from him the payment of the settled purchase price in return for the delivery of the plot of land.

### **Section 1101**

#### Release of the person entitled

To the extent that the person entitled is required in accordance with section 1100 to pay the purchase price to the purchaser or his successor in title, he is released from the obligation to pay the purchase price owed under the preemption.

### **Section 1102**

#### Release of the purchaser

If the purchaser or his successor in title, as a result of the exercise of the right of preemption, loses ownership, the purchaser shall, to the extent that the purchase price owed by him has not yet been settled, be released from his obligation; he may not demand the return of the settled purchase price.

### **Section 1103**

#### Real and personal right of preemption

(1) A right of preemption existing in favour of the current owner of a plot of land may not be separated from the ownership of this plot of land.

(2) A right of preemption existing in favour of a specific person may not be connected with the ownership of a plot of land.

### **Section 1104**

#### Exclusion of unknown entitled persons

(1) Where the person entitled is unknown, his right may be excluded by way of a public notice procedure if the requirements for the exclusion of a mortgage creditor specified in section 1170 are satisfied. The right of preemption is extinguished when the exclusory order comes into legal effect.

(2) These provisions do not apply to a right of preemption which exists in favour of the current owner of a plot of land.

## Division 6

### **Charges on land**

#### **Section 1105**

Statutory contents of the charge on land

(1) A plot of land may be encumbered in such a way that recurring acts of performance are to be made from the plot of land to the person in whose favour the encumbrance is created (charge on land). It is also possible to agree as the contents of the charge on land that the acts of performance to be made are adjusted to changed circumstances without notice if, based on the requirements stipulated in the agreement, the type and scope of the encumbrance of the land can be determined.

(2) The charge on land may also be created in favour of the current owner of another plot of land.

#### **Section 1106**

Encumbrance of a fraction

A fraction of a plot of land may be encumbered with a charge on land only if it consists in the share of a co-owner.

#### **Section 1107**

Individual payments

The provisions governing the interest on a mortgage claim apply with the necessary modifications to the individual payments.

#### **Section 1108**

Personal liability of the owner

(1) In addition, the owner is personally liable for the payments that fall due during the period of his ownership, unless otherwise provided.

(2) If the plot of land is divided, the owners of the individual parts are liable as joint and several debtors.



### **Section 1109**

Division of the dominant plot of land

(1) If the plot of land of the person entitled is divided, the charge on the land continues in existence for the individual parts. If the performance is divisible, the shares of the owners are determined in the relationship of the size of the parts; if it is not divisible, the provisions of section 432 apply. The exercise of the right is, in case of doubt, permissible only in such a way that it does not become more burdensome for the owner of the encumbered plot of land.

(2) The person entitled may determine that the right shall be connected only to one of the parts. This determination is to be made to the Land Registry and requires registration in the Land Register; the provisions of sections 876 and 878 apply with the necessary modifications. If the person entitled alienates a part of the land without making this determination, the right remains connected to the part that he retains.

(3) If the charge on land is beneficial to only one of the parts, it remains connected to this part only.

### **Section 1110**

Real charge on land

A charge on land existing in favour of the current owner of a plot of land may not be separated from the ownership of this plot of land.

### **Section 1111**

Personal charge on land

(1) A charge on land existing in favour of a specific person may not be connected with the ownership of a plot of land.

(2) If a claim for an individual act of performance is not transferable, the right may not be alienated or encumbered.

### **Section 1112**

Exclusion of unknown entitled persons

If the person entitled is unknown, the provisions of section 1104 apply with the necessary modifications to the exclusion of his right.

Division 7

## **Mortgage, land charge, annuity land charge**

Title 1

### **Mortgage**

#### **Section 1113**

Statutory contents of the mortgage

(1) A plot of land may be encumbered in such a way that the person in whose favour the encumbrance is created is to be paid out of the land a specific sum of money to satisfy a claim to which he is entitled (mortgage).

(2) The mortgage may also be created for a future or a conditional claim.

#### **Section 1114**

Encumbrance of a fraction

A fraction of a plot of land may be encumbered with a mortgage only if it consists in the share of a co-owner, except in the cases set out in section 3 (6) of the Land Register Act [Grundbuchordnung].

#### **Section 1115**

Registration of the mortgage

(1) Upon the registration of the mortgage, the creditor, the amount of the claim and, where the claim bears interest, the rate of interest, and if other supplementary payments are to be made, their amount, must be stated in the Land Register; apart from this, in order to describe the claim, reference may be made to the consent to registration.

(2) Upon the registration of the mortgage for a loan by a credit institution whose articles of association have been publicly disclosed by the public authority responsible, reference to the articles of association is sufficient to designate the supplementary payments apart from the interest that are to be made in accordance with the articles of association.

#### **Section 1116**

Certificated and uncertificated mortgage

(1) A mortgage certificate shall be issued on the mortgage.

(2) The issue of the certificate may be excluded. This exclusion may also be effected subsequently. The exclusion requires the agreement of the creditor and of the owner as well as registration in the Land Register; the provisions of section 873 (2) and of sections 876 and 878 apply with the necessary modifications.

(3) The exclusion of the issue of the certificate may be cancelled; the cancellation takes place in the same way as the exclusion.

### **Section 1117**

Acquisition of the certificated mortgage

- (1) If the issue of a mortgage certificate is not excluded, the creditor acquires the mortgage only when he is provided with the certificate by the owner of the plot of land. The provisions of section 929 sentence 2 and sections 930 and 931 apply to the delivery.
- (2) The delivery of the certificate may be replaced by the agreement that the creditor is to be entitled to have the Land Registry deliver the certificate to him.
- (3) If the creditor is in possession of the certificate, it is presumed that delivery has taken place.

### **Section 1118**

Liability for incidental claims

By operation of the mortgage, the plot of land is also liable for the statutory interest on the claim and for the costs of calling it in and of the pursuit of rights for the purpose of obtaining satisfaction from the plot of land.

### **Section 1119**

Extension of liability for interest

- (1) If the claim is interest-free or if the rate of interest is less than five per cent, the mortgage may, without the approval of the persons entitled with equal or lower priority, be extended so that the plot of land is liable for interest of up to five per cent.
- (2) For an amendment to the time and place of payment, the approval of these persons entitled is likewise unnecessary.

### **Section 1120**

Extension to products, parts and accessories

The mortgage extends to the products separated from the plot of land and to other components unless, by separation in accordance with sections 954 to 957, they passed into the ownership of a person other than the owner or the owner-occupier of the plot of land, as well as to the accessories of the plot of land with the exception of accessories that have not passed into the ownership of the owner of the plot of land.

### **Section 1121**

Release from liability through disposal and removal

- (1) Products and other components of the plot of land as well as accessories are released from liability if they are alienated and removed from the plot of land before they are seized for the benefit of the creditor.
- (2) Where the disposal occurs before the removal, the purchaser may not plead in relation to the creditor that he was in good faith in respect of the mortgage. Where the purchaser removes the thing from the plot of land, a seizure effected prior to the removal is effective in relation to him only if he is not in good faith in respect of the seizure upon removal.

### **Section 1122**

Release from liability without disposal

(1) Where the products or components have been separated, within the limits of proper management, from the plot of land, then their liability is extinguished even without disposal if they are removed from the plot of land before they are seized, unless the removal takes place for a temporary purpose.

(2) Accessories are released from liability without disposal if they lose the quality of being accessories, within the limits of proper management, before their seizure.

### **Section 1123**

Extension to claim for rent or for usufructuary rent

(1) If the plot of land is let on lease or usufructuary lease, the mortgage extends to the claim for rent or for usufructuary rent.

(2) To the extent that the claim is due, it is released from liability upon the expiry of one year from the due date, unless it is attached in favour of the mortgage creditor prior to this date. If the rent or usufructuary rent is payable in advance, the release does not extend to the rent or usufructuary rent for a period later than the calendar month current at the time of the attachment; if the attachment is effected after the fifteenth day of the month, the release also extends to the rent or the usufructuary rent for the following calendar month.

### **Section 1124**

Advance disposition of the rent or usufructuary rent

(1) If the rent or usufructuary rent is collected before it is attached in favour of the mortgage creditor, or if it is disposed of in another way prior to the attachment, the disposition is effective in relation to the mortgage creditor. If the disposition consists in the transfer of the claim to a third party, the liability for the claim is extinguished; if a third party acquires a right to the claim, it has priority over the mortgage.

(2) The disposition is ineffective in relation to the mortgage creditor to the extent that it relates to the rent or usufructuary rent for a period later than the calendar month current at the time of the attachment; however, if the attachment is made after the fifteenth day of the month, the disposition is effective insofar as it relates to the rent or usufructuary rent for the following calendar month.

(3) If the plot of land is alienated without the claim, this is equivalent to the transfer of the claim to a third party.

### **Section 1125**

Set-off against rent or usufructuary rent

To the extent that the collection of the rent or usufructuary rent is ineffective in relation to the mortgage creditor, the lessee or the usufructuary lessee may not set off against the mortgage creditor a claim of the lessee or usufructuary lessee against the lessor or the usufructuary lessor.

### **Section 1126**

#### Extension to recurring acts of performance

If a right to recurring acts of performance is connected with the ownership of the plot of land, the mortgage extends to claims for these acts of performance. The provisions of section 1123 (2) sentence 1, section 1124 (1) and (3) and section 1125 apply with the necessary modifications. A disposition made before the attachment in respect of a claim for an act of performance that first becomes due three months after the attachment is ineffective in relation to the mortgage creditor.

### **Section 1127**

#### Extension to insurance claim

(1) If objects that are subject to the mortgage are covered by insurance for the owner or the owner-occupier of the plot of land, the mortgage extends to a claim against the insurer.

(2) Liability for the claim against the insurer is extinguished, if the insured object is restored to its original condition or a replacement is provided for it.

### **Section 1128**

#### Insurance on buildings

(1) If a building is insured, the insurer may not pay the insured sum to the insured with effect in relation to the mortgage creditor until the insurer or the insured has notified the mortgage creditor that the damage has occurred and once one month has passed since the receipt of the notification. The mortgage creditor may, before the expiry of this period, make an objection to the insurer with regard to the payment. The notification may be omitted if it is impracticable; in this case the month is calculated from the point of time at which the insured sum becomes due.

(2) Where the mortgage creditor has notified the insurer of his mortgage, the insurer may only pay to the insured, with effect in relation to the mortgage creditor, if the mortgage creditor has given his approval to the payment in writing.

(3) Apart from this, the provisions governing a pledged claim apply; the insurer may not, however, plead that he did not know of the mortgage shown in the Land Register.

### **Section 1129**

#### Other insurance against damage

If an object other than a building is insured, the liability for the claim against the insurer is determined in accordance with the provisions of section 1123 (2) sentence 1 and section 1124 (1) and (3).

### **Section 1130**

#### Replacement clause

If, under the insurance provisions, the insurer is obliged to pay only the insured sum to replace the insured object, a payment to the insured in accordance with these provisions is effective in relation to the mortgage creditor.

### **Section 1131**

#### Addition of a plot of land

If a plot of land is added to another plot of land in the Land Register under section 890 (2), the mortgages in existence on this plot of land extend to the added plot of land. Rights encumbering the added plot of land have priority over these mortgages.

### **Section 1132**

#### Blanket mortgage

(1) If there is one mortgage on more than one plot of land for the claim (blanket mortgage), each plot of land is liable for the entire claim. The creditor may, at his discretion, seek satisfaction from each plot of land in whole or in part.

(2) The creditor is entitled to apportion the amount of the claim between the individual plots of land in such a way that each plot of land is liable only for the apportioned amount. The provisions of sections 875, 876 and 878 apply with the necessary modifications to the apportionment.

### **Section 1133**

#### Danger to the security of the mortgage

If, as a result of the deterioration of the plot of land, the security of the mortgage is endangered, the creditor may determine for the owner a reasonable period of time to remove the danger. After the expiry of the period, the creditor is entitled to seek satisfaction from the plot of land immediately, if the danger has not been removed by the improvement of the plot of land or by the creation of another mortgage. If the claim is interest-free, and is not yet due, the creditor is entitled only to the amount which, when the statutory interest for the period from payment until due date is added to it, equals the amount of the claim.

### **Section 1134**

#### Application for an injunction

(1) If the owner or a third party influences the plot of land in such a way that a deterioration of the plot of land that endangers the security of the mortgage is to be feared, the creditor may seek a prohibitory injunction.

(2) If the influence originates from the owner, the court shall, upon application by the creditor, order the measures that are required to avert the danger to be taken. The same applies if the deterioration is to be feared because the owner fails to take the necessary precautions against the influence of third parties or against other damage.

### **Section 1135**

#### Deterioration of accessories

It is equivalent to a deterioration of the plot of land within the meaning of sections 1133 and 1134 if accessories to which the mortgage extends deteriorate or are removed from the plot of land against the principles of proper management.

### **Section 1136**

Restraint on disposition by legal transaction

An agreement by which the owner binds himself in relation to the creditor not to alienate the plot of land or not to further encumber it is void.

### **Section 1137**

Defences of the owner

(1) The owner may assert against the mortgage the defences that are available against the claim to a personal obligor, as well as those available to a surety under section 770. If the personal debtor dies, then the owner may not invoke the fact that his heir has only limited liability for the obligation.

(2) If the owner is not the personal debtor, he does not lose a defence by the latter waiving it.

### **Section 1138**

Presumption of the accuracy of the contents of the Land Register

The provisions of sections 891 to 899 also apply to the mortgage, taking into consideration the claim and the defences available to the owner in accordance with section 1137.

### **Section 1139**

Objection with regard to an uncertificated mortgage for a loan

If, upon the creation of a mortgage for a loan, the issue of a mortgage certificate is excluded, then an application of the owner to the Land Registry suffices to register an objection on the basis that the loan has not been provided, provided that the application is made before the expiry of one month after the mortgage is registered. If the objection is registered within this month, then the registration has the same effect as if the objection had been registered at the same time as the mortgage.

### **Section 1140**

Mortgage certificate and inaccuracy of the Land Register

Insofar as the inaccuracy of the Land Register is apparent from the mortgage certificate or from a memorandum on the certificate, the invocation of the provisions of sections 892 and 893 is excluded.

An objection to an incorrect entry in the Land Register that is apparent from the certificate or from a memorandum on the certificate is equivalent to an objection entered in the Land Register.

### **Section 1141**

#### Notice of termination of the mortgage

(1) Where the due date of the claim is dependent on the giving of notice of termination, the notice is effective in respect of the mortgage only if it is given by the creditor to the owner or by the owner to the creditor. For the benefit of the creditor, the person registered as owner in the Land Register is deemed to be the owner.

(2) If the owner has no residence within the country, or if the requirements of section 132 (2) have been fulfilled, the local court [Amtsgericht] within whose district the plot of land is situated shall appoint for the owner, upon application by the creditor, a representative on whom the notice of the creditor can be served.

### **Section 1142**

#### Owner's right of satisfaction

(1) The owner is entitled to satisfy the creditor if the claim against him has fallen due or if the personal debtor is entitled to perform.

(2) The satisfaction may also take place by deposit or by set-off.

### **Section 1143**

#### Passing of claim

(1) If the owner is not the personal debtor, then the claim, to the extent that the owner satisfies the creditor, passes to him. The provisions of section 774 (1), governing a surety, apply with the necessary modifications.

(2) If there is a blanket mortgage in relation to the claim, the provisions of section 1173 apply to it.

### **Section 1144**

#### Delivery of documents

The owner may, in return for satisfaction of the creditor, demand delivery of the mortgage certificate and the other documents which are required for the correction of the Land Register or for the deletion of the mortgage.

### **Section 1145**

#### Partial satisfaction

(1) If the owner satisfies the creditor only in part, he is not entitled to demand that the mortgage certificate is delivered. The creditor is obliged to record the partial satisfaction on the certificate and to present the certificate to the Land Registry for the purpose of the correction of the Land Register or for deletion, or to the public authority responsible or the notary responsible for the purpose of issuing a partial mortgage certificate for the owner.

(2) The provision of subsection (1) sentence 2 applies to interest and other supplementary payments only if they are due later than in the calendar quarter in which the creditor is satisfied or in the following quarter. Costs for which the plot of land is liable under section 1118 are not governed by the provision.



### **Section 1146**

#### Default interest

If the requirements for a debtor to be in default are satisfied with regard to the owner, the creditor is entitled to default interest from the plot of land.

### **Section 1147**

#### Satisfaction by execution

The satisfaction of the creditor from the plot of land and from the objects to which the mortgage extends is effected by execution.

### **Section 1148**

#### Fiction of ownership

In the pursuit of the right arising from the mortgage, the person who is registered as owner in the Land Register is, for the benefit of the creditor, deemed to be the owner. The right of the unregistered owner to assert the objections to the mortgage to which he is entitled remains unaffected.

### **Section 1149**

#### Prohibited agreements on satisfaction

The owner may not, as long as the claim has not fallen due in respect to him, allow the creditor the right to demand the transfer of the ownership of the plot of land for the purpose of satisfaction or to effect the disposal of the plot of land in any way other than by execution.

### **Section 1150**

#### Right of redemption of third parties

If the creditor demands satisfaction from the plot of land, the provisions of sections 268, 1144 and 1145 apply with the necessary modifications.

### **Section 1151**

#### Change of priority for partial mortgages

If the claim is divided, the approval of the owner is not required to change the order of priority between the partial mortgages.

### **Section 1152**

#### Partial mortgage certificate

If there is a division of the claim, then unless the issue of a mortgage certificate is excluded, a partial mortgage certificate may be issued for each part; the approval of the owner of the plot of land is not required. The partial mortgage certificate takes the place of the previous certificate for the part to which it relates.

### **Section 1153**

#### Transfer of mortgage and claim

- (1) Upon the transfer of the claim, the mortgage passes to the new creditor.
- (2) The claim may not be transferred without the mortgage; the mortgage may not be transferred without the claim.

### **Section 1154**

#### Assignment of the claim

(1) For the assignment of the claim, it is necessary to make the declaration of assignment in writing and to hand over the mortgage certificate; the provision of section 1117 applies. The previous creditor shall, at the request of the new creditor, arrange for the declaration of assignment to be notarially certified at his expense.

(2) The written form required for the declaration of assignment may be replaced by the entry of the assignment in the Land Register.

(3) If the issue of a mortgage certificate is excluded, the provisions of sections 873 and 878 apply with the necessary modifications to the assignment of the claim.

### **Section 1155**

#### Presumption of the accuracy of certified declarations of assignment

If the right of the holder of the mortgage certificate as creditor arises from a connected series of notarially certified declarations of assignment that lead back to a registered creditor, the provisions of sections 891 to 899 apply in the same way as if the holder of the certificate were registered in the Land Register as a creditor. A judicial transfer order and a notarially certified acknowledgement of an assignment of the claim effected by operation of law are equivalent to a notarially certified declaration of assignment.

### **Section 1156**

#### Legal relationship between the owner and the new creditor

The provisions of sections 406 to 408 governing the transfer of the claim do not apply to the legal relationship between the owner and the new creditor with regard to the mortgage. The new creditor must, however, permit a notice of termination of the owner served on the previous creditor to be asserted against himself unless the transfer is known to the owner or is registered in the Land Register at the time of the notice.

### **Section 1157**

#### Continuation of defences to the mortgage

A defence which the owner is entitled to assert against the mortgage on the basis of the legal relationship existing between him and the previous creditor may also be relied on in relation to the new creditor. The provisions of sections 892, 894 to 899 and 1140 also apply to this defence.

### **Section 1158**

#### Future supplementary payments

To the extent that the claim is for interest or other supplementary payments that do not fall due later than in the calendar quarter in which the owner obtains knowledge of the transfer, or in the following quarter, the provisions of sections 406 to 408 apply to the legal relationship between the owner and the new creditor; the creditor may not invoke the provisions of 892 against the objections that the owner is entitled to raise in accordance with sections 404, 406 to 408 and 1157.

### **Section 1159**

#### Arrears of supplementary payments

(1) To the extent that the claim is for arrears of interest or other supplementary payments, the transfer and the legal relationship between the owner and the new creditor are governed by the general provisions that apply to the transfer of claims. The same applies to a claim for the reimbursement of costs for which the plot of land is liable in accordance with section 1118.

(2) The provision of section 892 does not apply to the claims designated in subsection (1).

### **Section 1160**

#### Enforcement of a certificated mortgage

(1) The enforcement of a mortgage may be contested, unless the issue of a mortgage certificate is excluded, if the creditor does not present the certificate; if the creditor is not entered in the Land Register, the documents required under section 1155 must also be presented.

(2) A notice of termination or a warning given to the owner is ineffective if the creditor does not present the documents necessary under subsection (1) and the owner rejects the notice or the warning for this reason without undue delay.

(3) These provisions do not apply to the claims set out in section 1159.

### **Section 1161**

#### Enforcement of the claim

If the owner is the personal debtor, the provision of section 1160 also applies to the enforcement of the claim.

### **Section 1162**

#### Public notice with regard to the mortgage certificate

If the mortgage certificate has been lost or destroyed, it may be declared invalid by means of the public notice procedure.

### **Section 1163**

#### Owner mortgage

- (1) If the claim for which the mortgage is created fails to come into existence, the owner is entitled to the mortgage. If the claim is extinguished, the owner acquires the mortgage.
- (2) A mortgage with regard to which the issue of a mortgage certificate is not excluded belongs to the owner until the certificate is handed over to the creditor.

### **Section 1164**

#### Passing of the mortgage to the debtor

- (1) If the personal debtor satisfies the creditor, the mortgage passes to him to the extent to which he may demand compensation from the owner or from a predecessor in title of the owner. If the debtor is to be compensated only in part, the owner may not enforce the mortgage, to the extent that it has passed to him, to the disadvantage of the mortgage of the debtor.
- (2) If the claim and the debt are merged in one person, this is equivalent to satisfying the creditor.

### **Section 1165**

#### Discharge of the debtor

If the creditor waives the mortgage, or if he cancels it in accordance with section 1183, or grants priority to another right, the personal debtor is discharged to the extent that, without this disposition, he might have obtained compensation from the mortgage in accordance with section 1164.

### **Section 1166**

#### Notification of the debtor

In the case where the personal debtor is entitled to demand compensation from the owner if he satisfies the creditor, then he may, if the creditor pursues a compulsory auction of the plot of land and does not notify him without undue delay, refuse to satisfy the creditor for a loss at the compulsory auction to the extent that he suffers damage as a result of the failure to notify. The notification may be omitted if it is impracticable.

### **Section 1167**

#### Delivery of correction documents

In the case where the personal debtor, if he satisfies the debtor, acquires the mortgage, or where, in the event of satisfaction, he has another legal interest in a correction of the Land Register, he has the rights set out in sections 1144 and 1145.

### **Section 1168**

Waiver of the mortgage

- (1) If the creditor waives the mortgage, the owner shall acquire it.
- (2) The waiver must be declared to the Land Registry or to the owner and it must be registered in the Land Register. The provisions of section 875 (2) and sections 876 and 878 apply with the necessary modifications.
- (3) If the creditor waives the mortgage with regard to part of the claim, the owner has the rights set out in section 1145.

### **Section 1169**

Defence with a negative effect on a right

If the owner is entitled to a defence that permanently excludes the enforcement of the mortgage, then he may demand that the creditor waive the mortgage.

### **Section 1170**

Exclusion of unknown creditors

- (1) Where the creditor is unknown, his right may be excluded by means of a public notice procedure if ten years have passed since the last entry in the Land Register with reference to the mortgage and the right of the creditor has not been recognised by the owner within this period in a manner appropriate under section 212 (1) no. 1 for the limitation period to recommence. If a calendar date is stipulated for payment of the claim, this period shall not commence before the end of the payment date.
- (2) When the exclusory order comes into legal effect, the owner acquires the mortgage. The mortgage certificate issued to the creditor becomes invalid.

### **Section 1171**

Exclusion by deposit

- (1) The right of the unknown creditor may also be excluded by way of a public notice procedure if the owner is entitled to satisfy the creditor or to give notice of termination, and deposits the amount of the claim for the creditor, at the same time waiving the right of withdrawal. The deposit of interest is required only if the rate of interest is registered in the Land Register; interest for a period earlier than the fourth calendar year prior to the exclusory order coming into legal effect is not required to be deposited.
- (2) When the exclusory order comes into legal effect, the creditor is deemed to have been satisfied, unless under the provisions on deposit satisfaction has already occurred. The mortgage certificate issued to the creditor becomes invalid.

(3) The right of the creditor to the deposited amount lapses upon the expiry of thirty years after the exclusory order coming into legal effect if the creditor does not report to the place of deposit before then; the depositor is entitled to withdraw, even if he has waived the right of withdrawal.

#### **Section 1172**

Owner blanket mortgage

(1) In the cases set out in section 1163, the owners of the encumbered plots of land are jointly entitled to a blanket mortgage.

(2) Each owner may, unless otherwise agreed, demand that the mortgage on his plot of land be restricted, in accordance with section 1132 (2), to the partial amount which is equivalent to the proportion between the value of his plot of land and the value of all of the plots of land, and that it is allotted to him with this restriction. The value is calculated with the deduction of the encumbrances which have higher priority than the blanket mortgage.

#### **Section 1173**

Satisfaction by one of the owners

(1) If the owner of one of the plots of land encumbered with a blanket mortgage satisfies the creditor, he acquires the mortgage on his plot of land; the mortgage on the other plots of land is extinguished. It is equivalent to the satisfaction of the creditor by the owner if the right of the creditor is transferred to the owner, or if the claim and debt are merged in the person of the owner.

(2) If the owner who satisfies the creditor is entitled to demand compensation from the owner of one of the other plots of land or from a predecessor in title of this owner, then the mortgage on the plot of land of this owner also passes to him in the amount of the claim for compensation; it remains a blanket mortgage, together with the mortgage on his own plot of land.

#### **Section 1174**

Satisfaction by the personal debtor

(1) Where the personal debtor satisfies the creditor to whom a blanket mortgage is owed, or where, in a blanket mortgage, the claim and debt are merged in one person, then if the debtor is entitled to demand compensation only from the owner of one of the plots of land or from a predecessor in title of the owner, the mortgage on this plot of land passes to him; the mortgage on the remaining plots of land is extinguished.

(2) If only partial compensation is payable to the debtor, and for this reason the mortgage passes to him only for a partial amount, the owner must allow this amount to be counted towards the part of the remaining amount of the blanket mortgage to which he is entitled in accordance with section 1172.

### **Section 1175**

Waiver of the blanket mortgage

(1) If a creditor waives the blanket mortgage, it devolves on the owners of the encumbered plots of land jointly; the provisions of section 1172 (2) apply. If the creditor waives the mortgage on one of the plots of land, the mortgage thereon is extinguished.

(2) The same applies if the right of the creditor is excluded in accordance with section 1170.

### **Section 1176**

Owner partial mortgage ; conflict clause

If the requirements set out in sections 1163, 1164, 1168 and 1172 to 1175 are fulfilled only in respect of a partial amount of the mortgage, the mortgage, which on the basis of these provisions passes to the owner or to one of the owners or to the personal debtor, may not be enforced to the disadvantage of the mortgage that remains to the creditor.

### **Section 1177**

Owner land charge, owner mortgage

(1) If the mortgage and the ownership are merged in one person, and the owner is not also entitled to the claim, the mortgage is converted into a land charge. With regard to whether the loan bears interest, the rate of interest, period for payment, notice of termination and place of payment, the provisions laid down for the claim remain decisive.

(2) If the claim is also owed to the owner, the rights of the owner under the mortgage are governed, as long as the merger exists, by the provisions applicable for a land charge of the owner.

### **Section 1178**

Mortgage for supplementary payments and costs

(1) A mortgage for arrears of interest and other supplementary payments as well as for costs that are payable to the creditor is extinguished if it is merged with the ownership in one person. Extinction does not take place as long as a third party has a claim for any such performance.

(2) It is sufficient for a waiver of the mortgage for the performance set out in subsection (1) if the creditor makes a declaration to the owner. As long as a third party has a claim for such performance, the approval of the third party is necessary. Approval is to be declared to the person in whose favour it is given; it is irrevocable.

### **Section 1179**

#### Priority notice of right to deletion

Where the owner agrees in relation to another to have the mortgage deleted if it is merged with the ownership in one person, a priority notice to secure the claim for deletion may be registered in the Land Register, if the person in whose favour the registration is to be made:

1. holds another right having equal or lower priority as a mortgage, land charge or annuity charge on the plot of land, or
  2. is entitled to the grant of another such right or to the transfer of ownership of the plot of land;
- the claim may also be future or conditional.

### **Section 1179a**

#### Claim for deletion in the case of third party rights

(1) The creditor of a mortgage may demand of the owner that the owner arranges for the deletion of a mortgage having higher or equal priority if, at the time of registration of the mortgage of the creditor, it is merged with the ownership in one person or such merger occurs subsequently. If, after registration of the mortgage given precedence under sentence 1, the ownership passed to another by way of singular succession, each owner is obliged to delete with regard to the mergers existing at the time of his ownership. The claim for deletion is secured in the same way as if a priority notice had been entered in the Land Register for its security at the same time as the mortgage given precedence.

(2) The deletion of a mortgage which is merged with the ownership in one person under section 1163 (1) sentence 1 may not be demanded under subsection (1) unless it appears that the claim to be secured will no longer come into existence; however, the claim for deletion is available from this point of time on with regard to the mergers existing beforehand. A claim under subsection (1) is not constituted by the merger of a mortgage with ownership in accordance with section 1163 (2).

(3) If, in the case of a favoured mortgage, the requirements under section 1163 are satisfied but the right has not been entered in the Land Register for the owner or his successor in title, the claim for deletion belongs to the registered creditor or his successor in title.

(4) If the priority of a mortgage is reduced, subsections (1) to (3) apply with the necessary modifications to the deletion of the mortgage that is prior or equal in rank to it as a result of the change of priority, provided that the time of the registration of the change of priority takes the place of the time of registration of the right with lower priority.



(5) If the creditor of a mortgage has a claim to deletion under the above provisions, it may be agreed that the exclusion of this claim is part of the contents of the mortgage; the exclusion may be restricted to a specific case of merger. The exclusion is to be stated in the Land Register with a designation of the mortgages which are wholly or partially exempted from the claim for deletion; if the exclusion has not been agreed for every case of merger, then, in order to define specifically the cases involved, reference may be made to the approval of registration. If the exclusion is cancelled, no claims for deletion arise from this for mergers which existed only prior to the cancellation.

#### **Section 1179b**

Claim for deletion based on one's own right

(1) A person who is registered in the Land Register as the creditor of a mortgage or is identified as the creditor in accordance with section 1155 may demand from the owner the deletion of the mortgage, if, at the time of its registration, it is merged with the ownership in one person or such a merger occurs subsequently.

(2) Section 1179a (1) sentences 2 and 3, (2) and (5) applies with the necessary modifications.

#### **Section 1180**

Substitution for the claim

(1) The claim for which the mortgage exists may be replaced by another claim. The alteration requires the agreement of the creditor and the owner, and registration in the Land Register; the provisions of section 873 (2) and sections 876 and 878 apply with the necessary modifications.

(2) If the claim that is to take the place of the previous claim does not belong to the previous mortgage creditor, his approval is required; this approval is to be declared to the Land Registry or to the person in whose favour it is given. The provisions of section 875 (2) and section 876 apply with the necessary modifications.

#### **Section 1181**

Extinction by satisfaction from the plot of land

(1) If the creditor is satisfied from the plot of land, the mortgage is extinguished.

(2) If the creditor is satisfied from one of the plots of land encumbered with a blanket mortgage, the other plots of land are also released.

(3) Satisfaction from the plot of land is equivalent to satisfaction from the objects to which the mortgage extends.

### **Section 1182**

Transfer in the case of satisfaction from the blanket mortgage

To the extent that, in the case of a blanket mortgage, the owner of the plot of land from which the creditor is satisfied may demand compensation from the owner of one of the other plots of land or from a predecessor in title of this owner, the mortgage on the plot of land of this owner passes to him.

However, if the creditor is satisfied only in part, the mortgage may not be enforced to the disadvantage of the mortgage that remains to the creditor and, if the plot of land is encumbered with an equal or lower-ranking right, it may not be enforced to the disadvantage of that right.

### **Section 1183**

Cancellation of the mortgage

For the cancellation of the mortgage by legal transaction, the approval of the owner is necessary. The approval is to be declared to the Land Registry or to the creditor; it is irrevocable.

### **Section 1184**

Debt-securing mortgage

(1) A mortgage may be created in such a way that the creditor's right under the mortgage is determined solely by the claim and the creditor may not rely on the registration to prove (debt-securing mortgage).

(2) The mortgage must be described as a debt-securing mortgage in the Land Register.

### **Section 1185**

Uncertificated mortgage; inapplicable provisions

(1) In the case of a debt-securing mortgage, the issue of a mortgage certificate is excluded.

(2) The provisions of sections 1138, 1139, 1141 and 1156 do not apply.

### **Section 1186**

Permitted conversions

A debt-securing mortgage may be converted into an ordinary mortgage, and an ordinary mortgage into a debt-securing mortgage. The approval of persons with equal or lower-ranking rights is not necessary.

### **Section 1187**

Debt-securing mortgage for bearer instruments and instruments made out to order

Only a debt-securing mortgage may be created for a claim under a bearer bond, under a bill of exchange or under any other instrument that can be transferred by endorsement. The mortgage is deemed to be a debt-securing mortgage, even if it is not described as such in the Land Register. The provision of section 1154 (3) does not apply. There is no claim for the deletion of the mortgage in accordance with sections 1179a and 1179b.

### **Section 1188**

Special provision for bearer bonds

(1) For the creation of a mortgage for a claim based on a bearer bond, a declaration of the owner to the Land Registry that he is creating the mortgage and registration in the Land Register are sufficient; the provision of section 878 applies.

(2) The exclusion of the right of the creditor in accordance with section 1170 is permitted only if the presentation period named in section 801 has expired. If, within the period, the bond is presented or the claim based on the document has been asserted in court, the exclusion may not take place until the limitation period has expired.

### **Section 1189**

Appointment of a Land Register representative

(1) In the case of a mortgage of the kind designated in section 1187, a representative may be appointed for the current creditor with power to make certain dispositions with regard to the mortgage with effect for and against every subsequent creditor, and to represent the creditor in the enforcement of the mortgage. For the representative to be appointed, entry in the Land Register is necessary.

(2) If the owner is entitled to demand from the creditor a disposition that the representative is authorised to make, he may demand that the representative make the disposition.

### **Section 1190**

Maximum amount mortgage

(1) A mortgage may be created in such a way that only the maximum amount to which the plot of land is to be liable is determined, and apart from this the stipulation of the claim is reserved. The maximum amount must be entered in the Land Register.

(2) If the claim bears interest, the interest is included in the maximum amount.

(3) The mortgage is deemed to be a debt-securing mortgage, even if it is not described as such in the Land Register.

(4) The claim may be transferred in accordance with the general provisions applying to the transfer of claims. If it is transferred under these provisions, the passing of the mortgage is excluded.

## Title 2

### **Land charge, annuity land charge**

#### Subtitle 1

### **Land charge**

#### **Section 1191**

Statutory contents of the land charge

(1) A plot of land may be encumbered in such a way that the person in whose favour the encumbrance is created is paid a specific sum of money from the plot of land (land charge).

(2) The encumbrance can be created in such a way that interest on the sum of money and other supplementary payments are payable from the plot of land.

#### **Section 1192**

Applicable provisions

(1) The land charge is governed by the provisions on mortgages with the necessary modifications, unless the fact that the land charge requires the existence of a claim leads to a different conclusion.

(1a) If the land charge has been established as security for a claim (security land charge), defences to which the owner is entitled with regard to the land charge on the basis of the security contract with the previous creditor, or which emerge from the security contract, may also be imposed on any acquirer of the land charge; section 1157 sentence 2 does not apply in this respect. Section 1157 remains unaffected in other respects.

(2) Interest on a land charge is governed by the provisions on interest on a mortgage claim.

#### **Section 1193**

Termination

(1) The principal of the land charge only falls due until after prior notice of termination. Both the owner and the creditor are entitled to give notice. The notice period is six months.

(2) Diverging provisions are admissible. If the land charge serves as security for a monetary receivable, a provision derogating from subsection (1) is not permissible.

#### **Section 1194**

Place of payment

The payment of the principal and interest and other supplementary payments, unless otherwise provided, is to be made at the place where the Land Registry has its seat.

#### **Section 1195**

Bearer land charge

A land charge may be created in such a way that the land charge certificate is made out to the bearer.

The provisions concerning bearer bonds apply with the necessary modifications to such a certificate.

### **Section 1196**

#### Owner land charge

- (1) A land charge may also be created for the owner.
- (2) For the creation of the land charge, a declaration of the owner to the Land Registry that the land charge is to be registered in the Land Register for him as well as registration is necessary; the provision of section 878 applies.
- (3) A claim for deletion of the land charge in accordance with section 1179a or section 1179b exists only for such mergers of the land charge and the ownership in one person as occur after the land charge has belonged to a person other than the owner.

### **Section 1197**

#### Deviations from third party land charge

- (1) If the owner is the creditor, he may not pursue execution for the purpose of his own satisfaction.
- (2) The owner is entitled to interest only if the plot of land is seized on application by another for the purpose of judicially enforced receivership, and only for the duration of the receivership.

### **Section 1198**

#### Permitted conversions

A mortgage may be converted into a land charge and a land charge into a mortgage. The approval of persons with equal or lower-ranking rights is not necessary.

#### Subtitle 2

### **Annuity land charge**

#### **Section 1199**

##### Statutory contents of the annuity land charge

- (1) A land charge may be created in such a way that a specific sum of money is payable from the plot of land on regularly recurring dates (annuity land charge).
- (2) When the annuity land charge is created, the sum payable to redeem the annuity land charge must be specified. The redemption sum must be stated in the Land Register.

#### **Section 1200**

##### Applicable provisions

- (1) The individual payments are governed by the provisions for mortgage interest, and the redemption sum by the provisions applying to the principal of a land charge, with the necessary modifications.
- (2) The payment of the redemption sum to the creditor has the same effect as the payment of the principal of a land charge.

#### **Section 1201**

##### Right of redemption

- (1) The owner has the right of redemption.
- (2) The creditor may not be granted the right to demand redemption. In the case of section 1133 sentence 2, the creditor is entitled to demand the payment of the redemption sum from the plot of land.

## **Section 1202**

### Termination

(1) The owner may exercise the right of redemption only after giving previous notice. The notice period is six months, unless otherwise provided.

(2) A restriction of the right to give notice is admissible only to the extent that the owner may, after thirty years, give notice, observing the six-month notice period.

(3) If the owner has given notice, then after the expiry of the notice period the creditor may demand payment of the redemption sum from the plot of land.

## **Section 1203**

### Permitted conversions

An annuity land charge may be converted into an ordinary land charge, and an ordinary land charge into an annuity land charge. The approval of persons with equal or lower-ranking rights is not necessary.

### Division 8

## **Pledge of movable things and over rights**

### Title 1

## **Pledge of movable things**

### **Section 1204**

#### Statutory contents of the pledge of movable things

(1) A movable thing may be encumbered to secure a claim in such a way that the creditor is entitled to seek satisfaction from the thing (pledge).

(2) A pledge may also be created for a future or a conditional claim.

### **Section 1205**

#### Creation

(1) To create a pledge, it is necessary for the owner to deliver the thing to the creditor and for both to agree that the creditor is to be entitled to the pledge. If the creditor is in possession of the thing, agreement on the creation of the pledge suffices.

(2) The delivery of possession of a thing in the indirect possession of the owner may be replaced by the owner transferring indirect possession to the pledgee and notifying the possessor of the pledging.

### **Section 1206**

#### Replacement of delivery by granting joint possession

Granting joint possession suffices instead of delivery of the thing if the thing is under the joint control of the creditor or, if it is in the possession of a third person, it may be delivered only to the owner and the creditor jointly.

### **Section 1207**

Pledging by an unauthorised person

If the thing does not belong to the pledgor, the provisions of sections 932, 934 and 935 governing the acquisition of ownership apply with the necessary modifications to the pledging.

### **Section 1208**

Acquisition of priority of rank in good faith

If the thing is encumbered with the right of a third party, then the pledge takes priority over the right, unless the pledgee, at the time of acquisition of the pledge, is not in good faith in relation to the right.

The provisions of section 932 (1) sentence 2, section 935 and of section 936 (3) apply with the necessary modifications.

### **Section 1209**

Priority of the pledge

The priority of the pledge is determined by the time of its creation, even if it is created for a future or a conditional claim.

### **Section 1210**

Extent of liability of the pledge

(1) The pledged item is liable for the claim as it exists from time to time, in particular including interest and contractual penalties. If a personal debtor is not the owner of the pledged item, the liability is not extended by a legal transaction entered into by the debtor after the pledging.

(2) The pledged item is liable for the claims of the pledgee for reimbursement of outlays, for the costs of notice and the pursuit of rights to be reimbursed to the pledgee and for the costs of the sale of the pledged item.

### **Section 1211**

Defences of the pledgor

(1) The pledgor may assert against the pledgee the defences which are available to a personal debtor against the claim, as well as those of a surety under section 770. If the personal debtor dies, then the pledgor may not invoke the fact that his heir has only limited liability for the obligation.

(2) If the pledgor is not the personal debtor, he does not forfeit a defence by the personal debtor waiving it.

### **Section 1212**

Extension to separated products

The pledge extends to the products that are separated from the pledged item.

### **Section 1213**

#### Pledge of emoluments

(1) The pledge may be created in such a way that the pledgee is entitled to take the emoluments of the pledged item.

(2) If a thing which by its nature bears fruit is delivered to the pledgee for his sole possession, it is to be presumed in case of doubt that the pledgee is to be entitled to take the fruit.

### **Section 1214**

#### Duties of the pledgee entitled to emoluments

(1) If the pledgee has the right to take the emoluments, he is obliged to attend to the production of the emoluments and to render account.

(2) The net yield of the emoluments is set off against the payment owed and, if costs and interest are payable, against these first.

(3) Diverging provisions are admissible.

### **Section 1215**

#### Duty of safekeeping

The pledgee is obliged to keep the pledged item in safe custody.

### **Section 1216**

#### Reimbursement of outlays

If the pledgee makes outlays on the pledged item, the duty of reimbursement of the pledgor is determined under the provisions on agency without specific authorisation. The pledgee is entitled to remove an installation with which he furnished the pledged item.

### **Section 1217**

#### Violation of rights by the pledgee

(1) Where the pledgee violates the rights of the pledgor to a substantial degree and where he continues this injurious conduct notwithstanding a warning given by the pledgor, the pledgor may demand that the pledged item is deposited at the cost of the pledgee or, if it is not suitable for deposit, that it is delivered to a custodian to be appointed by the court.

(2) Instead of the deposit or the delivery of the thing to a custodian, the pledgor may demand the return of the pledged item in return for the satisfaction of the creditor. If the claim is interest-free and is not yet due, then the pledgee is entitled only to the amount which, with the addition of the statutory interest for the period from the payment until the due date, is equivalent to the amount of the claim.



### **Section 1218**

Rights of the pledgor in the case of imminent spoilage

(1) If the spoilage of the pledged item or a substantial decrease in its value is to be feared, the pledgor may demand the return of the pledged item in return for the provision of some other security; the provision of security by sureties is excluded.

(2) The pledgee must notify the pledgor of the imminent spoilage without undue delay, unless notification is impracticable.

### **Section 1219**

Rights of the pledgee in the case of imminent spoilage

(1) If the imminent spoilage of the pledged item or a substantial decrease of its value that is to be feared jeopardises the security of the pledgee, the pledgee may have the pledged item sold by public auction.

(2) The proceeds take the place of the pledged item. Upon demand by the pledgor, the proceeds are to be deposited.

### **Section 1220**

Warning of auction

(1) The auction of the pledged item is permitted only after the pledgor has been warned of it; the warning may be omitted if the pledged item is vulnerable to spoilage and postponement of the auction entails danger. In the event of a decrease in value, it is necessary, apart from the warning, for the pledgee to determine a suitable time limit for the pledgor to provide other security and that this has expired.

(2) The pledgee must notify the pledgor of the auction without undue delay; in the event of failure to do so, he is obliged to pay damages.

(3) The warning, the determination of a time limit and the notification may be omitted if they are impracticable.

### **Section 1221**

Sale by private agreement

If the pledged item has a stock exchange or market price, the pledgee may effect the sale privately at the current price through a commercial broker officially authorised to effect such sales or through a person authorised to sell by public auction.

### **Section 1222**

Pledge of more than one thing

If the pledge extends to more than one thing, each thing is liable for the entire claim.

### **Section 1223**

Duty to return the pledged item; right to redeem the pledged item

- (1) The pledgee is obliged to return the pledged item to the pledgor after the pledge is extinguished.
- (2) The pledgor may demand the return of the pledged item in return for the satisfaction of the pledgee as soon as the debtor is entitled to perform.

### **Section 1224**

Satisfaction by deposit or set-off

The satisfaction of the pledgee by the pledgor may also be given by deposit or by set-off.

### **Section 1225**

Passing of claim to the pledgor

- (1) If the pledgor is not the personal debtor, then, insofar as he satisfies the pledgee, the claim passes to him. The provision of section 774, governing a surety, applies with the necessary modifications.

### **Section 1226**

Limitation of compensation claims

The compensation claims of the pledgor for alterations or deteriorations of the pledged item and the claims of the pledgee for the reimbursement of outlays or for leave to remove an installation are subject to a six-month limitation period. The provision of section 548 (1) sentence 2 and 3, (2) applies with the necessary modifications.

### **Section 1227**

Protection of the pledge

If the right of the pledgee is adversely affected, then the claims of the pledgee are governed by the provisions applying to claims from ownership, with the necessary modifications.

### **Section 1228**

Satisfaction by sale of the pledged item

- (1) The satisfaction of the pledgee from the pledged item is effected by sale.
- (2) The pledgee is entitled to effect the sale as soon as the claim is due in whole or in part. If the object owed does not consist in money, the sale is not permitted until the claim has been converted into a money claim.

### **Section 1229**

Prohibition of a forfeiture agreement

An agreement made before the right to sell comes into existence by which the ownership of the thing is to pass or be transferred to the pledgee if he is not satisfied or is not satisfied in good time is void.

### **Section 1230**

Selection of pledged item from more than one pledged item

The pledgee may, unless otherwise provided, select from more than one pledged item those that are to be sold. He may only sell as many pledges as are required for his satisfaction.

### **Section 1231**

#### Surrender of pledged item for sale

If the pledgee is not in sole possession of the pledged item, he may, after the right to sell comes into existence, demand the surrender of the pledged item for the purpose of sale. At the request of the pledgor, delivery to a joint custodian is to be effected instead of surrender; the custodian must, when delivery is made, agree to make the pledged item available for sale.

### **Section 1232**

#### Lower-ranking pledgees

The pledgee is not obliged to surrender the pledged item to a pledgee who is lower-ranking than himself for the purpose of sale. If he is not in possession of the pledged item, then he may not, unless he himself handles the sale, object to sale by a lower-ranking pledgee.

### **Section 1233**

#### Execution of the sale

(1) The sale of the pledged item is to be effected in accordance with the provisions of sections 1234 to 1240.

(2) If the pledgee has obtained an enforceable judgment against the owner for his right of sale, he may also have the sale made in accordance with the provisions governing the sale of a pledged thing.

### **Section 1234**

#### Warning of sale; waiting period

(1) The pledgee must warn the owner of the sale in advance and at the same time specify the sum of money for which the sale is to take place. The warning may be given only after the right of sale has arisen; it may be omitted if it is impracticable.

(2) The sale may not be effected until after the expiry of one month after the warning. If the warning is impracticable, the month is calculated from the time when the right of sale arises.

### **Section 1235**

#### Public auction

(1) The sale of the pledged item is to be made by public auction.

(2) If the pledged item has a stock exchange or market price, the provision of section 1221 applies.

### **Section 1236**

#### Place of auction

The auction is to be held at the place at which the pledged item is kept. If an auction at the place of safekeeping is not expected to result in reasonable success, the pledged item is to be auctioned at another suitable place.

### **Section 1237**

#### Public notice

The time and place of the auction are to be publicly announced, together with a general description of the pledged item. The owner and third parties who have rights in the pledged item are to be notified separately; the notification may be omitted if it is impracticable.

### **Section 1238**

#### Conditions of sale

(1) The pledged item may be sold only subject to the condition that the purchaser immediately pays the sale price in cash and that he forfeits his rights if this does not take place.

(2) If the sale is effected without this provision, the sale price is to be seen as received by the pledgee; the rights of the pledgee against the buyer are unaffected. If the immediate payment of the sale price is not made, the same applies, unless the reservation of the forfeiture of rights is invoked before the end of the auction.

### **Section 1239**

#### Bidding by creditor and owner

(1) The pledgee and the owner may join in the bidding at the auction. If the bid of the pledgee is accepted, he is deemed to have received the sale price.

(2) The bid of the owner may be rejected unless the amount is paid in cash. The same applies to the bid of the debtor if the pledged item is liable for the debt of another.

### **Section 1240**

#### Things made of gold or silver

(1) Things made of gold or silver may not be knocked down at less than the gold or silver value.

(2) If no sufficient bid is made, the sale may be effected privately by a person authorised to sell by public auction at a price not less than the gold or silver value.

### **Section 1241**

#### Notification of the owner

The pledgee must notify the owner of the sale of the pledged item and the result without undue delay, unless notification is impracticable.

### **Section 1242**

#### Effects of the legal sale

(1) The lawful sale of the pledged item gives the purchaser the same rights as if he had purchased the thing from the owner. This also applies if it is knocked down to the pledgee.

(2) Pledges of the thing are extinguished, even if the purchaser had knowledge of them. The same applies to a usufruct, unless it outranks all pledges in priority.

### **Section 1243**

#### Unlawful sale

(1) The sale of the pledged item is not lawful if the provisions of section 1228 (2), section 1230 sentence 2, section 1235, section 1237 sentence 1 or section 1240 are violated.

(2) Where the pledgee contravenes another provision governing the sale, he is obliged to pay damages if he is at fault.

### **Section 1244**

#### Acquisition in good faith

Where a thing is sold as a pledged item, and the seller is not entitled to a pledge or the requirements upon which the lawfulness of the sale depends are not satisfied, the provisions of sections 932 to 934 and 936 apply with the necessary modifications, if the sale was effected in accordance with section 1233 (2), or if the provisions of section 1235 or section 1240 (2) have been observed.

### **Section 1245**

#### Deviating agreements

(1) The owner and the pledgee may agree on a manner of sale of the pledged item that deviates from the provisions of sections 1234 to 1240. If a third party has a right in the pledged item which is extinguished by the sale, then the approval of this third party is necessary. Approval is to be declared to the person in whose favour it is given; it is irrevocable.

(2) The observation of the provisions of section 1235, section 1237 sentence 1 and section 1240 may not be waived before the right of sale comes into existence.

### **Section 1246**

#### Deviation for reasons of equity

(1) If a manner of sale of the pledged item deviating from the provisions of sections 1235 to 1240 corresponds with the interests of the parties concerned as appears just, each of them may demand that the sale be made in this manner.

(2) If an agreement is not reached, the court decides.

### **Section 1247**

#### Proceeds of the pledged item

To the extent that the pledgee is entitled to the proceeds from the pledged item for his satisfaction, the claim is deemed settled by the owner. Apart from this, the proceeds take the place of the pledged item.

### **Section 1248**

#### Presumption of ownership

When the pledged item is sold, the pledgor is deemed, for the benefit of the pledgee, to be the owner, unless the pledgee knows that the pledgor is not the owner.

### **Section 1249**

#### Right of redemption

A person, who through the sale of the pledged item would forfeit a right in the pledged item, may satisfy the pledgee as soon as the debtor is entitled to perform. The provision of section 268 (2) and (3) applies with the necessary modifications.

### **Section 1250**

#### Transfer of claim

(1) Upon the transfer of the claim, the pledge passes to the new creditor. The pledge may not be transferred without the claim.

(2) If, when the claim is transferred, the passing of the pledge is excluded, the pledge is extinguished.

### **Section 1251**

#### Effect of the passing of the pledge

(1) The new pledgee may demand from the previous pledgee the surrender of the pledged item.

(2) Upon obtaining possession, the new pledgee takes the place of the previous pledgee in relation to the duties connected with the pledge that are owed to the pledgor. If he fails to perform the duties, the previous pledgee is liable for the damage to be compensated for by him in the same way as a surety who has waived the defence of unexhausted remedies against the principal debtor. The liability of the previous pledgee does not come into existence if the claim passes to the new pledgee by operation of law or is assigned to him on the basis of a statutory obligation.

### **Section 1252**

#### Extinction with the claim

The pledge is extinguished together with the claim to which it relates.

### **Section 1253**

#### Extinction by return

(1) The pledge is extinguished if the pledgee returns the pledged item to the pledgor or to the owner. A reservation of the continuation of the pledge is ineffective.

(2) If the pledged item is in the possession of the pledgor or of the owner, there is a presumption that the pledged item has been returned to him by the pledgee. This presumption also applies if the pledged item is in the possession of a third party who obtained possession, after the creation of the pledge, from the pledgor or the owner.

### **Section 1254**

#### Claim for return

If there is a defence to the pledge that permanently excludes the enforcement of the pledge, the pledgor may demand the return of the pledged item. The owner has the same right.

### **Section 1255**

#### Cancellation of the pledge

(1) For the cancellation of the pledge by legal transaction, it is sufficient for the pledgee to declare to the pledgor or to the owner that he gives up the pledge.

(2) If the pledge is encumbered with the right of a third party, the approval of the third party is necessary. Approval is to be declared to the person in whose favour it is given; it is irrevocable.

### **Section 1256**

#### Coincidence of pledge and ownership

(1) The pledge is extinguished if it coincides with ownership in the same person. There is no extinction as long as the claim for which the pledge exists is encumbered with the right of a third party.

(2) The pledge is not deemed to be extinguished if the owner has a legal interest in the continuation of the pledge.

### **Section 1257**

#### Pledge by operation of law

The provisions on a pledge created by legal transaction apply with the necessary modifications to a pledge created by operation of law.

### **Section 1258**

#### Pledge of the share of a co-owner

(1) If there is a pledge relating to the share of a co-owner, the pledgee exercises the rights that arise from the community of co-owners with regard to the management of the thing and the nature of its use.

(2) The dissolution of the community may, before the pledgee's right of sale comes into existence, be demanded only by the co-owner and the pledgee jointly. After the right of sale has come into existence, the pledgee may demand that the community be dissolved without a need for the approval of the co-owner; he is not obliged by an agreement by which the co-owners have permanently or temporarily excluded the right to demand the dissolution of the community or have determined a period for notice of termination.

(3) If the community is dissolved, the pledgee is entitled to a pledge over the objects of property that take the place of the share.

(4) The right of the pledgee to sell the share is unaffected.

### **Section 1259**

Realisation of a commercial pledged item

If the owner and pledgee are entrepreneurs, legal persons under public law or special funds under public law, they may agree when the pledge is created, with regard to the realisation of a pledged item that has a stock exchange or market price, that the pledgee may effect the sale privately at its current price himself or through third parties or that the ownership of the thing is to fall to the pledgee when the claim becomes payable. In this case, the claim is deemed to be settled by the owner in the amount of the stock exchange or market price applicable on the due date. Sections 1229 and 1233 to 1239 do not apply.

### **Sections 1260 - 1272**

(repealed)

Title 2

### **Pledge of rights**

#### **Section 1273**

Statutory contents of the pledge of rights

(1) The object of a pledge may also be a right.

(2) Pledge of rights is governed by the provisions on the pledge of movable things with the necessary modifications, except to the extent that sections 1274 to 1296 lead to a different conclusion. The application of the provisions of section 1208 and section 1213 (2) is excluded.

#### **Section 1274**

Creation

(1) A pledge of a right is created in accordance with the provisions governing the transfer of the right. If the delivery of the thing is required for the transfer of the right, the provisions of sections 1205 and 1206 apply.

(2) To the extent that a right is not transferable, no pledge may be created over the right.

#### **Section 1275**

Pledge of right to performance

If a right under which an act of performance may be demanded is the object of a pledge, the legal relationship between the pledgee and the person obliged is governed by the provisions that apply to the legal relationship between the purchaser and the person obliged in the event of the transfer of the right, and in the event of a court order made in accordance with section 1217 (1), by the provision under section 1070 (2), with the necessary modifications.



### **Section 1276**

Cancellation or alteration of the pledged right

(1) A pledged right may be cancelled by legal transaction only with the approval of the pledgee.

Approval is to be declared to the person in whose favour it is given; it is irrevocable. The provision of section 876 sentence 3 is unaffected.

(2) The same applies in the event of an alteration of the right, to the extent that it interferes with the pledge.

### **Section 1277**

Satisfaction by execution

The pledgee may seek his satisfaction from the right only on the basis of an enforceable judgment in accordance with the provisions governing execution, unless otherwise provided. The provisions of section 1229 and section 1245 (2) are unaffected.

### **Section 1278**

Extinction by return

If a right whose pledging requires the delivery of a thing is the object of a pledge, the provision under section 1253 applies with the necessary modifications to the extinction of the pledge through the return of the thing.

### **Section 1279**

Pledge of a claim

The special provisions of sections 1280 to 1290 apply to the pledge of a claim. To the extent that a claim has a stock exchange or market price, the provision of section 1259 applies with the necessary modifications.

### **Section 1280**

Notification of the debtor

The pledging of a claim for whose transfer a contract of assignment suffices is effective only if the creditor gives notice thereof to the debtor.

### **Section 1281**

Performance before the due date

The debtor may pay only to the pledgee and the creditor jointly. Either of them may demand that payment be made to them jointly; either may demand that, instead of payment, the thing owed be deposited for both, or if it is not suitable for deposit, that it be delivered to a custodian to be appointed by the court.

### **Section 1282**

#### Performance after the due date

(1) If the requirements of section 1228 (2) have been fulfilled, the pledgee is entitled to collect the claim and the debtor may pay only to him. The pledgee is entitled to collect a money claim only to the extent that it is necessary for his satisfaction. To the extent that he is entitled to collection, he may also demand that the money claim be assigned to him instead of payment.

(2) The pledgee has no right to make other dispositions of the claim; the right to seek satisfaction from the claim in accordance with section 1277 is unaffected.

### **Section 1283**

#### Termination

(1) Where the due date of the pledged claim depends on a notice of termination, the creditor requires the approval of the pledgee for this notice only if the latter is entitled to receive the emoluments.

(2) The notice of the debtor is only effective if it is declared to the pledgee and the creditor.

(3) If the requirements of section 1228 (2) have been fulfilled, then the pledgee is also entitled to give notice; for the notice of the debtor, a declaration made to the pledgee suffices.

### **Section 1284**

#### Deviating agreements

The provisions of sections 1281 to 1283 do not apply to the extent that the pledgee and the creditor agree otherwise.

### **Section 1285**

#### Cooperation in collection

(1) Where performance is to be made to the pledgee and the creditor jointly, they are reciprocally obliged to cooperate in the collection if the claim is due.

(2) Insofar as the pledgee is entitled to collect the claim without the cooperation of the creditor, he is to ensure collection in due form. He must notify the creditor of the collection without undue delay, unless the notification is impracticable.

### **Section 1286**

#### Duty of termination in the case of danger

If the maturity of the pledged claim depends on notice, the pledgee may, unless he has the right to give notice, demand that the creditor gives notice, if the collection of the claim is necessary under the rules of proper management of assets by reason of a danger to its safety. Subject to the same requirement, the creditor may demand from the pledgee his approval of the notice, to the extent that approval is required.

### **Section 1287**

#### Effect of performance

Where the debtor performs under sections 1281 and 1282, then upon performance the creditor acquires the object provided and the pledgee a pledge over the object. Where performance consists in the transfer of the ownership of a plot of land, the pledgee acquires a debt-securing mortgage; if it consists of the transfer of ownership of a registered ship or a ship under construction, the pledgee acquires a ship mortgage.

### **Section 1288**

#### Investment of collected money

(1) If a money claim is collected under section 1281, the pledgee and the creditor are reciprocally obliged to cooperate in order that the collected amount, to the extent that this is practicable without impairing the interests of the pledgee, is invested at interest in accordance with the provisions governing the investment of money held in trust for wards, and at the same time the pledge is created for the pledgee. The type of investment is determined by the creditor.

(2) If the collection is made under section 1282, the claim of the pledgee, to the extent that he is entitled to the collected amount for his satisfaction, is deemed settled by the creditor.

### **Section 1289**

#### Extension to the interest

The pledge of a claim extends to the interest on the claim. The provisions of section 1123 (2) and sections 1124 and 1125 apply with the necessary modifications; the attachment is replaced by the notification by the pledgee to the debtor that he is exercising the right of collection.

### **Section 1290**

#### Collection in the case of multiple pledges

If there is more than one pledge of a claim, only the pledgee whose pledge has priority over the remaining pledges is entitled to collect.

### **Section 1291**

#### Pledge of land charge or annuity land charge

The provisions on the pledge of a claim also apply to the pledge of a land charge and of an annuity land charge.

### **Section 1292**

#### Pledging of instruments made out to order

For the pledging of a bill of exchange or any other instrument that may be transferred by endorsement, agreement between the creditor and the pledgee and the delivery of the endorsed instrument are sufficient.

**Section 1293**

Pledge of bearer instruments

The pledge of a bearer instrument is governed by the provisions on the pledge of movable things.

**Section 1294**

Collection and notice of termination

If a bill of exchange, another instrument that may be transferred by endorsement or a bearer instrument is the object of a pledge, then even if the requirements of section 1228 (2) have not yet been fulfilled, the pledgee is entitled to collection and, if notice is required, to give notice, and the debtor may pay only to the pledgee.

**Section 1295**

Private sale of instruments made out to order

Where a pledged instrument, transferable by endorsement, has a stock exchange or market price, the creditor is entitled, after the fulfilment of the requirements of section 1228 (2), to have the instrument sold under section 1221. Section 1259 applies with the necessary modifications.

**Section 1296**

Extension to interest coupons

The pledge of a security extends to the interest, annuity or dividend coupons belonging to the instrument only if they have been delivered to the pledgee. The pledgor may, unless otherwise provided, demand the surrender of the coupons, to the extent that they fall due before the fulfilment of the requirements of section 1228 (2).

Book 4

**Family Law**

Division 1

**Civil marriage**

Title 1

**Engagement**

**Section 1297**

Non-actionability, nullity of a promise to pay a penalty

(1) No action for the entering into of a marriage may be based on an engagement.

(2) The promise to pay a penalty for the eventuality that the marriage is not entered into is void.

**Section 1298**

Duty of compensation in the case of withdrawal

(1) If an engaged person withdraws from the engagement, he must reimburse the other engaged person and the parents of the other engaged person, and also third parties who acted in place of the parents, for the damage arising from the fact that in expectation of the marriage they incurred outlays or liabilities. He must also compensate the other engaged person for the damage suffered by the latter because in expectation of the marriage he has taken other measures affecting his property or his earnings.

(2) The damage is to be compensated for only to the extent that the outlays, the entering into the obligations and the other measures were reasonable in the circumstances.

(3) The duty to compensate does not arise if there is a compelling reason for the withdrawal.

**Section 1299**

Withdrawal by reason of fault of the other party

If one engaged person causes the other to withdraw by reason of the fault of the former, and this fault is a compelling reason for the withdrawal, then under section 1298 (1) and (2) he is obliged to pay damages.

**Section 1300**

(repealed)

**Section 1301**

Return of the presents

If the marriage does not take place, each engaged person may require the other to return what the former gave as a present or as a sign of the engagement, under the provisions on the return of unjust enrichment. In case of doubt it should be assumed that the claim for return is to be excluded if the engagement ends as a result of the death of one of the engaged persons.

**Section 1302**

Limitation

The claims specified in sections 1298 to 1301 are subject to a two-year limitation period after the breaking off of the engagement.

Title 2

## **Entering into marriage**

Subtitle 1

### **Capacity to marry**

#### **Section 1303**

Marriageable age

- (1) A marriage should not be entered into before the parties reach the age of majority.
- (2) The family court, on application, may grant exemption from this provision if the applicant has reached the age of sixteen and his future spouse is of full age.
- (3) Where the legal representative of the applicant or another person with care for the person of the child objects to the application, the family court may grant exemption only if the objection is not based on weighty reasons.
- (4) If the family court grants exemption under subsection (2), the applicant no longer requires the prior consent of the legal representative or of another person with care for the person of the child in order to enter into marriage.

#### **Section 1304**

Incapacity to contract

A person who is incapable of contracting may not enter into a marriage.

#### **Section 1305**

(repealed)

Subtitle 2

### **Impediments to marriage**

#### **Section 1306**

Existing marriage or civil partnership

A marriage may not be entered into if a marriage or a civil partnership exists between one of the persons who intend to be married to each other and a third party.

#### **Section 1307**

Relationship by blood

A marriage may not be entered into between relatives in direct line and between brothers and sisters of the whole blood and of the half blood. This continues to apply if the relationship is extinguished as the result of adoption.

## **Section 1308**

### Adoption

(1) A marriage should not be entered into between persons whose relationship in the meaning of section 1307 was created by adoption. This does not apply if the adoption relationship has been dissolved.

(2) The family court may, on application, grant exemption from this provision if the adoption created a collateral relationship between the applicant and his future spouse. The exemption should be refused if compelling reasons prevent the entering into of the marriage.

### Subtitle 3

## **Certificate of no impediment**

## **Section 1309**

### Certificate of no impediment for foreigners

(1) A person who, with regard to the requirements for entering into a marriage, is subject to foreign law, except as provided by Article 13 (2) of the Introductory Act to the German Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch], should not enter into a marriage before he has furnished a certificate of the domestic authority of his home state that there is no impediment to the marriage under the law of that state. A certificate of the domestic authority includes a written confirmation that is issued by another office under a treaty entered into with the home state of the person affected. The certificate becomes ineffective if the marriage is not entered into within six months after it is issued; if the certificate states a shorter period of validity, the latter is conclusive.

(2) The president of the higher regional court in whose area the registry of births, deaths and marriages to whom the marriage has been notified has his seat may grant exemption from the requirement under subsection (1) sentence 1. The exemption should be granted only to stateless persons with their habitual residence abroad and nationals of states whose public authorities do not issue certificates of no impediment in the meaning of subsection (1). In special cases, it may also be granted to nationals of other states. The exemption is valid only for the period of six months.

#### Subtitle 4

### **Marriage**

#### **Section 1310**

Jurisdiction of the registrar of births, deaths and marriages, curing defective marriages

(1) Marriage is entered into only if the parties contracting the marriage declare before the registrar that they wish to enter into the marriage. The registrar may not refuse his cooperation in the entering into of the marriage if the requirements for the marriage are satisfied; he must refuse his cooperation if it is obvious when the marriage is entered into would be voidable under section 1314 (2).

(2) A registrar includes a person who, without being a registrar, publicly exercised the office of a registrar and entered the marriage in the marriage register.

(3) A marriage is also deemed to have been entered into if the spouses have declared that they intend to be married to each other and

1. the registrar has entered the marriage in the marriage register,
2. the registrar, in connection with the recording of the birth of a child of the spouses, has entered a reference to the marriage in the register of births, or
3. the registrar has received from the spouses a family-law declaration which requires an existing marriage in order to be valid and the spouses have been issued with a certificate of this that is provided in statutory provisions

and the spouses have lived together as spouses for ten years since then or until the death of one of the spouses, but for a minimum of five years.

#### **Section 1311**

Personal declaration

The parties contracting the marriage must make the declarations under section 1310 (1) in person and both must be present at the same time. The declarations may not be made subject to a condition or a stipulation as to time.

#### **Section 1312**

Marriage ceremony

On the occasion of the marriage, the registrar should ask the parties contracting the marriage separately whether they intend to enter into marriage with each other and, after the parties contracting the marriage have answered this question in the affirmative, state that they are now, by operation of law, lawfully joined spouses. The marriage may be effected in the presence of one or two witnesses if the parties contracting the marriage so wish.



### Title 3

#### **Annulment of marriage**

##### **Section 1313**

Annulment by judicial decision

A marriage may be annulled only by a judicial decision on petition. The marriage is dissolved when the decision becomes final and absolute. The conditions under which a petition for annulment may be made follow from the following provisions.

##### **Section 1314**

Grounds of annulment

(1) A marriage may be annulled if it was entered into contrary to the provisions of sections 1303, 1304, 1306, 1307 and 1311.

(2) In addition, a marriage may be annulled if

1. a spouse was in a state of unconsciousness or temporary mental disturbance on the occasion of the marriage;
2. a spouse did not know, on the occasion of the marriage, that a marriage was taking place;
3. a spouse was induced to enter into the marriage by deceit as to circumstances such as, if he had known the factual position and if he had correctly appreciated the nature of marriage, would have prevented him from entering into the marriage; this does not apply where the deceit relates to financial circumstances or was exercised by a third party without the knowledge of the other spouse;
4. a spouse was unlawfully induced to enter into the marriage by duress;
5. both spouses were in agreement on the occasion of the marriage that they did not intend to create a duty under section 1353 (1).

## **Section 1315**

### Exclusion of annulment

(1) An annulment of the marriage is excluded

1. in the case of a breach of section 1303, where the requirements of section 1303 (2) were satisfied on the occasion of the marriage and the family court, as long as the spouse is not of full age, ratifies the marriage or if the spouse, after he is of full age, has indicated that he intends to continue the marriage (confirmation);
2. in the case of a breach of section 1304, if the spouse, after the incapacity to contract ends, has indicated that he intends to continue the marriage (confirmation);
3. in the case of section 1314 (2) no. 1, if the spouse, after the unconsciousness or the mental disturbance ends, has indicated that he intends to continue the marriage (confirmation);
4. in the cases of section 1314 (2) nos. 2 to 4, if the spouse, after discovery of the mistake or the deceit or after the position of constraint ends, has indicated that he intends to continue the marriage (confirmation);
5. in the cases of section 1314 (2) no. 5, if the spouses, after the marriage, lived together as spouses.

The confirmation of a person incapable of contracting is ineffective. The confirmation of a minor, in the case of a breach of section 1304 and in the case of section 1314 (2) no. 1, is subject to the approval of his legal representative; if the legal representative refuses the approval without weighty reasons, the family court may, on the application of the minor, substitute the approval.

(2) An annulment of the marriage is further excluded

1. in the case of a breach of section 1306, if, before the new marriage is entered into, the dissolution by divorce or the annulment of the former marriage or the annulment of the civil partnership is pronounced and this pronouncement becomes final and absolute after the new marriage is entered into;
2. in the case of a breach of section 1311, if the spouses, after entering into the marriage, lived together as spouses for five years, or, if one of them died earlier, until the death of that spouse, but for a minimum of three years, unless at the end of the five years or at the time of the death a petition for annulment has been made.

### **Section 1316**

#### Entitlement to petition

(1) The following persons are entitled to petition:

1. The following persons are entitled to petition: in the case of a breach of sections 1303, 1304, 1306, 1307 and 1311, and in the cases of section 1314 (2) nos. 1 and 5, either spouse, the competent administrative authority and in the cases of section 1306 the third person too. The competent administrative authority is determined by statutory order of the Land governments. The Land governments may transfer the authorisation under sentence 2 to the competent supreme Land authorities by statutory order;

2. in the cases of section 1314 (2) nos. 2 to 4, the spouse named there.

(2) For a spouse who is incapable of contracting, the petition may be filed only by his legal representative. In the other cases, a minor spouse may file the petition only without a representative; he does not need the approval of his legal representative for this.

(3) In the case of a breach of sections 1304, 1306 and 1307, and in the cases of section 1314 (2) nos. 1 and 5, the competent administrative authority should file the petition, unless the annulment of the marriage would represent such severe hardship for one spouse or for the children of the marriage that, exceptionally, it seems advisable to maintain the marriage.

### **Section 1317**

#### Period for filing petition

(1) In the cases of section 1314 (2) nos. 2 to 4, the petition may be filed only within one year. The period for filing begins on the discovery of the mistake or the deceit or when the position of constraint ends; however, the period for the legal representative of a spouse who is incapable of contracting does not begin before the date on which he becomes aware of the circumstances that cause the period to commence, and in the case of a minor spouse not before he is of full age. Section 206 and section 210 (1) sentence 1 are to be applied to the running of the period with the necessary modifications.

(2) If the legal representative of a spouse without capacity to contract does not file the petition in good time, the spouse himself, within six months after the incapacity to contract comes to an end, may file the petition.

(3) If the marriage has been dissolved, the petition may not be filed again.

## **Section 1318**

### Consequences of annulment

(1) The consequences of the annulment of a marriage are determined only in the following cases by the provisions on divorce.

(2) The provisions of sections 1569 to 1586b apply with the necessary modifications

1. in favour of a spouse who, in the case of a breach of sections 1303, 1304, 1306, 1307 or section 1311, or in the cases of section 1314 (2) no. 1 or 2, did not when the marriage was entered into know that the marriage was voidable, or who has been deceived or threatened, in the cases of section 1314 (2) no. 3 or 4, by the other spouse or with his knowledge;

2. in favour of both spouses in the case of a breach of section 1306, 1307 or section 1311, if both spouses knew of the voidability; this does not apply in the case of a breach of section 1306, to the extent that the claim of a spouse to maintenance would adversely affect a corresponding claim of the third person.

The provisions on maintenance by reason of the care or upbringing of a child of the spouses also apply here, with the necessary modifications, to the extent that a refusal of maintenance would be grossly inequitable with regard to the concerns of the child.

(3) Sections 1363 to 1390 and section 1587 apply, with the necessary modifications, to the extent that this would not be grossly inequitable with regard to the circumstances when the marriage is entered into or in the case of a breach of section 1306 with regard to the concerns of the third person.

(4) The provisions of the Household Effects Order [Hausratsverordnung] apply with the necessary modifications; here, particular account is to be taken of the circumstances when the marriage is entered into, and in the case of a breach of section 1306 of the concerns of the third person.

(5) Section 1931 does not apply in favour of a spouse who, in the case of a breach of sections 1304, 1306, 1307 or section 1311 or in the case of section 1314 (2) no. 1, knew when the marriage was entered into that the marriage was voidable.

#### Title 4

### Remarriage after declaration of death

#### Section 1319

Annulment of the previous marriage

(1) Where a spouse, after the other spouse has been declared dead, enters into a new marriage, then, if the spouse declared dead is still alive, the new marriage may be annulled for breach of section 1306 only if both spouses knew when the marriage was entered into that the spouse declared dead was still alive at the date of the declaration of death.

(2) On the entering into of the new marriage, the earlier marriage is dissolved, unless both spouses of the new marriage knew when the marriage was entered into that the spouse declared dead was still alive at the date of the declaration of death. It remains dissolved even if the declaration of death is cancelled.

#### Section 1320

Annulment of the new marriage

(1) If the spouse declared dead is still alive, then notwithstanding section 1319, his former spouse may petition for the annulment of the new marriage, unless he knew when the marriage was entered into that the spouse declared dead was still alive at the date of the declaration of death. The annulment may be petitioned for only within one year. The period begins on the date on which the spouse of the former marriage obtained knowledge that the spouse declared dead was still alive. Section 1317 (1) sentence 3 and (2) applies with the necessary modifications.

(2) The consequences of the annulment are governed by section 1318 with the necessary modifications.

#### Sections 1321 - 1352

(repealed)

## Title 5

### Effects of marriage in general

#### Section 1353

##### Conjugal community

(1) Marriage is entered into for life. The spouses have a mutual duty of conjugal community; they are responsible for each other.

(2) A spouse is not obliged to comply with the demand of the other spouse to create the community if the demand shows itself as an abuse of his right or if the marriage has broken down.

#### Section 1354

(repealed)

#### Section 1355

##### Family name

(1) The spouses should determine a common family name (family name). The spouses have the family name determined by them. If the spouses do not determine a family name, they keep the names they use when the marriage is entered into after the marriage too.

(2) The spouses may choose the birth name of the husband or the wife or the name the husband or wife had at the time of the declaration on the determination of the family name as family name by declaration to the registry of births, deaths and marriages.

(3) The declaration on the determination of the family name should be made when the marriage is entered into. If the declaration is made later, it must be notarially certified.

(4) A spouse whose name does not become the family name may, by declaration to the registry of births, deaths and marriages, attach his birth name or the name he has at the time of the declaration on the determination of the family name before or after the family name. This does not apply if the family name consists of more than one name. If the name of one spouse consists of more than one name, only one of these names may be attached. The declaration may be revoked to the registry of births, deaths and marriages; in this case, a new declaration under sentence 1 is not admissible. The declaration and the revocation must be notarially certified.

(5) The widowed or divorced spouse retains the family name. He may, by declaration to the registry of births, deaths and marriages, reassume his birth name or the name that he had until the determination of the family name, or attach his birth name or the name he had at the time of the determination of the family name before or after the family name. Subsection (4) applies with the necessary modifications.

(6) Birth name means the name that is to be entered in the birth certificate of a spouse at the date of the declaration to the registry of births, deaths and marriages.

### **Section 1356**

Household management, gainful employment

(1) The spouses provide for the household management in mutual agreement. If the household management is left to one of the spouses, that spouse manages the household on his own responsibility.

(2) Both spouses are entitled to be gainfully employed. In the choice and exercise of a gainful employment, they must take the necessary account of the concerns of the other spouse and the family.

### **Section 1357**

Transactions to provide the necessities of life

(1) Each spouse is entitled to enter into transactions to appropriately provide the necessities of life of the family, also binding the other spouse. Such transactions entitle and oblige both spouses, unless it appears otherwise from the circumstances.

(2) One spouse may restrict or exclude the entitlement of the other spouse to enter into transactions binding him; if there is no adequate reason for the restriction or exclusion, the family court must cancel it on application. Towards third parties, the restriction or exclusion is effective only in compliance with section 1412.

(3) Subsection (1) does not apply if the spouses live apart.

### **Section 1358**

(repealed)

### **Section 1359**

Scope of duty of care

In the performance of the duties arising from the marriage relationship, the spouses are answerable to each other only for the care they customarily exercise in their own affairs.

### **Section 1360**

Duty of family maintenance

The spouses have a duty to each other to appropriately maintain the family through their work and with their assets. If the household management is entrusted to one spouse, he normally performs his duty of contributing to family maintenance through work by carrying out the household management.

### **Section 1360a**

#### Scope of the obligation to maintain

(1) The reasonable maintenance of the family includes everything that is necessary, depending on the circumstances of the spouses, to pay the costs of the household and to satisfy the personal needs of the spouses and the necessities of life of the children of the family entitled to maintenance.

(2) Maintenance must be provided in the manner that is required by conjugal community. The spouses have a duty to each other to provide for a reasonable period of time in advance the means necessary for the collective maintenance of the family.

(3) The provisions of sections 1613 to 1615 that govern the duty of relatives to maintain apply with the necessary modifications.

(4) If a spouse is not in a position to bear the costs of a legal dispute which relates to a personal matter, the other spouse has a duty to advance him these costs, insofar as this is equitable. The same applies to the costs of defence in criminal proceedings in which a spouse is the defendant.

### **Section 1360b**

#### Overpayment

If a spouse makes a larger contribution to the maintenance of the family than he is obliged to, then in case of doubt it is to be assumed that he does not intend to demand reimbursement from the other spouse.

### **Section 1361**

#### Maintenance when spouses are living apart

(1) If the spouses are living apart, one spouse may demand from the other the maintenance appropriate with regard to the standard of living and the earnings and property situation of the spouses; for outlays resulting from injury to body and health, section 1610a applies. If divorce proceedings are pending between the spouses, who are living apart, then maintenance, from the date when the proceedings are pending, also includes the costs of appropriate insurance for old age and for reduced earning capacity.

(2) The spouse who is not gainfully employed can be required to earn his own maintenance through gainful employment only if this can be expected of him in view of his personal circumstances, in particular by reason of earlier gainful employment, taking into account the duration of the marriage, and with regard to the financial circumstances of both spouses.



(3) The provision of section 1579 nos. 2 to 8 on the restriction or refusal of maintenance by reason of gross inequity applies with the necessary modifications.

(4) The day-to-day maintenance is to be rendered by making periodical payments. The periodical payments are to be paid monthly in advance. The person obliged owes the full monthly amount even if the person entitled dies in the course of the month. Section 1360a (3) and (4) and sections 1360b and 1605 apply with the necessary modifications.

#### **Section 1361a**

Allocation of household effects when spouses are living apart

(1) If the spouses are living apart, either of them may require the other spouse to deliver to him the household objects that belong to him. However, he has a duty to permit the other spouse to continue to use them to the extent that the latter needs them to maintain a separate household and the permission of use in the circumstances of the case is equitable.

(2) Household objects which belong to the spouses jointly are allocated between them in accordance with the principles of equity.

(3) If the spouses cannot agree, the competent court decides. The court may determine a reasonable payment for the use of the household objects.

(4) The property relations are unaffected unless the spouses agree otherwise.

#### **Section 1361b**

Matrimonial home when spouses are living apart

(1) If the spouses are living apart or if one of them wishes to live apart, one spouse may demand that the other permit him the sole use of the matrimonial home or of part of the matrimonial home, to the extent that this is necessary, taking account of the concerns of the other spouse, in order to avoid an inequitable hardship. An inequitable hardship may also exist if the best interests of children living in the household are adversely affected. If one spouse alone or together with a third party is entitled to the ownership of or a heritable building right or usufruct in the plot of land on which the matrimonial home is situated, special account must be taken of this; similar provisions apply to the ownership of an apartment, a permanent residential right and a right of habitation running with the land.

(2) If the spouse against whom the application is directed has unlawfully and intentionally injured the body, health or liberty of the other spouse or unlawfully threatened such an injury or injury to life, then as a general rule sole use of the whole home is to be permitted. The claim to permission of use of the home is excluded only if no further injuries and unlawful threats are to be feared, unless the injured spouse cannot be expected to continue living together with the other by reason of the severity of the act.

(3) If one spouse has been permitted the use of the matrimonial home in whole or in part, the other spouse must refrain from everything that is suitable to render more difficult or defeat the exercise of this right of use. He may demand from the spouse with the right of use payment for the use, insofar as this is equitable.

(4) If, after the spouses commence living apart in the meaning of section 1567 (1), a spouse moves from the matrimonial home, and if within six months after moving out he has not notified the other spouse of a serious intention to return, it is irrebuttably presumed that he has permitted the spouse who remained in the matrimonial home the sole right of use.

### **Section 1362**

Presumption of ownership

(1) It is presumed in favour of the creditors of the husband and the creditors of the wife that the movable things that are in the possession of one spouse or of both spouses belong to the debtor. This presumption does not apply if the spouses are living apart and the things are in the possession of the spouse who is not the debtor. Bearer instruments and instruments made out to order which have a blank endorsement are treated in the same way as movable things.

(2) It is presumed of the things intended exclusively for the personal use of a spouse, as between the spouses to each other and between the spouses and the creditors, that they belong to the spouse for whose use they are intended.

Title 6

## **Matrimonial property regime**

Subtitle 1

### **Statutory property regime**

#### **Section 1363**

Community of accrued gains

(1) The spouses live under the property regime of community of accrued gains if they do not by marriage contract agree otherwise.

(2) The property of the husband and the property of the wife do not become the common property of the spouses; the same applies to property that one spouse acquires after marriage. The accrued gains that the spouses acquire in the marriage, however, are equalised if the community of accrued gains ends.

#### **Section 1364**

Management of property

Each spouse manages his property independently; however, he is restricted in the management of his property under the following provisions.

### **Section 1365**

Disposition of property as a whole

(1) A spouse may only with the consent of the other spouse agree to dispose of his property as a whole. Where he has agreed without the approval of the other spouse, he may perform the duty only if the other spouse consents.

(2) Where the transaction complies with the principles of proper management, the family court, on the application of the spouse, may substitute the approval of the other spouse if the latter refuses it without adequate cause or is prevented by illness or absence from making a declaration and delay entails risk.

### **Section 1366**

Ratification of contracts

(1) A contract which a spouse enters into without the necessary consent of the other spouse is effective if the spouse ratifies it.

(2) Until the ratification, the third party may revoke the contract.

Where he knew that the man or the woman was married, he may revoke only if the man or the woman untruthfully claimed that the other spouse had consented; in this case too, he may not revoke if when he entered into the contract he knew that the other spouse had not consented.

(3) Where the third party requests the spouse to obtain the necessary ratification of the other spouse, the latter may declare ratification only to the third party; if he made a declaration to his spouse even before the request, the declaration becomes ineffective. The ratification may be made only within two weeks after the receipt of the request; if it is not made, it is deemed to have been refused. If the family court substitutes the ratification, its order is effective only if the spouse communicates it to the third party within the two-week period; failing this, the ratification is deemed to have been refused.

(4) If ratification is refused, the contract is ineffective.

### **Section 1367**

Unilateral legal transactions

A unilateral legal transaction that is entered into without the necessary consent is ineffective.

### **Section 1368**

Asserting the ineffectiveness

If a spouse, without the necessary approval of the other spouse, disposes of his property, the other spouse is also entitled to assert the rights arising from the ineffectiveness of the disposition against the third party in court.

### **Section 1369**

#### Dispositions of household objects

(1) A spouse may dispose of objects of the household of the spouses belonging to him and agree to such a disposition only if the other spouse consents.

(2) The family court, on the application of the spouse, may substitute the approval of the other spouse if the latter refuses it without adequate cause or is prevented by illness or absence from making a declaration.

(3) The provisions of sections 1366 to 1368 apply with the necessary modifications.

### **Section 1370**

#### Replacement of household objects

Household objects that are acquired in place of objects that are no longer in existence or have become valueless become the property of the spouse who owned the objects that are no longer in existence or have become valueless.

### **Section 1371**

#### Equalisation of accrued gains in the case of death

(1) If the property regime is ended by the death of a spouse, the equalisation of the accrued gains is effected by the share of the inheritance on intestacy of the surviving spouse being increased by one quarter of the inheritance; it is irrelevant here whether the spouses in the individual case have made accrued gains.

(2) If the surviving spouse does not become an heir and if he has no right to a legacy, he may demand equalisation of the accrued gains under the provisions of sections 1373 to 1383 and section 1390; the compulsory portion of the surviving spouse or of another person entitled to a compulsory portion is determined in this case with reference to the share of the inheritance on intestacy of the spouse before it is increased.

(3) Where the surviving spouse disclaims the inheritance, then in addition to the equalisation of the accrued gains he may demand the compulsory portion even if he would have no entitlement to this under the provisions of the law of succession; this does not apply if he has waived his right of intestate succession or his right to a compulsory portion by a contract with his spouse.

(4) Where descendants of the deceased spouse who are entitled to inherit, and who are not descended from the marriage ended by the death of this spouse, are in existence, the surviving spouse has a duty to grant these descendants, if and to the extent that they need these, the means for a reasonable education from the quarter additionally granted under subsection (1).

### **Section 1372**

Equalisation of accrued gains in other cases

If the property regime is ended in another way than by the death of a spouse, the accrued gains are equalised under the provisions of sections 1373 to 1390.

### **Section 1373**

Accrued gains

Accrued gains means the amount by which the final assets of a spouse exceed the initial assets.

### **Section 1374**

Initial assets

(1) Initial assets means the assets that belong to a spouse at the beginning of the property regime after the deduction of the liabilities; the liabilities may be deducted only to the amount of the assets.

(2) Assets which a spouse acquires after the beginning of the property regime as a result of death or with regard to a future right of succession, by donation or as advancements, are added to the initial assets after the deduction of the liabilities, to the extent that in the circumstances they are not to be seen as income.

### **Section 1375**

Final assets

(1) Final assets means the assets that belong to one spouse at the end of the property regime after the deduction of the liabilities. The liabilities are also deducted, if third parties may be claimed on under section 1390, to the extent that they exceed the amount of the assets.

(2) The final assets of a spouse are increased by the amount by which these assets are reduced as a result of the fact that a spouse, after the beginning of the property regime,

1. made gratuitous dispositions by which he was not fulfilling a moral duty or showing regard for decency,
2. squandered property, or
3. performed acts with the intention of disadvantaging the other spouse.

(3) The amount by which the assets are reduced is not added to the final assets if the reduction was effected at least ten years before the end of the property regime or if the other spouse was in agreement with the gratuitous disposition or the squandering.

### **Section 1376**

Ascertainment of the value of the initial and final assets

- (1) The calculation of the initial assets is based on the value that the assets in existence at the beginning of the property regime had at that date and that the assets to be added to the initial assets had at the date of their acquisition.
- (2) The calculation of the final assets is based on the value that the assets in existence at the end of the property regime had at that date and that a reduction of assets to be added to the final assets had at the date when the reduction occurred.
- (3) The above provisions apply with the necessary modifications for the valuation of liabilities.
- (4) An agricultural or forestry enterprise which is to be taken into account in the calculation of the initial assets and the final assets is to be reported at income value if the owner is claimed on under section 1378 (1) and it can be expected that the enterprise is continued or recommenced by the owner or a descendant; the provision of section 2049 (2) applies.

### **Section 1377**

List of initial assets

- (1) If the spouses have jointly drawn up a list recording the inventory and the value of the initial assets belonging to one spouse and the objects to be added to these assets, it is presumed, as between the spouses, that the list is correct.
- (2) Each spouse may require that the other spouse cooperate in drawing up the list. The drawing up of the list is governed by the provisions of section 1035 applying to usufruct. Each spouse may, at his own cost, have the value of the assets and the liabilities determined by experts.
- (3) To the extent that no list has been drawn up, it is presumed that the final assets of a spouse represent his accrued gains.

### **Section 1378**

Equalisation claim

- (1) If the accrued gains of one spouse exceed the accrued gains of the other spouse, the half of the surplus is due to the other spouse as an equalisation claim.
- (2) The amount of the equalisation claim is limited by the value of the assets that remain, after deduction of the liabilities, at the end of the property regime.
- (3) The equalisation claim arises on the ending of the property regime and from this date on it is inheritable and transferable. An agreement on the equalisation of the accrued gains that the spouses enter into, during proceedings instituted to dissolve the marriage, for the eventuality of the dissolution of the marriage, must be notarially recorded; section 127a also applies to an agreement that is recorded in proceedings on family matters before the court hearing the case. Apart from this, neither spouse may before the end of the property regime agree to dispose of the equalisation claim.

(4) The equalisation claim is statute-barred in three years; the period begins on the date on which the spouse discovers that the property regime has ended. However, the claim is statute-barred at the latest thirty years after the property regime ends. If the property regime ends as the result of the death of a spouse, moreover, the provisions that govern the limitation of a claim to a compulsory share apply.

#### **Section 1379**

##### Duty of information

(1) After the end of the property regime, each spouse has a duty to inform the other spouse of the inventory of his final assets. Each spouse may require that he be involved in the drawing up of the list to be submitted to him under section 260 and that the value of the assets and the liabilities is determined. He may also demand that the list be drawn up at his cost by the competent authority or by a responsible official or notary.

(2) If a spouse has petitioned for divorce or the annulment of the marriage, subsection (1) applies with the necessary modifications.

#### **Section 1380**

##### Set-off of advancements

(1) Against the equalisation claim of a spouse is set off what he is given by the other spouse by inter vivos legal transaction with the provision that it is to be set off against the equalisation claim. In case of doubt it is to be assumed that dispositions should be set off if their value exceeds the value of occasional gifts that are customary in keeping with the standard of living of the spouses.

(2) In the calculation of the equalisation claim, the value of the disposition is added to the accrued gains of the spouse who made the disposition. The value is determined according to the date of the disposition.

#### **Section 1381**

##### Refusal of satisfaction for gross inequity

(1) The debtor may refuse to satisfy the equalisation claim to the extent that the equalisation of accrued gains in the circumstances of the case would be grossly inequitable.

(2) Gross inequity may in particular be given if the spouse who made the smaller amount of accrued gains for a long period culpably failed to discharge his financial duties which arise from the marital relationship.

## **Section 1382**

### Deferment

- (1) On application, the family court defers an equalisation claim, to the extent that it is not disputed by the debtor, if immediate payment would occur at an inopportune time, also taking into account the interests of the creditor. Immediate payment would also occur at an inopportune time if it would cause long-term deterioration in the housing conditions or other aspects of the standard of living of children of the spouses.
- (2) The debtor must pay interest on a deferred claim.
- (3) On application, the family court may order that the debtor is to provide security for a deferred claim.
- (4) The family court decides at its reasonably exercised discretion the amount and due date of the interest and on the nature and scope of the security provided.
- (5) To the extent that a legal dispute on the equalisation claim is pending at court, the debtor may make an application for deferment only in these proceedings.
- (6) The family court may, on application, set aside or alter a final and absolute decision if the circumstances have substantially changed since the decision.

## **Section 1383**

### Transfer of assets

- (1) On the application of the creditor, the family court may order that the debtor is to transfer particular objects of his assets to the creditor, to be set off against the equalisation claim if this is necessary to avoid gross inequity for the creditor and if this can be expected of the debtor; the decision must stipulate the amount that is set off against the equalisation claim.
- (2) In the application, the creditor must designate the objects whose transfer he seeks.
- (3) Section 1382 (5) applies with the necessary modifications.

## **Section 1384**

### Date of calculation in the case of divorce

If the marriage is dissolved by divorce, then when the accrued gains are calculated, the date of the end of the property regime is replaced by the date when the divorce petition was first pending at court.

## **Section 1385**

### Premature equalisation of accrued gains when spouses are living apart

If the spouses have lived apart for at least three years, either from them may institute proceedings for premature equalisation of the accrued gains.



### **Section 1386**

Premature equalisation of accrued gains in other cases

(1) A spouse may institute proceedings for premature equalisation of accrued gains if the other spouse for a long period culpably failed to discharge his financial duties which arise from the marital relationship and it is to be assumed that he will not discharge them in future either.

(2) A spouse may institute proceedings for premature equalisation of accrued gains if the other spouse

1. has entered into a legal transaction of the nature set out in section 1365 without the necessary approval or

2. has reduced his assets by one of the acts set out in section 1375 and a substantial endangerment of the future equalisation claim is to be feared.

(3) A spouse may institute proceedings for premature equalisation of accrued gains if the other spouse persistently refuses without adequate reason to inform him of the inventory of his assets.

### **Section 1387**

Date of calculation in the case of premature equalisation

If the court grants premature equalisation of the accrued gains, then when the accrued gains are calculated, the date of the end of the property regime is replaced by the date on which the action for premature equalisation is instituted.

### **Section 1388**

Occurrence of separation of property

When the judgment by which premature equalisation of accrued gains is granted becomes final and absolute, separation of property occurs.

### **Section 1389**

Provision of security

Where the action for premature equalisation of accrued gains has been instituted or the petition for divorce or annulment of marriage has been filed, a spouse may demand provision of security if, by reason of the conduct of the other spouse, it is to be feared that his rights to the future equalisation of accrued gains are substantially endangered.

### **Section 1390**

Claims against third parties of the person entitled to equalisation

(1) To the extent that, under section 1378 (2), a spouse is not entitled to an equalisation claim because the other spouse, with the intention of disadvantaging him, made gratuitous dispositions to a third party, the third party is obliged to return the property received under the provisions on the return of unjust enrichment to the spouse for the purpose of compensation for the lost equalisation claim. The third party may avoid return by paying the missing sum.

(2) The same applies to other legal transactions if the intention to disadvantage the spouse was known to the third party.

(3) The claim is statute-barred three years after the end of the property regime. If the property regime ends as a result of the death of a spouse, the limitation is not suspended as a result of the fact that the claim cannot be asserted until the spouse has disclaimed the inheritance or a legacy.

(4) If the action for premature equalisation of the accrued gains has been instituted or the petition for divorce or annulment of the marriage has been filed, a spouse may require security from the third party for his claims under subsections (1) and (2).

### **Sections 1391 - 1407**

(repealed)

Subtitle 2

### **Contractual property regime**

Chapter 1

#### **General provisions**

#### **Section 1408**

Marriage contract, freedom of contract

(1) The spouses may provide for their matrimonial property arrangements by contract (marriage contract), and in particular even after entering into marriage terminate or alter the matrimonial property regime.

(2) If the spouses conclude agreements in a marriage contract regarding the equalisation of pension rights, sections 6 and 8 of the Equalisation of Pension Rights Act [Versorgungsausgleichsgesetz] apply in this respect.

#### **Section 1409**

Restriction of freedom of contract

The matrimonial property regime may not be determined by reference to law that is no longer valid or to foreign law.

#### **Section 1410**

Form

The marriage contract must be recorded by a notary, and both parties must be present.

### **Section 1411**

Marriage contracts of persons with restricted capacity to contract or incapable of contracting

(1) A person whose capacity to contract is restricted may enter into a marriage contract only with the approval of his legal representative. This also applies to a person of full age placed under the care of a custodian to the extent that a reservation of consent has been ordered for this matter. Where the legal representative is a guardian, then in addition to the approval of the legal representative the approval of the family court is necessary if the equalisation of the accrued gains is excluded or restricted or if community of property is agreed or terminated; if the legal representative is a custodian, the approval of the custodianship court is necessary. The legal representative may not enter into a marriage contract for a spouse with restricted capacity to contract or a person of full age placed under care who is capable of contracting.

(2) For a spouse who is incapable of contracting, the legal representative enters into the contract; he may not agree on or terminate community of property. If the legal representative is a guardian, he may enter into the contract only with the approval of the family court; if the legal representative is a custodian, the approval of the custodianship court is necessary.

### **Section 1412**

Effect in relation to third parties

(1) Where the spouses have excluded or altered the statutory matrimonial property regime, they may derive from this, in relation to a third party, objections to a legal transaction that was entered into between one of them and the third party only if the marriage contract has been entered in the marriage property register of the competent local court [Amtsgericht] or was known to the third party when the legal transaction was entered into; objections to a final and absolute judgment which has been pronounced between one of the spouses and the third party are admissible only if the marriage contract was registered or known to the third party at the time when the legal dispute was first pending at court.

(2) The same applies if the spouses terminate or alter by marriage contract a provision for the marriage property arrangements which is entered in the marriage property register.

### **Section 1413**

Revocation of permission to manage assets

If a spouse permits his assets to be managed by the other spouse, then the right to revoke the permission at any time may be excluded or restricted only by marriage contract; however, revocation for a compelling reason remains admissible.

## Chapter 2

### **Separation of property**

#### **Section 1414**

Commencement of separation of property

If the spouses exclude the statutory property regime or terminate it, separation of property takes effect, unless the marriage contract leads to a different conclusion. The same applies if the equalisation of the accrued gains is excluded or community of property is terminated.

## Chapter 3

### **Community of property**

#### Subchapter 1

#### **General provisions**

#### **Section 1415**

Agreement by marriage contract

If the spouses, by marriage contract, agree on community of property, the following provisions apply.

#### **Section 1416**

Marital property

(1) The property of the husband and the property of the wife, as a result of community of property, become the joint property of both spouses (marital property). The marital property also includes the property that the husband or the wife acquires during the period of community of property.

(2) The individual objects become joint property; it is not necessary to transfer them by legal transaction.

(3) If a right that is registered in the Land Register or may be registered in the Land Register becomes marital property, each spouse may require the other to cooperate in correcting the Land Register. Similar provisions apply if a right that is registered in the ship register or in the ship construction register becomes marital property.

#### **Section 1417**

Separate property

(1) The separate property is excluded from the marital property.

(2) Separate property is the objects that may not be transferred by legal transaction.

(3) Each spouse manages his separate property independently. He manages it for the account of the marital property.

### **Section 1418**

#### Reserved property

- (1) The reserved property is excluded from the marital property.
- (2) Reserved property is the objects
  1. that by marriage contract are declared the reserved property of a spouse,
  2. that a spouse acquires as a result of death or that are given to him by a third party free of charge, if the testator specified by testamentary disposition or the third party specified when making the disposition that the acquisition is to be reserved property,
  3. that a spouse acquires on the basis of a right that is part of his reserved property or as compensation for the destruction of, damage to or removal of an object that is part of the reserved property or by a legal transaction that relates to the reserved property.
- (3) Each spouse manages his reserved property independently. He manages it for own account.
- (4) If assets are part of the reserved property, this is effective against third parties only under section 1412.

### **Section 1419**

#### Joint ownership

- (1) A spouse may not dispose of his share of the marital property and of the individual objects that are part of the marital property; he is not entitled to demand partition.
- (2) The debtor may set off against a claim that is part of the marital property only a claim whose discharge he is entitled to demand from the marital property.

### **Section 1420**

#### Use for maintenance

The income that falls within the marital property is to be used for the maintenance of the family before the income that falls within the reserved property, and the capital of the marital property is to be used for the maintenance of the family before the capital of the reserved property or the separate property.

### **Section 1421**

#### Management of the marital property

In the marriage contract in which they agree on community of property, the spouses should specify whether the marital property is managed by the husband or by the wife or by both of them jointly. If the marriage contract contains no provision on this, the spouses manage the marital property jointly.

## Subchapter 2

### **Management of the marital property by the husband or the wife**

#### **Section 1422**

Subject matter of right of management

The spouse who manages the marital property is entitled in particular to take possession of the things belonging to the marital property and to dispose of the marital property; he conducts legal disputes that relate to the marital property in his own name. The other spouse is not personally obliged by the management acts.

#### **Section 1423**

Disposition of the marital property as a whole

The spouse who manages the marital property may agree only with the consent of the other spouse to dispose of the marital property as a whole. Where he has agreed without the approval of the other spouse, he may perform the duty only if the other spouse consents.

#### **Section 1424**

Disposition of plots of land, ships or ships under construction

The spouse who manages the marital property may agree only with the consent of the other spouse to dispose of a plot of land that is part of the marital property; in addition, he may agree to such a disposition only with the consent of his spouse. The same applies if a registered ship or ship under construction is part of the marital property.

#### **Section 1425**

Donations

(1) The spouse who manages the marital property may make gifts of objects from the marital property only with the consent of the other spouse; where, without the approval of the other spouse, he has promised to make gifts of objects from the marital property, he may fulfil this promise only if the other spouse consents. The same applies to a promise of donation that does not relate to the marital property.

(2) An exception applies to gifts that are made to comply with a moral duty or to show consideration for decency.

#### **Section 1426**

Substitution of the approval of the other spouse

Where a transaction that under sections 1423 and 1424 may be entered into only with the consent of the other spouse is necessary for the proper management of the marital property, the family court, on application, may substitute the approval of the other spouse if the latter refuses it without adequate cause or is prevented by illness or absence from making a declaration and delay entails risk.

### **Section 1427**

Legal consequences of lack of consent

(1) If the spouse who manages the marital property enters into a legal transaction without the necessary consent of the other spouse, the provisions of section 1366 (1), (3) and (4) and of section 1367 apply with the necessary modifications.

(2) A contract may be revoked by the third party until the ratification. Where he knew that the spouse was living under community of property, he may revoke only if the spouse untruthfully claimed that the other spouse had consented; in this case too, he may not revoke if when he entered into the contract he knew that the other spouse had not consented.

### **Section 1428**

Dispositions without approval

If the spouse who manages the marital property disposes without the necessary approval of the other spouse of a right that is part of the marital property, the other spouse may assert the right against third parties; the spouse who manages the marital property need not cooperate in this.

### **Section 1429**

Emergency right of management

Where the spouse who manages the marital property is prevented by illness or absence from entering into a legal transaction which relates to the marital property, the other spouse may undertake the legal transaction if delay entails risk; when doing this, he may act either in his own name or in the name of the managing spouse. The same applies to conducting a legal dispute which relates to the marital property.

### **Section 1430**

Substitution of the approval of the managing spouse

If the spouse who manages the marital property refuses, without adequate cause, his approval to a legal transaction which the other spouse has to undertake in order to properly attend to his personal affairs, but which he cannot without this approval undertake with effect for the marital property, the family court may, on application, substitute the approval.

### **Section 1431**

Independent trade or business

(1) If the spouse who manages the marital property has consented to the other spouse operating an independent trade or business, his approval of such legal transactions and legal disputes as the business operations entail is not required. Unilateral legal transactions which relate to the trade or business are to be entered into with the spouse who operates the trade or business.

(2) If the spouse who manages the marital property knows that the other spouse is operating a trade or business, and if he has filed no objection to this, this is equivalent to consent.

(3) Against third parties, an objection and the revocation of the consent are effective only under section 1412.

### **Section 1432**

Acceptance of an inheritance; refusal of offer to enter into contract or of donation

(1) If an inheritance or a legacy has accrued to the spouse who does not manage the marital property, only he is entitled to accept or disclaim the inheritance or the legacy; the approval of the other spouse is not necessary. The same applies to the waiver of the compulsory portion or to the equalisation of accrued gains, and also of the refusal of an offer to enter into a contract or of a donation.

(2) The spouse who does not manage the marital property may file an inventory of an inheritance that accrues to him without the approval of the other spouse.

### **Section 1433**

Continuation of a legal dispute

The spouse who does not manage the marital property may without the approval of the other spouse continue a legal dispute that was pending at court at the beginning of the community of property.

### **Section 1434**

Unjust enrichment of the marital property

If a legal transaction that a spouse undertakes without the required approval of the other spouse enriches the marital property, the enrichment is to be returned from the marital property under the provisions on unjust enrichment.

### **Section 1435**

Duties of the managing spouse

The spouse must manage the marital property properly. He must inform the other spouse of the management and, on request, give him information on the status of the management. Where the marital property is reduced, he must compensate the marital property if he is responsible for the loss or has caused it by a legal transaction which he undertook without the necessary approval of the other spouse.



### **Section 1436**

Managing spouse under guardianship or custodianship

If the spouse who manages the marital property is under guardianship or if the management of the marital property falls under the area of responsibilities of his custodian, his guardian or custodian must act on his behalf in the rights and duties which arise from the management of the marital property.

This also applies if the other spouse is appointed guardian or custodian.

### **Section 1437**

Obligations of the marital property; personal liability

(1) The creditors of the spouse who manages the marital property and, to the extent that sections 1438 to 1440 do not provide otherwise, the creditors of the other spouse in addition may require satisfaction from the marital property (marital property obligations).

(2) The spouse who manages the marital property is also personally liable as a joint and several debtor for the obligations of the other spouse which are marital property obligations. The liability lapses on the termination of the community of property if the obligations, as between the spouses, fall on the other spouse.

### **Section 1438**

Liability of the marital property

(1) The marital property is liable for an obligation arising from a legal transaction that is entered into during the period of community of property only if the spouse who manages the marital property enters into the legal transaction or if he approves it or if the legal transaction is effective for the marital property without his approval.

(2) The marital property is liable for the costs of a legal dispute even if the judgment is not effective in relation to the marital property.

### **Section 1439**

No liability on acquisition of an inheritance

The marital property is not liable for obligations that arise as a result of the acquisition of an inheritance if the spouse who is an heir does not manage the marital property and acquires the inheritance during the period of community of property as reserved property or as separate property; the same applies on the acquisition of a legacy.

### **Section 1440**

#### Liability for reserved or separate property

The marital property is not liable for a personal obligation of the spouse who does not manage the marital property that arises during the period of community of property as the result of a right that is part of the reserved property or the separate property or of the possession of a thing that belongs to such property. However, the marital property is liable if the right or the thing is part of a trade or business which the spouse operates independently with the consent of the other spouse, or if the obligation is part of the burdens of the separate property that are customarily paid from the income.

### **Section 1441**

#### Liability as between the spouses

As between the spouses, the following marital property obligations fall on the spouse as whose personal obligations they arise:

1. the obligations arising from a tort which he commits after the commencement of the community of property, or from criminal proceedings that are conducted against him with regard to such an act;
2. the obligations arising from a legal relationship that relates to his reserved property or his separate property, even if they arose before the commencement of the community of property or before the time at which the property became reserved property or separate property;
3. the costs of a legal dispute about one of the obligations set out in nos. 1 and 2.

### **Section 1442**

#### Obligations of the separate property and of a trade or business

The provisions of section 1441 nos. 2 and 3 do not apply if the obligations are part of the burdens of the separate property which are customarily paid from the income. Nor do the provisions apply if the obligations arise from the operation of a trade or business that is conducted for the account of the marital property or as the result of a right or of the possession of a thing that belongs to such a trade or business.

### **Section 1443**

#### Costs of litigation

(1) As between the spouses, the costs of a legal dispute that the spouses conduct against each other are borne by the spouse who is to bear them under general provisions of law.

(2) If the spouse who does not manage the marital property conducts a legal dispute against a third party, the costs of the legal dispute, as between the spouses, are borne by that spouse. However, the costs are borne by the marital property if the judgment takes effect against the marital property or if the legal dispute relates to a personal matter or a marital property obligation of the spouse and the disbursement of the costs is appropriate in the circumstances; section 1441 no. 3 and section 1442 are unaffected.

### **Section 1444**

#### Costs of the advancement of a child

(1) If the spouse who manages the marital property promises or grants an advancement to a child of the spouses, then as between the spouses he bears the costs of the advancement to the extent that they exceed the degree that is appropriate for the marital property.

(2) If the spouse who manages the marital property promises or grants an advancement to a child that is not a child of the spouses, then as between the spouses the father or mother bears the costs of the advancement; for the spouse who does not manage the marital property, however, this applies only to the extent that he approves or the advancement does not exceed the degree that is appropriate for the marital property.

### **Section 1445**

#### Equalisation between reserved property, separate property and marital property

(1) If the spouse who manages the marital property applies marital property to his reserved property or his separate property, he must reimburse to the marital property the value of the property applied.

(2) If he applies reserved property or separate property to the marital property, he may require compensation from the marital property.

### **Section 1446**

#### Due date of the equalisation claim

(1) Whatever the spouse who manages the marital property owes to the marital property he need pay only after the termination of the community of property; whatever he may claim from the marital property he may claim only after the termination of the community of property.

(2) Whatever the spouse who does not manage the marital property owes to the marital property or whatever he owes to the reserved property or separate property of the other spouse he need not pay until after the termination of the community of property; however, he must discharge the debt before this to the extent that his reserved property and his separate property are sufficient for this.

### **Section 1447**

Action of the non-managing spouse for termination

The spouse who does not manage the marital property may institute proceedings for termination of the community of property

1. if his future rights may be substantially endangered by the fact that the other spouse is incapable of managing the marital property or abuses his right to manage the marital property,
2. if the other spouse has violated his duty to contribute to the family maintenance and a substantial endangerment of the maintenance is to be feared in the future,
3. if the marital property is over-indebted by obligations that arose as personal obligations of the other spouse to such an extent that a later acquisition by the spouse who does not manage the marital property is substantially endangered,
4. if the management of the marital property falls under the area of responsibilities of the custodian of the other spouse.

### **Section 1448**

Action of the managing spouse for termination

The spouse who manages the marital property may take action for termination of the community of property if the marital property, as a result of obligations of the other spouse which fall on the latter as between the spouses, is over-indebted to such a degree that a later acquisition is substantially endangered.

### **Section 1449**

Effect of the judicial termination decision

- (1) When the judicial decision becomes final and absolute, the community of property is terminated; separation of property applies for the future.
- (2) Against third parties, the termination of the community of property is effective only under section 1412.

### Subchapter 3

#### **Joint management of the marital property by the spouses**

##### **Section 1450**

Joint management by the spouses

(1) If the marital property is jointly managed by the spouses, the spouses are in particular entitled only jointly to dispose of the marital property and to conduct legal disputes that relate to the marital property. The possession of the things that are part of the marital property is the right of the spouses jointly.

(2) Where a declaration of intention is to be made to the spouses, it is sufficient if it is made to one spouse.

##### **Section 1451**

Duty of both spouses to cooperate

Each spouse is obliged to the other to cooperate in measures that are necessary for due management of the marital property.

##### **Section 1452**

Substitution of approval

(1) Where, for the proper management of the marital property, it is necessary for a legal transaction to be entered into or a legal dispute to be conducted, the family court, on the application of a spouse, may substitute the approval of the other spouse if the latter refuses it without adequate cause.

(2) The provision of subsection (1) also applies if for proper attention to the personal affairs of a spouse a legal transaction is necessary that the spouse may not undertake with effect for the marital property without the approval of the other spouse.

##### **Section 1453**

Disposition without consent

(1) If a spouse, without the necessary consent of the other spouse, disposes of the marital property, the provisions of section 1366 (1), (3) and (4) and of section 1367 apply with the necessary modifications.

(2) A contract may be revoked by the third party until the ratification. Where he knew that the spouse was living under community of property, he may revoke only if the spouse untruthfully claimed that the other spouse had consented; in this case too, he may not revoke if when he entered into the contract he knew that the other spouse had not consented.

#### **Section 1454**

##### Emergency right of management

Where a spouse is prevented by illness or absence from cooperating in a legal transaction that relates to the marital property, the other spouse may enter into the legal transaction if delay entails risk; when doing this, he may act either in his own name or in the name of both spouses. The same applies to conducting a legal dispute which relates to the marital property.

#### **Section 1455**

##### Acts of management without the cooperation of the other spouse

Each spouse may, without the cooperation of the other spouse,

1. accept or disclaim an inheritance that has accrued to him or a legacy that has accrued to him,
2. waive his compulsory portion or the equalisation of accrued gains,
3. file an inventory of an inheritance that has accrued to him or to the other spouse, unless the inheritance that has accrued to the other spouse is part of the other spouse's reserved property or separate property,
4. refuse an offer made to him to enter into a contract or a donation made to him,
5. enter into a legal transaction in relation to the marital property as against the other spouse,
6. judicially assert against the other spouse a right that is part of the marital property,
7. continue a legal dispute which was pending at court when the community of property commenced,
8. judicially assert against a third party a right that is part of the marital property if the other spouse disposed of the right without the necessary approval,
9. judicially assert a right to object to an enforcement of judgment against the marital property,
10. take the necessary measures to preserve the marital property if delay entails risk.

#### **Section 1456**

##### Independent trade or business

(1) If a spouse has consented to the other spouse operating an independent trade or business, his approval of such legal transactions and legal disputes as the business operations entail is not required. Unilateral legal transactions which relate to the trade or business are to be entered into with the spouse who operates the trade or business.

(2) If a spouse knows that the other spouse is operating a trade or business, and if he has filed no objection to this, this is equivalent to consent.

(3) Against third parties, an objection and the revocation of the consent are effective only under section 1412.

### **Section 1457**

Unjust enrichment of the marital property

If a legal transaction that a spouse undertakes without the required approval of the other spouse enriches the marital property, the enrichment is to be returned from the marital property under the provisions on unjust enrichment.

### **Section 1458**

Guardianship of a spouse

As long as a spouse is under parental custody or under guardianship, the other spouse manages the marital property alone; the provisions of sections 1422 to 1449 apply.

### **Section 1459**

Obligations of the marital property; personal liability

(1) The creditors of the husband and the creditors of the wife, may, to the extent that sections 1460 to 1462 do not provide otherwise, require satisfaction from the marital property (marital property obligations).

(2) For the marital property obligations, the spouses are also personally liable as joint and several debtors. If the obligations, as between the spouses, fall on one of the spouses, the obligation of the other spouse expires on the termination of the community of property.

### **Section 1460**

Liability of the marital property

(1) The marital property is liable for an obligation arising from a legal transaction that a spouse enters into during the period of community of property only if the other spouse approves the legal transaction or if the legal transaction is effective for the marital property without his approval.

(2) The marital property is liable for the costs of a legal dispute even if the judgment is not effective in relation to the marital property.

### **Section 1461**

No liability on acquisition of an inheritance

The marital property is not liable for the obligations of one spouse which arise as a result of the acquisition of an inheritance or of a legacy if the spouse acquires the inheritance or the legacy during the period of community of property as reserved property or as separate property.

### **Section 1462**

#### Liability for reserved or separate property

The marital property is not liable for an obligation of a spouse which comes into existence during the period of community of property as the result of a right that is part of the reserved property or the separate property or of the possession of a thing that is part of the reserved property or of the separate property. However, the marital property is liable if the right or the thing is part of a trade or business which a spouse operates independently with the consent of the other spouse, or if the obligation is one of the burdens of the separate property that are customarily paid from the income.

### **Section 1463**

#### Liability as between the spouses

As between the spouses, the following marital property obligations fall on the spouse as whose personal obligations they arise:

1. the obligations arising from a tort which he commits after the commencement of the community of property, or from criminal proceedings that are conducted against him with regard to such an act;
2. the obligations arising from a legal relationship that relates to his reserved property or his separate property, even if they arose before the commencement of the community of property or before the time at which the property became reserved property or separate property;
3. the costs of a legal dispute about one of the obligations set out in nos. 1 and 2.

### **Section 1464**

#### Obligations of the separate property and of a trade or business

The provisions of section 1463 nos. 2 and 3 do not apply if the obligations are part of the burdens of the separate property which are customarily paid from the income. Nor do the provisions apply if the obligations arise from the operation of a trade or business that is conducted for the account of the marital property or as the result of a right or of the possession of a thing that belongs to such a trade or business.



### **Section 1465**

#### Costs of litigation

(1) As between the spouses, the costs of a legal dispute that the spouses conduct against each other are borne by the spouse who is to bear them under general provisions of law.

(2) If a spouse conducts a legal dispute against a third party, the costs of the legal dispute, as between the spouses, are borne by the spouse who conducts the legal dispute. However, the costs are borne by the marital property if the judgment takes effect against the marital property or if the legal dispute relates to a personal matter or a marital property obligation of the spouse and the disbursement of the costs is appropriate in the circumstances; section 1463 no. 3 and section 1464 are unaffected.

### **Section 1466**

#### Costs of the advancement of a child that is not a child of the spouses

As between the spouses, the costs of the advancement of a child that is not a child of the spouses are borne by the father or mother of the child.

### **Section 1467**

#### Equalisation between reserved property, separate property and marital property

(1) If a spouse applies marital property to his reserved property or his separate property, he must reimburse to the marital property the value of the property applied.

(2) If a spouse applies reserved property or separate property to the marital property, he may require compensation from the marital property.

### **Section 1468**

#### Due date of the equalisation claim

Whatever a spouse owes to the marital property or whatever he owes to the reserved property or separate property of the other spouse he need not pay until after the termination of the community of property; but to the extent that the reserved property and the separate property of the debtor are sufficient, he must discharge the debt before this.

### **Section 1469**

#### Action for termination

Each spouse may institute proceedings for the termination of the community of property,

1. if his future rights may be substantially endangered as a result of the fact that the other spouse, without his cooperation, undertakes acts of management that may be undertaken only jointly,
2. if the other spouse, without adequate cause, persistently refuses to cooperate in the proper management of the marital property,
3. if the other spouse has violated his duty to contribute to the family maintenance and a substantial endangerment of the maintenance is to be feared in the future,
4. if the marital property is over-indebted by obligations that arose as personal obligations of the other spouse, and are borne by the latter as between the spouses, to such an extent that its later acquisition is substantially endangered,
5. if the exercise of a right of the other spouse that arises from the community of property falls under the area of responsibilities of a custodian.

### **Section 1470**

#### Effect of the judicial termination decision

- (1) When the judicial decision becomes final and absolute, the community of property is terminated; separation of property applies for the future.
- (2) Against third parties, the termination of the community of property is effective only under section 1412.

#### Subchapter 4

### **Partitioning of the marital property**

#### **Section 1471**

##### Beginning of the partitioning

- (1) After the termination of the community of property, the spouses partition the marital property.
- (2) Until the partitioning, the provisions of section 1419 govern the marital property.

### **Section 1472**

Joint management of the marital property

- (1) Until the partitioning, the spouses manage the marital property jointly.
- (2) Each spouse may manage the marital property in the same way as before the termination of the community of property until he obtains knowledge of the termination or ought to know. A third party may not rely on this if, when he enters into a transaction, he knows or ought to know that the community of property has ended.
- (3) Each spouse is obliged to the other to cooperate in measures that are necessary for the proper management of the marital property; each spouse may take the measures that are necessary for preservation alone.
- (4) If the community of property ends as the result of the death of one spouse, the surviving spouse must carry out the transactions that are necessary for proper management and may not be postponed without risk until the heir can make other provision. This duty does not exist if the deceased spouse managed the marital property alone.

### **Section 1473**

Direct substitution

- (1) Whatever is acquired on the basis of a right that is part of the marital property or as compensation for the destruction of, damage to or deprivation of an object that is part of the marital property, or is acquired by a legal transaction that relates to the marital property, is marital property.
- (2) If a claim that is acquired by legal transaction is part of the marital property, the debtor need not allow this to be asserted against him until he has knowledge that the claim is part of the marital property; the provisions of sections 406 to 408 apply with the necessary modifications.

### **Section 1474**

Implementation of the partitioning

The spouses effect the partitioning, unless they agree otherwise, under sections 1475 to 1481.

### **Section 1475**

Discharge of the marital property obligations

- (1) The spouses must first discharge the obligations of the marital property. If an obligation is not yet payable or if it is disputed, the spouses must retain whatever is necessary to discharge this obligation.
- (2) If a marital property obligation, as between the spouses, falls on one of the spouses alone, the latter may not require that the obligation be discharged from the marital property.
- (3) The marital property must be converted into money, to the extent that this is necessary, in order to discharge the marital property obligations.

### **Section 1476**

#### Division of the surplus

(1) The surplus that remains after the discharge of the marital property obligations is due to the spouses in equal shares.

(2) Each spouse must allow whatever he is to reimburse to the marital property to be set off against his share. To the extent that he does not make compensation in this way, he remains obliged to the other spouse.

### **Section 1477**

#### Implementation of the division

(1) The surplus is divided under the provisions on co-ownership.

(2) Each spouse, on repayment of the value, may take the things that are intended exclusively for his personal use, in particular clothes, jewellery and tools. The same applies to the objects which a spouse has brought into the community of property or acquired during the period of community of property as a result of succession, as a legacy or with regard to a future right of succession, by donation or as an advancement.

### **Section 1478**

#### Partitioning after divorce

(1) Where the marriage has been dissolved by divorce before the partitioning is finished, then at the request of one spouse, each of them must be reimbursed the value of what he brought into the community of property; if the value of the marital property is not sufficient for this, the shortfall is to be borne by the spouses in the proportion of the value of what they brought in.

(2) The following are to be regarded as having been brought in:

1. the objects that belonged to one spouse when the community of property commenced,
2. the objects which a spouse acquired as a result of death or with regard to a future right of succession, by donation or as an advancement, unless the acquisition, in the circumstances, was to be regarded as income,
3. the rights which are extinguished on the death of a spouse or whose acquisition is conditional on the death of a spouse.

(3) The value of the items brought in is assessed according to the date at which they were brought in.

### **Section 1479**

#### Partitioning after judicial termination decision

Where the community of property is terminated by judicial decision on the basis of sections 1447 and 1448 or of section 1469, the spouse who obtained the judicial decision may require that the partitioning be carried out in such a way as if the claim to partitioning had become pending at court at the time when the action for termination of the community of property was instituted.

### **Section 1480**

Liability to third parties after the division

If the marital property is divided before a marital property obligation has been discharged, the spouse who, at the time of the division, did not have such a liability is also personally liable to the creditor as a joint and several debtor. His liability is limited to the objects allocated to him; the provisions of sections 1990 and 1991 that govern the liability of the heir apply with the necessary modifications.

### **Section 1481**

Liability of the spouses to each other

(1) If the marital property is divided before the discharge of a marital property obligation which, as between the spouses, falls on the marital property, the spouse who managed the marital property alone during the period of community of property is answerable to the other spouse that the other spouse is not claimed on, either for half of the obligation or for the surplus beyond what is obtained from the marital property.

(2) If the spouses managed the marital property jointly during the period of community of property, each spouse is answerable to the other that the other spouse is not claimed on by the creditor for more than half of the obligation.

(3) If the obligation, as between the spouses, falls on one of the spouses, the latter is answerable to the other that the other spouse is not claimed on by the creditor.

### **Section 1482**

Dissolution of marriage by death

If the marriage is dissolved by the death of a spouse, the share of the deceased spouse in the marital property is part of his estate. The succession of the deceased spouse takes place under the general provisions of law.

Subchapter 5

### **Continued community of property**

#### **Section 1483**

Occurrence of continued community of property

(1) The spouses may agree by marriage contract that the community of property, after the death of a spouse, is continued between the surviving spouse and the descendants of the spouses. If the spouses make such an agreement, the community of property is continued with the descendants of the spouses who are heirs in the case of intestate succession. The share of the deceased spouse in the marital property is not part of the estate; apart from this, the succession of the deceased spouse takes place under the general provisions of law.

(2) Where, in addition to the descendants of the spouses, there are other descendants, their rights of succession and their shares of the inheritance are determined as if there had been no continued community of property.

#### **Section 1484**

Refusal of continued community of property

- (1) The surviving spouse may refuse the continuation of the community of property.
- (2) The refusal is governed by the provisions governing the disclaimer of an inheritance of sections 1943 to 1947, 1950, 1952, 1954 to 1957 and 1959 with the necessary modifications. If the surviving spouse is under parental custody or under custodianship, the approval of the family court is necessary for the refusal. In the event of refusal by the custodian of the surviving spouse, the approval of the custodianship court is necessary.
- (3) If the spouse refuses the continuation of the community of property, the same applies as in the case of section 1482.

#### **Section 1485**

Marital property

- (1) The marital property of the continued community of property consists of the marital property to the extent that it does not pass under section 1483 (2) to a descendant who is not entitled to a share and of the property that the surviving spouse acquires from the estate of the deceased spouse or after the beginning of the continued community of property.
- (2) The property which a descendant of the spouses has at the time when the continued community of property begins or acquires later is not part of the marital property.
- (3) The marital property is governed by the provision for marital community of property of section 1416 (2) and (3) with the necessary modifications.

#### **Section 1486**

Reserved property; separate property

- (1) Reserved property of the surviving spouse is what he previously had as reserved property or what he acquires as reserved property under section 1418 (2) nos. 2 and 3.
- (2) Separate property of the surviving spouse is what he previously had as separate property or what he acquires as separate property.

### **Section 1487**

Legal position of the spouse and the descendants

(1) The rights and obligations of the surviving spouse and of the descendants entitled to a share with regard to the marital property of the continued community of property are determined by the provisions applying to marital community of property of sections 1419, 1422 to 1428, 1434, of section 1435 sentences 1 and 3 and of sections 1436 and 1445; the surviving spouse has the legal position of the spouse who manages the marital property alone, and the descendants entitled to a share have the legal position of the other spouse.

(2) What the surviving spouse owes to the marital property or may claim from the marital property is payable only after the termination of the continued community of property.

### **Section 1488**

Marital property obligations

Marital property obligations of the continued community of property are the obligations of the surviving spouse and such obligations of the deceased spouse as were marital property obligations of the marital community of property.

### **Section 1489**

Personal liability for the marital property obligations

(1) The surviving spouse is personally liable for the marital property obligations of the continued community of property.

(2) To the extent that the personal liability applies to the surviving spouse only as a result of the occurrence of the continued community of property, the provisions governing the liability of the heir for the obligations of the estate apply with the necessary modifications; the estate is replaced by the marital property with the inventory that it has at the time when the continued community of property commences.

(3) No personal liability of the descendants entitled to a share for the obligations of the deceased spouse or of the surviving spouse is created by the continued community of property.

### **Section 1490**

Death of a descendant

Where a descendant entitled to a share dies, his share of the marital property is not part of his estate.

Where he has descendants who would be entitled to a share if he had not survived the deceased spouse, the descendants take his place. If he has no such descendants, his share accrues to the other descendants entitled to a share and, if there are no such descendants, to the surviving spouse.

### **Section 1491**

#### Waiver by a descendant

(1) A descendant entitled to a share may waive his share of the marital property. The waiver is made by declaration to the court with jurisdiction over the estate of the deceased spouse; the declaration must be made in notarially certified form. The probate court should give notification of the declaration to the surviving spouse and the other descendants entitled to a share.

(2) The waiver may also be made by contract with the surviving spouse and the other descendants entitled to a share. The contract must be notarially recorded.

(3) If the descendant is under parental custody or under guardianship, the approval of the family court is necessary for the waiver. In the event of waiver by the custodian of the descendant, the approval of the custodianship court is necessary.

(4) The waiver has the same effects as if the person waiving had died without descendants at the time of the waiver.

### **Section 1492**

#### Termination by the surviving spouse

(1) The surviving spouse may terminate the continued community of property at any time. The termination is made by declaration to the court with jurisdiction over the estate of the deceased spouse; the declaration must be made in notarially certified form. The probate court should notify the descendants entitled to a share and, if the surviving spouse is the legal representative of one of the descendants, the family court of the declaration; if custodianship exists, the approval of the custodianship court is necessary.

(2) The termination may also be effected by contract between the surviving spouse and the descendants entitled to a share. The contract must be notarially recorded.

(3) If the surviving spouse is under parental custody or under guardianship, the approval of the family court is necessary for the termination. In the event of termination by the custodian of the surviving spouse, the approval of the custodianship court is necessary.



### **Section 1493**

Remarriage or establishment of a civil partnership by the surviving spouse

(1) The continued community of property ends when the surviving spouse remarries or establishes a civil partnership.

(2) The surviving spouse must, if a descendant entitled to a share is minor, notify the family court of his intention to remarry, submit a list of the marital property, terminate the community of property and bring about the partitioning. The family court may permit the community of property not to be terminated until conclusion of marriage and the partitioning not to take place until a later date.

Sentences 1 and 2 also apply if care for the property of a descendant entitled to a share is part of the area of responsibilities of a custodian; in this case, the custodianship court replaces the family court.

(3) The registry of births, deaths and marriages in which conclusion of marriage has been registered must notify the guardianship court of the registration.

### **Section 1494**

Death of the surviving spouse

(1) The continued community of property ends on the death of the surviving spouse.

(2) If the surviving spouse is declared to be dead, or if the date of his death is established under the provisions of the Missing Persons Act [Verschollenheitsgesetz], the continued community of property ends at the time that is deemed to be the time of death.

### **Section 1495**

Action of a descendant for termination

A descendant entitled to a share may take legal action against the surviving spouse for termination of the continued community of property

1. if his future rights may be substantially endangered by the fact that the other spouse is incapable of managing the marital property or abuses his right to manage the marital property,
2. if the surviving spouse has violated his duty to grant maintenance to the descendant and a substantial endangerment of the maintenance is to be feared in the future,
3. if the management of the marital property falls under the area of responsibilities of the custodian of the surviving spouse,
4. if the surviving spouse has forfeited parental custody for the descendant or, if he had been entitled to it, would have forfeited it.

### **Section 1496**

Effect of the judicial termination decision

The termination of the continued community of property takes effect in the cases of section 1495 when the judicial decision becomes final and absolute. It takes effect for all descendants, even if the judicial decision was pronounced in response to the legal action of one of the descendants.

### **Section 1497**

Legal relationship until partitioning

(1) After the termination of the continued community of property, the surviving spouse and the descendants partition the marital property.

(2) Until the partitioning, their legal relationship to the marital property is governed by sections 1419, 1472 and 1473.

### **Section 1498**

Implementation of the partitioning

The partitioning is governed by the provisions of sections 1475, 1476, section 1477 (1), sections 1479 and 1480 and section 1481 (1) and (3); the place of the spouse who managed the marital property alone is taken by the surviving spouse, and the position of the other spouse is taken by the descendants entitled to a share. The duty set out in section 1476 (2) sentence 2 exists only for the surviving spouse.

### **Section 1499**

Obligations borne by the surviving spouse

In the partitioning, the surviving spouse bears the following:

1. the marital property obligations for which he was responsible at the beginning of the continued community of property for which the marital property was not liable or which he bore as between the spouses;
2. the marital property obligations that arise after the beginning of the continued community of property which, if they had arisen as personal expenses of his during the period of marital community of property, would have fallen on him as between the spouses;
3. an advancement which he promised or granted to a descendant entitled to a share in excess of the amount corresponding to the marital property or which he promised or granted to a descendant not entitled to a share.

### **Section 1500**

Obligations borne by the descendants

(1) The descendants entitled to a share must allow obligations of the deceased spouse which the latter bore as between the spouses to be set off against their share when the partitioning is carried out to the extent that the surviving spouse has not been able to obtain repayment from the heir of the deceased spouse.

(2) In the same way, the descendants entitled to a share must allow whatever the deceased spouse was obliged to reimburse to the marital property to be set off against them.

### **Section 1501**

#### Set-off of lump sum payments

(1) If a descendant entitled to a share has been granted a lump sum payment from the marital property for waiving his share, the payment is included in the marital property when partitioning takes place and is set off against the half due to the descendants.

(2) The surviving spouse may, even before the termination of the continued community of property, enter into an agreement to a different effect with the other descendants entitled to a share. The agreement must be notarially recorded; it is also effective in relation to the descendants who enter the continued community of property only at a later date.

### **Section 1502**

#### Right of surviving spouse to take over property

(1) The surviving spouse is entitled to take over the marital property or individual objects that are part of it in return for reimbursement of the value. The right does not pass to the heir.

(2) If the continued community of property, on the basis of section 1495, is terminated by judicial decision, the surviving spouse does not have the right set out in subsection (1). The descendants entitled to a share may in this case take over in return for reimbursement of the value the objects that the deceased spouse would be entitled to take over under section 1477 (2). The right may be exercised by them only jointly.

### **Section 1503**

#### Division among the descendants

(1) More than one descendant entitled to a share take parts of the half of the marital property that accrues to them in accordance with the proportion of the shares to which they would be entitled in the case of intestate succession as heirs of the deceased spouse if the latter had not died until the time of the termination of the continued community of property.

(2) What they have received previously is set off under the provisions governing set-off among descendants, except to the extent that such a set-off was effected when the estate of the deceased spouse was divided.

(3) If a descendant who has waived his share has been granted a lump sum payment from the marital property, this sum is borne by the descendants who are benefited by the waiver.

### **Section 1504**

#### Adjustment of liability between descendants

To the extent that the descendants entitled to a share under section 1480 are liable to the marital property creditors, they are liable as between each other in the proportion of their shares to the marital property. The liability is restricted to the objects allotted to them; the provisions of sections 1990 and 1991 that govern the liability of the heir apply with the necessary modifications.

### **Section 1505**

Supplementation of the share of a descendant

The provisions on the right to supplement the compulsory share are applied with the necessary modifications in favour of a descendant entitled to a share; the termination of the continued community of property takes the place of the devolution of the inheritance, the share of the descendant in the marital property at the time of termination is deemed to be the share of the inheritance on intestacy, and half of the value of this share is treated as the compulsory portion.

### **Section 1506**

Unworthiness to receive a share

If a descendant of the spouses is unworthy to inherit, he is also unworthy to receive a share of the marital property. The provisions on unworthiness to inherit apply with the necessary modifications.

### **Section 1507**

Certificate on continuation of the community of property

The probate court, on application, must grant the surviving spouse a certificate confirming the continuation of the community of property. The provisions on the certificate of inheritance apply with the necessary modifications.

### **Section 1508**

(repealed)

### **Section 1509**

Exclusion of the continued community of property by testamentary disposition

Each spouse may, for the eventuality that the marriage is dissolved by his death, by testamentary disposition exclude the continuation of the community of property if he is entitled to deprive the other spouse of the compulsory portion or to institute proceedings for termination of the community of property. The same applies if the spouse is entitled to petition for the annulment of the marriage and has filed the petition. The exclusion is governed by the provisions on the removal of the compulsory portion, with the necessary modifications.

### **Section 1510**

Effect of exclusion

If the continuation of the community of property is excluded, the same applies as in the case of section 1482.

### **Section 1511**

#### Exclusion of a descendant

(1) Each spouse may, for the eventuality that the marriage is dissolved by his death, by testamentary disposition exclude a descendant of the spouses from the continued community of property.

(2) The excluded descendant may, notwithstanding his right of succession, require payment from the marital property of the continued community of property of the amount that would be due to him from the marital property of the marital community of property as a compulsory share if the continued community of property had not commenced. The provisions governing the claim to a compulsory portion apply with the necessary modifications.

(3) In the partitioning, the amount paid to the excluded descendant is charged to the descendants entitled to a share under section 1501. As between the descendants, it is charged to the descendants who are benefited by the exclusion.

### **Section 1512**

#### Reduction of the share

Each spouse may, for the eventuality that on his death the continued community of property occurs, by testamentary disposition reduce the share of the marital property to which a descendant entitled to a share has a claim after the end of the continued community of property by up to one half.

### **Section 1513**

#### Deprivation of the share

(1) Each spouse may, for the eventuality that on his death the continued community of property occurs, by testamentary disposition deprive a descendant entitled to a share of the share of the marital property to which that descendant is entitled after the end of the continued community of property if the spouse is entitled to deprive the descendant of his compulsory share. The provision of section 2336 (2) to (4) applies with the necessary modifications.

(2) If the spouse is entitled under section 2338 to restrict the descendant's right to a compulsory share, he may subject the share of the descendant in the marital property to a corresponding restriction.

### **Section 1514**

#### Disposition of the amount withheld

Each spouse may also give to a third party by testamentary disposition the amount of which he deprives a descendant under section 1512 or under section 1513 (1).

### **Section 1515**

Right of a descendant and of the spouse to take over property

(1) Each spouse may, for the eventuality that on his death the continued community of property occurs, by testamentary disposition direct that a descendant entitled to a share should have the right, when the division takes place, to take over the marital property or individual objects that are part of it in return for the reimbursement of the value.

(2) If a farm is part of the marital property, it may be directed that the farm should be assessed at the income value or at a price that is at least as high as the income value. The provisions of section 2049 governing succession apply.

(3) The right to take over the farm at the value or price set out in subsection (2) may also be granted to the surviving spouse.

### **Section 1516**

Approval of the other spouse

(1) For the dispositions of a spouse set out in section 1511 to 1515 to be effective, the approval of the other spouse is necessary.

(2) The approval may not be given through an agent. If the spouse has restricted capacity to contract, the approval of his legal representative is not required. The declaration of approval must be notarially recorded. The approval is irrevocable.

(3) The spouses may also make the dispositions set out in sections 1511 to 1515 in a joint will.

### **Section 1517**

Waiver of his share by a descendant

(1) The effectiveness of a contract by which a descendant of the spouses agrees with one of the spouses to waive his share of the marital property of the continued community of property or by which such a waiver is withdrawn for the eventuality that the marriage is dissolved by the death of that spouse is subject to the approval of the other spouse. The approval is governed by the provision of section 1516 (2) sentences 3 and 4.

(2) The provisions applying to the waiver of an inheritance apply with the necessary modifications.

### **Section 1518**

Mandatory law

Arrangements that conflict with the provisions of sections 1483 to 1517 may not be made by the spouses, either by testamentary disposition or by contract. The right of the spouses to cancel by marriage contract that contract in which they agreed on continued community of property is unaffected.

## **Section 1519 to 1557**

(repealed)

Subtitle 3

### **Marriage property register**

#### **Section 1558**

Competent registration court

(1) The entries in the marriage property register are to be made at every local court [Amtsgericht] in whose district even only one of the spouses has his habitual residence.

(2) The Land governments are authorised to transfer the competence to keep the register, by statutory order, to one local court [Amtsgericht] for the districts of more than one local court [Amtsgericht]. The Land governments may, by statutory order, transfer the authorisation to the Land justice administration authorities.

#### **Section 1559**

Change of habitual residence

If a spouse, after the entry, moves his habitual residence to another district, the entry must be repeated in the register of that district. The earlier entry is deemed to have been repeated if a spouse changes his habitual residence back to the earlier district.

#### **Section 1560**

Application for entry

An entry in the register should be made only on application and only to the extent that it is applied for. The application must be in notarially certified form.

#### **Section 1561**

Requirements for application

(1) The application of both spouses is necessary for entry; each spouse is obliged to the other to cooperate.

(2) The application of one spouse is sufficient

1. to enter a marriage contract or a change in the marital property regime arrangements of the spouses based on a judicial decision if, together with the application, the marriage contract or the decision, bearing a certificate of finality and non-appealability, is submitted;
2. to repeat an entry in the register of another district if, together with the application, a notarially certified copy of the earlier entry issued after the termination of the previous residence is submitted;
3. to enter the objection to the independent operation of a trade or business by the other spouse and to enter the revocation of the consent, if the spouses live in community of property and the spouse who makes the application manages the marital property alone or jointly with the other spouse;
4. to enter the restriction or exclusion of the entitlement of the other spouse to perform transactions with effect for the applicant (section 1357 (2)).

(3) (repealed)

### **Section 1562**

Public notice

(1) The local court [Amtsgericht] must publish the entry in the newspaper intended for its public notices.

(2) If a change of the matrimonial property regime is entered, the notice must be restricted to the designation of the matrimonial property regime and, where this is defined differently from the statutory provisions, to a general designation of the difference.

### **Section 1563**

Inspection of the register

Every person is permitted to inspect the register. A copy of the entries may be requested; on request, the copy must be certified.

Title 7

## **Divorce**

Subtitle 1

### **Grounds of divorce**

#### **Section 1564**

Divorce by judicial decision

A marriage may be dissolved by divorce only by judicial decision on the petition of one or both spouses. The marriage is dissolved when the decision becomes final and absolute. The conditions under which a petition for divorce may be made follow from the following provisions.

#### **Section 1565**

Breakdown of marriage

(1) A marriage may be dissolved by divorce if it has broken down. The marriage has broken down if the conjugal community of the spouses no longer exists and it cannot be expected that the spouses restore it.

(2) Where the spouses have not yet lived apart for one year, the marriage may be dissolved by divorce only if the continuation of the marriage would be an unreasonable hardship for the petitioner for reasons that lie in the person of the other spouse.

#### **Section 1566**

Presumption of breakdown

(1) It is irrebuttably presumed that the marriage has broken down if the spouses have lived apart for a year and both spouses petition for divorce or the respondent consents to divorce.

(2) It is irrebuttably presumed that the marriage has broken down if the spouses have lived apart for three years.



## **Section 1567**

### Living apart

(1) The spouses are living apart if there is no domestic community between them and a spouse recognisably does not intend to create this because he rejects conjugal community. Domestic community also no longer exists if the spouses live apart in the matrimonial home.

(2) Living together for a short period which is intended to reconcile the spouses does not interrupt or suspend the periods laid down in section 1566.

## **Section 1568**

### Hardship clause

(1) The marriage should not be dissolved by divorce, although it has broken down, if and as long as the maintenance of the marriage, in the interest of minor children of the family, is, exceptionally, necessary for particular reasons or if and as long as divorce, by reason of extraordinary circumstances, would be such a severe hardship for the respondent, who rejects it, that the maintenance of the marriage, exceptionally, appears to be advisable, even taking into account the concerns of the petitioner.

(2) (repealed)

### Subtitle 2

## **Maintenance of the divorced spouse**

### Chapter 1

#### **Principle**

## **Section 1569**

### Principle of personal responsibility

After divorce, each spouse is responsible for providing for his own maintenance. If he is not in a position to do this, he has a claim for maintenance against the other spouse only under the following provisions.

### Chapter 2

#### **Entitlement to maintenance**

## **Section 1570**

### Maintenance to care for a child

(1) A divorced spouse may demand maintenance from the other, for the care for or upbringing of a child of the spouses, for at least three years after the birth. The duration of the claim to maintenance is extended as long as and to the extent that this is equitable. Here, the concerns of the child and the existing possibilities of childcare are to be taken into account.

(2) The duration of the maintenance claim is further extended if, taking into account the arrangement of childcare and gainful employment in the marriage and the duration of the marriage, this is equitable.

### **Section 1571**

Maintenance by reason of old age

A divorced spouse may demand maintenance of the other to the extent that, at the date

1. of the divorce,
2. of the end of the care or upbringing of a child of the spouses or
3. of the lapse of the requirements for a claim to maintenance under sections 1572 and 1573

gainful employment may no longer be expected of him by reason of his age.

### **Section 1572**

Maintenance for illness or infirmity

A divorced spouse may demand maintenance of the other, as long as and to the extent that, from the date

1. of the divorce,
2. of the end of the care or upbringing of a child of the spouses or
3. of the end of training, further training or retraining, or
4. of the lapse of the requirements for a claim to maintenance under section 1573

onwards no gainful employment may be expected, by reason of illness or other infirmities or weakness of his physical or mental capacity.

### **Section 1573**

Maintenance for unemployment and topping-up maintenance

(1) To the extent that a divorced spouse has no maintenance claim under sections 1570 to 1572, he may nevertheless demand maintenance as long as and to the extent that he is not able to find appropriate gainful employment after the divorce.

(2) If the income from appropriate gainful employment is not sufficient for complete maintenance (section 1578), he may, to the extent that he does not already have a maintenance claim under sections 1570 to 1572, demand the differential amount between the income and full maintenance.

(3) Subsections (1) and (2) apply with the necessary modifications if maintenance was to be granted under sections 1570 to 1572 and 1575 but the requirements of this provision have ceased to apply.

(4) The divorced spouse may also demand maintenance if the income from appropriate gainful employment ceases because the spouse, despite his efforts, had not succeeded in securing the maintenance with lasting effect by means of the gainful employment after the divorce. If he had succeeded in securing part of the maintenance with lasting effect, he may demand the differential amount between the maintenance secured with lasting effect and the full maintenance.

(5) (repealed)

### **Section 1574**

Appropriate gainful employment

- (1) The divorced spouse is under a duty to enter gainful employment that is appropriate for him.
- (2) Gainful employment is appropriate if it suits the training, the skills, a former employment, the age and the state of health of the divorced spouse, to the extent that such work would not be inequitable with regard to the standard of living in the marriage. In considering the standard of living in the marriage, particular account is to be taken of the duration of the marriage and the duration of the care for or upbringing of a child of the spouses.
- (3) To the extent that it is necessary in order to take up appropriate gainful employment, the divorced spouse is under a duty to undertake training, further training or retraining, if successful completion of the training is to be expected.

### **Section 1575**

Training, further training or retraining

- (1) A divorced spouse who in expectation of the marriage or during the marriage did not undertake education at school or vocational training or who broke this off may demand maintenance of the other spouse if he takes up this or corresponding training as soon as possible in order to obtain appropriate gainful employment that secures maintenance with lasting effect and successful completion of the training is to be expected. The claim exists at maximum for the period of time in which such training is normally completed; here, delays in the training that result from the marriage are to be taken into account.
- (2) Similar provisions apply if the divorced spouse undertakes further training or retraining in order to compensate for disadvantages that arose as a result of the marriage.
- (3) If the divorced spouse, after the completion of the training, further training or retraining, demands maintenance under section 1573, then in determining the appropriate gainful employment for him (section 1574 (2)), the higher level of education attained is not taken into account.

### **Section 1576**

Maintenance for reasons of equity

A divorced spouse may demand maintenance from the other to the extent that and as long as he, for other serious reasons, cannot be expected to be in gainful employment and the refusal of maintenance, taking into account the concerns of both spouses, would be grossly inequitable. The mere fact that serious reasons led to the breakdown of the marriage does not mean that they may be taken into account.

### **Section 1577**

#### Indigence

- (1) The divorced spouse may not demand the maintenance under sections 1570 to 1573, 1575 and 1576 as long as and to the extent that he can maintain himself from his income and his property.
- (2) Income is not to be taken into account to the extent that the person obliged is not paying the full maintenance (sections 1578 and 1578b). Income that exceeds the full maintenance is to be taken into account to the extent that this is equitable, with regard to the financial circumstances of both spouses.
- (3) The person entitled need not realise the basic assets to the extent that the realisation would be uneconomical or, taking into account the financial circumstances of both spouses, inequitable.
- (4) If at the date of the divorce it was to be expected that the maintenance of the person entitled would be secured with lasting effect from his assets, but the assets subsequently no longer exist, there is no claim to maintenance. This does not apply if at the time when the assets cease to exist the spouse cannot be expected to undertake gainful employment by reason of the care for or upbringing of a child of the spouses.

### **Section 1578**

#### Amount of maintenance

- (1) The amount of maintenance is determined in accordance with the marital standard of living. The maintenance comprises all the necessities of life.
- (2) Necessities of life also include the costs of appropriate insurance in the case of illness and need for long-term care and the costs of school education or vocational training, further training or retraining under sections 1574 and 1575.
- (3) If the divorced spouse has a maintenance claim under sections 1570 to 1573 or section 1576, then necessities of life also include the costs of appropriate insurance for old age and for reduced earning capacity.

### **Section 1578a**

#### Presumption of cover in the case of additional expenditure resulting from injury

For outlays resulting from injury to body or health, section 1610a applies.

### **Section 1578b**

Reduction and time limitation of maintenance on grounds of inequity

(1) The maintenance claim of the divorced spouse is to be reduced to cover the reasonable necessities of life where an assessment of the maintenance claim oriented to the marital standard of living would be inequitable even if the concerns of a child of the spouses entrusted to the person entitled in order to be cared for or brought up were observed. Here, particular account is to be taken of how far, as a result of the marriage, disadvantages have occurred with regard to the possibility of taking care of one's own maintenance. Such disadvantages may result above all from the duration of the care or upbringing of a child of the spouses, from the organisation of household management and gainful employment during the marriage, and from the duration of the marriage.

(2) The maintenance claim of the divorced spouse is to be limited in time where a maintenance claim without time limitation would be inequitable even if the concerns of a child of the spouses entrusted to the person entitled in order to be cared for or brought up were observed. Subsection (1) sentences 2 and 3 applies with the necessary modifications.

(3) The reduction and time limitation of the maintenance claim may be combined.

### **Section 1579**

Restriction or refusal of maintenance for gross inequity

A maintenance claim is to be refused, reduced or restricted in time to the extent that it would be grossly inequitable for the person obliged to be claimed on, even if the concerns of a child of the spouses entrusted to the person entitled in order to be cared for or brought up were observed, because

1. the marriage was of short duration; here, account must be taken of the time in which the person entitled may demand maintenance for the care or upbringing of a child of the spouses under section 1570,
2. the person entitled lives in a stable long-term relationship,
3. the person entitled has committed a major criminal offence or a serious intentional minor offence against the person obliged or against a close relative of the person obliged,
4. the person entitled frivolously induced his own indigence,
5. the person entitled frivolously disregarded serious property interests of the person obliged,
6. the person entitled, before the parties lived apart, for a long period grossly violated his duty to contribute to the family maintenance,
7. the person entitled is clearly responsible for manifestly serious misconduct towards the person obliged, or
8. there is another reason that is just as serious as the reasons set out in nos. 1 to 7.

## **Section 1580**

### Duty of information

The divorced spouses have a duty to each other to provide, on request, information on their income and their assets. Section 1605 applies with the necessary modifications.

## Chapter 3

### **Ability to pay and priority**

#### **Section 1581**

##### Ability to pay

If the person obliged, with regard to his earnings and property situation, taking into account his other duties, is unable without endangering his own appropriate maintenance to pay maintenance to the person entitled, he need pay maintenance only to the extent that is equitable, taking into account the needs and the earnings and property situation of the divorced spouses. He need not realise the basic assets to the extent that the realisation would be uneconomical or, taking into account the financial circumstances of both spouses, inequitable.

#### **Section 1582**

##### Priority of the divorced spouse where more than one person is entitled to maintenance

If there is more than one person entitled to maintenance, the priority of the divorced spouse is governed by section 1609.

#### **Section 1583**

##### Influence of the matrimonial property regime

If the person obliged, in the case of a remarriage, lives in the matrimonial property regime of community of property with his new spouse, section 1604 is to apply with the necessary modifications.

#### **Section 1584**

##### Priority of more than one person liable for maintenance

The divorced spouse liable for maintenance is liable before the relatives of the person entitled.

However, to the extent that the person obliged is not able to pay, the relatives are liable before the divorced spouse. Section 1607 (2) and (4) applies with the necessary modifications.

## Chapter 4

### **Form of the maintenance claim**

#### **Section 1585**

##### Nature of maintenance payment

(1) The day-to-day maintenance is to be rendered by making periodical payments. The periodical payments are to be paid monthly in advance. The person obliged owes the full monthly amount even if the maintenance claim expires in the course of the month as a result of remarriage or death of the person entitled.

(2) Instead of the periodical payments, the person entitled may demand a lump sum as capital, if there is a compelling reason and the person obliged is not inequitably burdened by this.

#### **Section 1585a**

##### Provision of security

(1) On request, the person obliged must provide security. The duty to provide security does not apply if there is no reason to assume that the payment of maintenance is endangered or if the person obliged would be inequitably burdened by the provision of security. The amount for which security is to be provided should not exceed the periodical payments for one year, except to the extent that, in the particular circumstances of the cases, a higher amount of security appears appropriate.

(2) The nature of the security payment is determined according to the circumstances; the restriction of section 232 does not apply.

#### **Section 1585b**

##### Maintenance for the past

(1) By reason of special need (section 1613 (2)), the person entitled may demand maintenance for the past.

(2) Apart from this, the person entitled may claim performance or damages for non-performance for the past only pursuant to section 1613 subsection (1).

(3) For a period lying more than one year before pendency, performance or damages for non-performance may be claimed only if it is to be assumed that the person obliged intentionally avoided performance.

#### **Section 1585c**

##### Agreements on maintenance

The spouses may make agreements on the obligation to maintain for the time after the divorce. An agreement that is entered into before the divorce becomes final and absolute must be notarially recorded. Section 127a also applies to an agreement that is recorded in matrimonial proceedings before the trial court.

## Chapter 5

### **End of the maintenance claim**

#### **Section 1586**

Remarriage, establishment of a civil partnership or death of the person entitled

(1) The claim to maintenance expires on the remarriage of, on the establishment of a civil partnership by or on the death of the person entitled.

(2) Claims for performance or damages for non-performance for the past continue in effect. The same applies to the claim for the monthly payment due at the time of the remarriage, the establishment of a civil partnership or the death.

#### **Section 1586a**

Revival of the maintenance claim

(1) Where a divorced spouse enters into a new marriage or civil partnership and where the marriage or civil partnership is then dissolved, he may demand maintenance under section 1570 from the former spouse if he has to care for or to bring up a child from the former marriage or civil partnership.

(2) The spouse in the marriage dissolved later is liable before the spouse of the marriage dissolved earlier.

#### **Section 1586b**

Obligation not extinguished on death of the person obliged

(1) On the death of the person obliged, the obligation to maintain passes to the heir as a liability of the estate. The restrictions under section 1581 do not apply. However, the heir is not liable beyond a sum that corresponds to the compulsory portion which would be due to the person entitled if the marriage had not been dissolved by divorce.

(2) In the calculation of the compulsory portion, special elements by reason of the matrimonial property regime under which the divorced spouses lived are not taken into account.

## Subtitle 3

### **Equalisation of pension rights**

## Chapter 1

### **Principle**

#### **Section 1587**

Reference to the Pension Equalisation Act [Versorgungsausgleichsgesetz]

In accordance with the Pension Equalisation Act, an equalisation takes place between the divorced spouses of rights existing in Germany or elsewhere, in particular of the statutory pensions insurance, from other standard security systems such as civil servants pensions or pensions of a professional group, from company pensions or from private old-age and invalidity pensions.



## Chapter 2

### **Equalisation of value of expectancies or prospects of a pension**

#### **Section 1587a**

##### Claim for equalisation

(1) The spouse who is the person obliged for equalisation purposes is the spouse with expectancies or prospects of a pension to be equalised which are of higher value. The entitled spouse has a right to half of the difference in value as equalisation.

(2) In order to determine the difference in value, the following values are to be used as a basis:

1. In the case of a pension or pension expectancy arising from an employment relationship under public law or from an employment relationship with a claim to a pension under civil service law provisions or principles, the basis is to be the amount that would be the pension at the date when the divorce petition is first pending at court. In this calculation, the pensionable period of service worked until this date is increased by the time until retirement age (total period). The decisive value is the part of the pension that corresponds to the proportion of the pensionable period of service falling in the period of the marriage to the total period. Increases on the basis of accidents are disregarded. In this respect, the official emoluments of retired professors are equivalent to pensions and the provisions of civil service law on pensionable length of service apply with the necessary modifications.

2. In the case of pensions or pension expectancies from the statutory pension scheme, the calculation is to be based on the amount of the full old-age pension that would apply at the end of the period of the marriage on the basis of the pension credit points relating to the period of the marriage, without taking into account the accrual factor.

3. In the case of payments, expectancies or prospects of payments of an occupational pension plan,

a) if, on the date when the divorce petition is first pending at court, the time of employment continues, the basis is to be the part of the pension that corresponds to the proportion of the time of employment falling into the period of the marriage to the time from the beginning of the time of employment until the fixed retirement age provided in the pension terms; times equivalent to the time of employment are to be included; the pension is calculated on the basis of the amount that would result when the spouse reached the fixed retirement age provided in the pension terms if the bases of assessment at the date when the divorce petition is first pending at court were taken as the starting point;

- b) if, before the date when the divorce petition is first pending at court, the time of employment has ended, the basis is to be the part of the pension acquired that corresponds to the proportion of the time of employment falling into the period of the marriage to the total time of employment; times equivalent to the time of employment are to be included.

This does not apply to payments or expectancies of payments under an insurance relationship with an additional civil-service pension organisation; no. 4 letter c is to govern these. For expectancies or prospects of payments from the occupational pension plan that are not yet non-forfeitable at the date when the decree is pronounced, the provisions on contractual equalisation of pension rights apply.

4. In the case of other pensions or similar recurring payments that are intended to serve as a pension for old age or reduced earning capacity, or expectancies or prospects of these,

a) if the pension or payment is assessed on the basis of the duration of a creditable period, the basis is to be the amount of the payment that would follow from the creditable period falling in the period of the marriage if the pensionable event had occurred at the date when the divorce petition was first pending at court;

b) if the pension or payment is not assessed or not only assessed on the basis of the duration of a creditable period, nor under letter d, the basis is to be the partial amount of the full pension or payment under the pension terms that corresponds to the proportion of the time that falls into the period of the marriage that is to be taken into account in assessing this pension or payment to its expected total duration until the retirement age that qualifies for the payment of the pension;

c) if the pension or payment is assessed on the basis of a fraction of contributions paid, the basis is to be the amount that would be payable on the basis of the contributions made for the period of the marriage if, when the divorce petition is pending at court, the insured event had occurred;

d) if the pension or payment is assessed on the basis of the principles applying to statutory pension insurance, the basis is to be the partial amount of the old-age pension that would be payable when the divorce petition is first pending at court, which corresponds to the proportion of the years of coverage falling in the period of marriage to the total number of years of coverage to be taken into account.

5. In the case of pensions or pension expectancies on the basis of an insurance contract that was entered into to provide a pension for the insured,

a) if it is an insurance policy with a duty to pay premiums continuing beyond the date when the divorce petition is first pending at court, the basis is to be the amount of pension that the insurer would pay if the policy were first converted into a paid-up insurance policy, if the insured event had taken place at this date. If premiums for the period before the marriage have also been paid into the insurance policy, the pension amount is to be assessed at a correspondingly lower figure;

b) if there is no duty to pay premiums continuing beyond the date when the divorce petition is first pending at court, the basis is to be the amount of pension that would be payable as a payment of the insurer if at this date the insured event had occurred. Letter a sentence 2 applies.

(3) In the case of pension payments or expectancies or prospects of a pension under subsection (2) no. 4, the value of which does not rise in the same way or in almost the same way as the value of the expectancies named in subsection (2) nos. 1 and 2, and in the cases of section 2 no. 5 the following applies:

1. if the payments are made from cover fund or a comparable insurance reserve, the basis is to be the standard old-age pension that would be payable if the part of the cover fund built up during the marriage or the part of the insurance reserve falling into this period had been paid into the statutory pension insurance scheme as a contribution;

2. if the payments are not or not exclusively made from a cover fund or a comparable insurance reserve, the basis is to be the standard old-age pension that would be payable if the cash value of the part pension for the date when the divorce petition is first pending at court were assessed and were paid into the statutory pension scheme as a contribution. Detailed provisions on the assessment of the cash value are laid down by the federal government by statutory order with the approval of the Federal Council [Bundesrat].

(4) Payments of expectancies or prospects of payments of an occupational pension plan under subsection (2) no. 3 are governed by subsection (3) no. 2.

(5) If the pension is not assessed by the valuation standards set out in the above subsections, the family court determines the pension to be equalised, applying the above provisions with the necessary modifications at its reasonably exercised discretion.

(6) If a spouse is entitled to more than one pension expectancy in the meaning of subsection (2) no. 1, then to assess the value, the basis is to be the total pensions and related benefits arrived at after applying rules on suspension of benefits and the total pensionable length of service falling in the period of the marriage; an analogous procedure is to be followed if the pension, on account of periodical payments or a similar recurring payment, were subject to a term relating to the suspension or set-off of benefits.

(7) For the purposes of evaluation under subsection (2), no account is taken of the fact that a qualifying period, minimum employment period, minimum insurance period or other requirements as to time that are essential for the pension have not yet been completed at the date when the divorce petition is first pending at court; subsection (2) no. 3 sentence 3 is unaffected. This does not apply to periods of time on which the pension based on minimum income is dependent in the statutory pension schemes.

(8) When the value is calculated, the supplementary allowances contained in a benefit, pension or payment that are only granted on the basis of an existing marriage, and children's allowances and similar family-related elements are to be left from account.

### **Section 1587b**

Transfer and establishment of pension expectancies by the family court

(1) If a spouse, in the period of the marriage, has acquired pension expectancies in a statutory pension scheme in the meaning of section 1587a (2) no. 2 and if these exceed the expectancies in the meaning of section 1587a (2) no. 1 and 2 which the other spouse has acquired in the period of the marriage, the family court transfers to that spouse pension expectancies in the amount of half of the difference in value. The details are governed by the provisions on statutory pension schemes.

(2) If, in the period of the marriage, a spouse acquired an expectancy in the meaning of section 1587a (2) no. 1 from a public-law corporation, institution or foundation, one of their associations including the central organisations or one of their joint associations, and if this expectancy, alone or together with a pension expectancy in the meaning of section 1587a (2) no. 2 exceeds the expectancies in the meaning of section 1587a (2) nos. 1 and 2 that the other spouse acquired in the period of the marriage, the family court establishes for the latter pension expectancies in a statutory pension scheme in the amount of half of the difference in value still remaining after the application of subsection (1). The details are governed by the provisions on statutory pension schemes.

(3) To the extent that the equalisation is not to be undertaken under subsection (1) or 2, the spouse who is the person obliged must pay, as contributions to establish expectancies in a particular pension in a statutory pension scheme for the spouse entitled, the amount that is necessary in order to equalise the difference in value;<sup>1)</sup>

<sup>1)</sup> this applies only as long as the spouse entitled has not yet satisfied the requirements for an old-age pension from a statutory pension scheme. The details are governed by the provisions on statutory pension schemes. Pension expectancies to be transferred under subsection (1) or to be established under subsection (2) are to be included in the equalisation; by way of set-off, only one equalisation is to be made.

(4) If the transfer or establishment of pension expectancies in the statutory pension schemes would probably not take effect to the advantage of the person entitled, or if the equalisation of pension rights in this form, in the circumstances of the case, would be uneconomical, the family court should, on the application of one party, make different arrangements; section 1587o (1) sentence 2 applies with the necessary modifications.

(5) The monthly amount of the pension expectancies in the statutory pension insurance schemes to be transferred under subsection (1) or to be established under subsections (2) and (3), together with the monthly amount of the pension expectancies already established in the statutory pension schemes of the spouse entitled to equalisation may not exceed the maximum amount set out in section 76 (2) sentence 3 of Book Six of the Social Security Code [Sozialgesetzbuch].

(6) When pension expectancies in the statutory pension insurance are transferred or established, the family court must order that the monthly amount of the pension expectancies to be transferred or to be established is to be converted into pension credit points.

\*)Note: This half-sentence is void, by the judgment of the Federal Constitutional Court [Bundesverfassungsgericht] of 27 January 1983 (Federal Law Gazette [Bundesgesetzblatt] I p. 375)

### **Section 1587c**

#### Restriction or end of equalisation

There is no equalisation of pension rights

1. to the extent that claiming on the person obliged, taking into account the circumstances of both parties, in particular the acquisition of assets on both sides during the marriage or in connection with the divorce, would be grossly inequitable; here, the mere fact that circumstances led to the breakdown of the marriage does not mean that they may be taken into account;
2. to the extent that the person entitled, in expectation of the divorce or after the divorce, by acts or omissions, has brought about a situation where expectancies or prospects of a pension to which he is entitled and which were to be equalised under section 1587 (1) did not come into existence or ceased to exist;
3. to the extent that the person entitled, during the marriage, for a long period of time grossly violated his duty to contribute to the family maintenance.

### **Section 1587d**

#### Suspension of the duty to establish pension expectancies

(1) On the application of the person obliged, the family court may order that the duty under section 1587b (3) is suspended as long as and to the extent that the person obliged would be inequitably burdened by the payment, and in particular would become incapable of maintaining himself appropriately and satisfying his statutory maintenance duties towards the divorced spouse and the persons entitled with equal priority with the divorced spouse. If the person obliged is in the position to pay instalments, the court must also lay down the amount of the instalment payments for which the person obliged is liable.

(2) The family court may, on application, set aside or alter a final and absolute decision if the circumstances have substantially changed since the divorce.

### **Section 1587e**

Duty of information; extinction of claim to equalisation

- (1) The equalisation of pension rights under section 1587b is governed by section 1580 with the necessary modifications.
- (2) On the death of the person entitled, the equalisation claim expires.
- (3) The claim for payment of contributions (section 1587b (3)) also expires as soon as contractual equalisation of pension rights under section 1587g (1) sentence 2 may be demanded.
- (4) The equalisation claim does not expire on the death of the person obliged. It must be asserted against the heirs.

Chapter 3

### **Contractual equalisation of pension rights**

#### **Section 1587f**

Requirements

In the cases in which

1. the establishment of pension expectancies in a statutory pension scheme, with regard to the provision of section 1587b (3) sentence 1 second half-sentence, is not possible,
  2. the transfer or establishment of pension expectancies in a statutory pension scheme, with regard to the provision of section 1587b (5), is excluded,
  3. the spouse who is the person obliged has not made the payments to establish pension expectancies in a statutory insurance scheme imposed on him under section 1587b (3) sentence 1 first half-sentence,
  4. payments of an occupational pension plan on the basis of such expectancies or prospects are to be included in the equalisation which at the date when the decree was pronounced were not yet non-forfeitable,
  5. the family court, under section 1587b (4), has made a ruling in the form of contractual equalisation of pension rights or the spouses, under section 1587o, have agreed on contractual equalisation of pension rights,
- the equalisation here takes place on the application of one spouse under the provisions of sections 1587g to 1587n (contractual equalisation of pension rights).

### **Section 1587g**

Claim to payment of a pension

(1) The spouse whose pension to be equalised exceeds that of the other spouse must make to the other spouse, as equalisation, periodical payments (an equalisation pension) in the amount of half of the excess amount in each case. The pension may be demanded only if both spouses have obtained a pension or if the spouse who is the person obliged has obtained a pension and the other spouse, by reason of illness or other infirmity or weakness of his physical or mental powers, will for a period whose end cannot be foreseen not be able to undertake gainful employment that is reasonable according to his training and skills or has reached the age of sixty-five.

(2) For the determination of the pension to be equalised, section 1587a applies with the necessary modifications. If, since the date when the divorce petition was first pending at court, the value of a pension or an expectancy or prospect of a pension has changed, or if a pension or an expectancy or prospect of a pension that existed on the date when the divorce petition was first pending at court has ceased to exist, or if requirements of a pension have been satisfied that were not satisfied on the date when the divorce petition was first pending at court, this must be taken into account in addition.

(3) Section 1587d (2) applies with the necessary modifications.

### **Section 1587h**

Restriction or end of equalisation claim

There is no equalisation claim under section 1587g

1. to the extent that the person entitled is able to pay the maintenance appropriate to his standard of living from his income and his assets and the granting of the equalisation of pension rights would be an inequitable hardship for the person obliged, taking into account the financial circumstances of both spouses; section 1577 (3) applies with the necessary modifications;
2. to the extent that the person entitled, in expectation of the divorce or after the divorce, by acts or omissions, has brought about a situation where a pension which would have to be equalised under section 1587 is not granted;
3. to the extent that the person entitled, during the marriage, for a long period of time grossly violated his duty to contribute to the family maintenance.

### **Section 1587i**

Assignment of pension claims

(1) The person entitled may demand that the person obliged assign him, in the amount of the day-to-day equalisation pension, pension rights included in the equalisation that have become payable or that become payable for the same period of time.

(2) The effectiveness of the assignment to the spouse under subsection (1) does not prevent the exclusion of transferability and pledgeability of the claims.

(3) Section 1587d (2) applies with the necessary modifications.

### **Section 1587k**

Applicable provisions; extinction of claim to equalisation

(1) The equalisation claim under section 1587g (1) sentence 1 is governed by sections 1580, 1585 (1) sentences 2 and 3 and section 1585b (2) and (3) with the necessary modifications.

(2) The claim expires on the death of the person entitled; section 1586 (2) applies with the necessary modifications. To the extent that the claim expires under this provision, the claims assigned under section 1587i (1) pass to the person obliged.

### **Section 1587l**

Claim to lump sum payment of future equalisation claims

(1) A spouse may demand a lump sum payment from the other spouse for his future equalisation claims if the other spouse can reasonably be expected to make the payment with regard to his financial circumstances.

(2) The amount of the lump sum payment is to be based on the current market value, determined under section 1587g (2), of the expectancies or prospects of both parties of a pension to be equalised.

(3) The lump sum payment may be demanded only in the form of the payment of contributions to a statutory pension scheme or to a private life insurance or pensions insurance policy. If the lump sum payment in the form of the payment of contributions to a private life insurance or pensions insurance policy is chosen, the insurance contract must be entered into by the person entitled for himself for the event of death and reaching the age of sixty-five or a lower age and must provide that profit shares are applied to increase the insurance benefits. On application, the person obliged is to be permitted to pay in instalments to the extent that this is equitable in view of his financial circumstances.

### **Section 1587m**

Extinction of the claim to a lump sum payment

On the death of the person entitled, the claim to payment of the lump sum expires to the extent that the person obliged has not yet discharged it.



### **Section 1587n**

#### Set-off against maintenance claim

Where the person entitled has been paid a lump sum under section 1587l, he must allow the amount that he would receive as equalisation of pension rights under section 1587g if the lump sum payment had not been made to be set off against a claim to maintenance against the divorced spouse.

#### Chapter 4

### **Agreements between the parties**

#### **Section 1587o**

##### Agreements on the equalisation

(1) In connection with the divorce, the spouses may make an agreement on the equalisation of expectancies or rights to a pension for old age or reduced earning capacity (section 1587). The agreement may not cause expectancies in a statutory pension scheme under section 1587b (1) or (2) to be established or transferred.

(2) The agreement under subsection (1) must be notarially recorded. Section 127a applies with the necessary modifications. The agreement requires the approval of the family court. The approval should be refused only if, when the maintenance arrangement and the partitioning of assets are included, the agreed performance is obviously not suitable to provide security corresponding with the goal of the equalisation of pension rights for the person entitled or does not result in an equalisation between the spouses that is appropriate in nature and amount.

#### Chapter 5

### **Protection of the person obliged under the pension**

#### **Section 1587p**

##### Payment to the person previously entitled

If, by the final and absolute decision of the family court, pension expectancies in a statutory pension scheme have been transferred to the entitled spouse, the latter must permit to be asserted against him a payment to the person obliged spouse which the payer of the pension makes to the person obliged spouse before the end of the month following the month in which the decision was served on him.

## Title 8

### **Church duties**

#### **Section 1588**

(no heading) The church duties with regard to the marriage are not affected by the provisions of this division.

## Division 2

### **Relationship**

## Title 1

### **General provisions**

#### **Section 1589**

Relationship by blood

(1) Persons one of whom is descended from the other are related lineally. Persons who are not related in direct line but who are descended from the same third person are related collaterally. The degree of relationship is determined by the number of intermediate births.

(2) (repealed)

#### **Section 1590**

Relationship by marriage

(1) The relatives of a spouse are related to the other spouse by marriage. The line and the degree of the relationship by marriage are determined according to the line and the degree of the intermediate relationship by blood.

(2) Relationship by marriage continues even if the marriage by which it was created has been dissolved.

## Title 2

### **Descent**

#### **Section 1591**

Maternity

The mother of a child is the woman who gave birth to it.

#### **Section 1592**

Paternity

The father of a child is the man

1. who is married to the mother of the child at the date of the birth,
2. who has acknowledged paternity or
3. whose paternity has been judicially established under section 1600d or section 182 (2) of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction [Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit].

### **Section 1593**

Paternity in the case of dissolution of the marriage by death

Section 1592 no. 1 applies with the necessary modifications if the marriage has been dissolved by death and within 300 days after the dissolution a child is born. If it is certain that the child was conceived more than 300 days before its birth, this period of time is conclusive. If a woman who has entered into a further marriage gives birth to a child that would be both the child of the former husband under sentences 1 and 2 and the child of the new husband under section 1592 no. 1, it is to be regarded only as the child of the new husband. If the paternity is challenged and if it is finally and non-appealably established that the new husband is not the father of the child, then it is the child of the former husband.

### **Section 1594**

Acknowledgement of paternity

- (1) The legal effects of acknowledgement may, to the extent that statute does not provide otherwise, be asserted only from the date on which the acknowledgement becomes effective.
- (2) An acknowledgement of paternity is not effective as long as the paternity of another man is in effect.
- (3) An acknowledgement subject to a condition or a stipulation as to time is ineffective.
- (4) The acknowledgement is admissible even before the birth of the child.

### **Section 1595**

Need for approval of the acknowledgement

- (1) The acknowledgement requires the approval of the mother.
- (2) The acknowledgement also requires the approval of the child if the mother does not have parental custody in this respect.
- (3) The approval is governed by section 1594 (3) and (4) with the necessary modifications.

### **Section 1596**

Acknowledgement and approval in the case of lack of capacity to contract or limited capacity to contract

(1) A person whose capacity to contract is limited may only acknowledge without a representative. The approval of the legal representative is required. For a person who has no capacity to contract, the legal representative may acknowledge, with the approval of the family court; if the legal representative is a custodian, approval of the custodianship court is necessary. The approval of the mother is governed by sentences 1 to 3 with the necessary modifications.

(2) For a child that is incapable of contracting or is not yet fourteen years old, only the legal representative may approve the acknowledgement. Apart from this, a child that has limited capacity to contract can only give approval without a representative; this requires the approval of the legal representative.

(3) A person of full age placed under care who is capable of contracting may only acknowledge or give approval without a representative; section 1903 is unaffected.

(4) Acknowledgement and approval may not be declared by an authorised representative.

### **Section 1597**

Formal requirements; revocation

(1) Acknowledgement and approval must be notarially recorded.

(2) Certified copies of the acknowledgement and of all declarations that are important for the effectiveness of the acknowledgement are to be sent to the father, the mother and the child, and to the registry of births, deaths and marriages.

(3) The man may revoke the acknowledgement if it has not yet become effective one year after the recording. The revocation is governed by subsections (1) and (2) and section 1594 (3) and section 1596 (1), (3) and (4) with the necessary modifications.

### **Section 1598**

Ineffectiveness of acknowledgement, approval and revocation

(1) Acknowledgement, approval and revocation are ineffective only if they do not satisfy the requirements of the above provisions.

(2) Where, since the entry in a German register of civil status, five years have passed, the acknowledgement is effective, even if it does not satisfy the requirements of the above provisions.

### **Section 1598a**

Claim to consent to a genetic examination to clarify natural parentage

(1) To clarify the natural parentage of the child,

1. the father may require mother and child,
2. the mother may require father and child, and
3. the child may require both parents

to consent to a genetic paternity test and to acquiesce in the taking of a genetic sample appropriate for the test. The sample must be taken in compliance with the recognised principles of science.

(2) On the application of a person entitled to clarify, the family court must substitute consent that has not been given and order acquiescence in the taking of a sample.

(3) The court suspends the proceeds if and as long as the clarification of the natural parentage would result in a considerable adverse effect on the best interests of the minor child which would be unreasonable for the child even taking into account the concerns of the person entitled to clarify.

(4) A person who has consented to a genetic paternity test and has given a genetic sample may require the person entitled to clarify who has had a paternity test made to permit inspection of the genetic paternity test report or to provide a copy. The family court decides disputes arising from the claim under sentence 1.

### **Section 1599**

Non-existence of paternity

(1) Section 1592 nos. 1 and 2 and section 1593 do not apply if, by reason of contestation, it has been finally and non-appealably established that the man is not the father of the child.

(2) Section 1592 no. 1 and section 1593 also do not apply if the child is born after a divorce petition is pending at court and a third person, at the latest before the end of one year after the decree granting the divorce petition has become final and absolute, acknowledges paternity; section 1594 (2) does not apply. In addition to the declarations necessary under sections 1595 and 1596, the acknowledgement requires the approval of the man who is married to the mother at the date of the birth; this approval is governed by section 1594 (3) and (4), section 1596 (1) sentences 1 to 3, (3) and (4), section 1597 (1) and (2) and section 1598 (1) with the necessary modifications. The acknowledgement becomes effective at the earliest when the decree granting the petition for divorce becomes final and absolute.

## **Section 1600**

### Persons entitled to contest

(1) The following are entitled to contest the paternity:

1. the man whose paternity exists under section 1592 nos. 1 and 2 and section 1593,
2. the man who declares in lieu of an oath that he had sexual intercourse with the mother of the child during the period of conception,
3. the mother,
4. the child and
5. the competent authority (authority entitled to contest paternity) in the cases of section 1592 no. 2.

(2) The contestation under subsection (1) no. 2 requires that there be no social and family relationship between the child and its father in the meaning of subsection (1) no. 1, nor was there a social and family relationship at the date of his death, and that the person contesting is the natural father of the child.

(3) The contestation under subsection (1) no. 5 requires that there be no social and family relationship between the child and the person acknowledging, nor was there a social and family relationship at the date of the acknowledgment or of his death and the recognition satisfies legal requirements for the permitted entry or the permitted residence of the child or of a parent.

(4) A social and family relationship under subsections 2 and 3 exists if the father, in the meaning of subsection (1) no. 1, has or had actual responsibility for the child at the relevant point of time. There is as a rule an assumption of actual responsibility if the father in the meaning of subsection (1) no. 1 is married to the mother of the child or lived together with the child for a long period in domestic community.

(5) If the child, with the consent of the man and the mother, was conceived by means of artificial insemination by sperm donation from a third person, the contestation of paternity by the man or the mother is excluded.

(6) The Land governments are authorised to specify the public authorities under subsection (1) no. 5 by statutory order. The Land governments may transfer this authorisation by statutory order to the competent supreme Land authorities. If the public authority does not have local jurisdiction under these provisions, the jurisdiction is determined by the seat of the court that is competent for the action.

### **Section 1600a**

Personal contestation; contestation in the case of lack of capacity to contract or limited capacity to contract

- (1) The contestation may not be made through an authorised representative.
- (2) The persons entitled to contest in the meaning of section 1600 (1) nos. 1 to 3 may contest the paternity only without a representative. This also applies if they have limited capacity to contract; they do not need the approval of their legal representatives for this. If they have no capacity to contract, only their legal representative may contest.
- (3) For a child that is incapable of contracting or has limited capacity to contract, only the legal representative may contest.
- (4) The contestation through the legal representative is admissible only if it serves the best interests of the person represented.
- (5) A person of full age placed under care who is capable of contracting may contest the paternity only without a representative.

### **Section 1600b**

Contestation periods

- (1) The paternity may be contested at court within two years. The period commences on the date on which the person entitled learns of the circumstances that argue against the paternity; the existence of a social and family relationship in the meaning of section 1600 (2) first alternative does not prevent the period from running.
  - (1a) In the case of section 1600 subsection (1) no. 5, the paternity may be contested in court within one year. The period commences when the public authority entitled to contest paternity obtains knowledge of the fact that justify the assumption that the requirements for its right to contest are satisfied. The contestation is excluded at the latest after the expiry of five years after the acknowledgement of paternity for a child born in the Federal territory; failing this, at the latest five years after the entry into the country of the child.
- (2) The period does not commence before the birth of the child, nor before the acknowledgement has become effective. In the cases of section 1593 sentence 4, the period does not begin before the finality and non-appealability of the decision finding that the new husband of the mother is not the father of the child.
- (3) If the legal representative of a minor child did not contest the paternity in good time, the child may contest it itself after it has reached the age of majority. In this case, the period does not begin before the minor becomes of full age, nor before the date on which the child learns of the circumstances that argue against the paternity.

(4) If the legal representative of a person incapable of contracting did not contest the paternity in good time, the person entitled to contest may himself contest after the lack of capacity to contract comes to an end. Subsection (3) sentence 2 applies with the necessary modifications.

(5) The period is suspended by the commencement of proceedings under section 1598a subsection (2); section 204 subsection (2) applies with the necessary modifications. The period is also suspended as long as the person entitled to contest is unlawfully prevented from contestation by threat. Apart from this, sections 206 and 210 apply with the necessary modifications.

(6) If the child obtains knowledge of circumstances on the basis of which the consequences of the paternity are unreasonable for it, the period of subsection (1) sentence 1 commences again for the child on this date.

#### **Section 1600c**

Presumption of paternity in contestation proceedings

(1) In the proceedings to contest the paternity, it is presumed that the child is the descendant of the man whose paternity exists under section 1592 nos. 1 and 2 and section 1593.

(2) The presumption under subsection (1) does not apply if the man who has acknowledged paternity contests the paternity and his acknowledgement suffers from a defect in the intention under section 119 (1) and section 123; in this case, section 1600d (2) and (3) apply with the necessary modifications.

#### **Section 1600d**

Court determination of paternity

(1) If there is no paternity under section 1592 nos. 1 and 2 and section 1593, the paternity must be determined by the court.

(2) In the proceedings for court determination of paternity, it is presumed that the father is the man who had sexual intercourse with the mother in the period of conception. The presumption does not apply if there are serious doubts as to the paternity.

(3) The period of conception is deemed to be the time from the 300th to the 181st day before the birth of the child, including both the 300th and the 181st days. If it is certain that the child was conceived outside the period of sentence 1, this deviating period of time is deemed to be the period of conception.

(4) The legal effects of paternity may, to the extent that statute does not provide otherwise, be asserted only from the date on which they are established.



### **Section 1600e**

Jurisdiction of the family court; right of action and answerability as the proper party

(1) The family court decides on the determination or contestation of paternity

1. upon an action of the man against the child,
2. upon an action of the mother or the child against the man,
3. in the case of contestation under section 1600 subsection (1) no. 2 upon an action against the child and the father in the meaning of section 1600 subsection (1) no. 1 or
4. in the case of contestation under section 1600 subsection (1) no. 5 upon an action against the child and the father in the meaning of section 1592 no. 2.

If a person against whom the action would have to be directed in the case of contestation under section 1600 (1) no. 2 or 5 is deceased, the action is to be directed only against the other person.

(2) If the persons against whom the action would have to be directed are deceased, the family court decides on the application of the person or the public authority that would be entitled to take action under subsection (1).

### Title 3

## Obligation to maintain

### Subtitle 1

## General provisions

### Section 1601

Persons with an obligation to maintain

Lineal relatives are under an obligation to maintain each other.

### Section 1602

Indigence

(1) Only a person who is incapable of maintaining himself is entitled to maintenance.

(2) A minor unmarried child may demand from its parents, even if it has assets, the payment of maintenance to the extent that the income of its assets and the income of its work are not sufficient for maintenance.

### Section 1603

Ability to pay

(1) A person who, taking into account his other duties, is unable, without endangering his reasonable maintenance, to pay maintenance has no obligation to maintain.

(2) If parents are in this situation, they are obliged to their minor unmarried children to use all available funds equally for their maintenance and the maintenance of the children. Unmarried children of full age are equivalent to the minor unmarried children, until these reach the age of twenty-one, as long as they live in the household of the parents or of one parent and are in general education. This obligation does not arise if another relative with an obligation to maintain is available; nor does it arise with regard to a child whose maintenance can be paid from its basic assets.

### Section 1604

Influence of the matrimonial property regime

Where the person with an obligation to maintain lives under the matrimonial property regime of community of property, his obligation to maintain towards relatives is determined as if the marital property belonged to him. Where both persons living under the matrimonial property regime of community of property have indigent relatives, the maintenance is to be paid from the marital property as if the indigent relatives had the relationship to both persons with an obligation to maintain on which the obligation to maintain of the person obliged is based.

### **Section 1605**

#### Duty of information

- (1) Lineal relatives are obliged to each other, on request, to supply information on their income and their assets, to the extent that this is necessary to establish a maintenance claim or a maintenance obligation. On the amount of the income, on request, supporting documents, in particular certificates from the employer, must be submitted. Sections 260 and 261 apply with the necessary modifications.
- (2) Before the end of a two-year period, information may be demanded again only if it is credibly established that the person with a duty to give information later acquired a substantially higher income or further assets.

### **Section 1606**

#### Order of priority of more than one person obliged

- (1) The descendants are obliged to provide maintenance before the ascendants.
- (2) Among the descendants and among the ascendants, the closer relatives are liable before the more distant relatives.
- (3) More than one equally close relative are liable on a pro rata basis on the basis of their earnings and property situation. The parent who is caring for a minor unmarried child fulfils his obligation to contribute to the maintenance of the child as a rule in the care and upbringing of the child.

### **Section 1607**

#### Substituted liability and statutory passing of claim

- (1) To the extent that a relative, on the basis of section 1603, has no obligation to maintain, the relative liable after him must pay maintenance.
- (2) The same applies if the prosecution of rights against a relative within the country is excluded or substantially more difficult. The claim against such a relative, to the extent that another relative obliged under subsection (1) pays the maintenance, passes to the latter.
- (3) The maintenance claim of a child against a parent, to the extent that, subject to the requirements of subsection (2) sentence 1, another relative who is not liable for maintenance, or the spouse of the other parent, pays maintenance in place of the parent, passes to the latter. Sentence 1 applies with the necessary modifications if a third person pays the child maintenance as father.
- (4) The passing of the maintenance claim may not be asserted to the disadvantage of the person entitled to maintenance.

### **Section 1608**

Liability of the spouse or civil partner

(1) The spouse of an indigent person is liable before that person's relatives. However, to the extent that the spouse, taking into account his other duties, is unable, without endangering his reasonable maintenance, to pay maintenance, the relatives are liable before the spouse. Section 1607 (2) and (4) applies with the necessary modifications. The civil partner of the indigent person is liable in the same way as a spouse.

(2) (repealed)

### **Section 1609**

Priority of more than person entitled to maintenance

If there is more than one person entitled to maintenance and if the person liable for maintenance is unable to pay maintenance to all, the following order of priority applies:

1. minor unmarried children and children in the meaning of section 1603 (2) sentence 2,
2. parents who are entitled to maintenance for the care of a child, or would be so entitled in the case of a divorce, and spouses and divorced spouses in the case of a long marriage; if it is determined that the marriage was long, account must also be taken of disadvantages in the meaning of section 1578b (1) sentences 2 and 3,
3. spouses and divorced spouses who do not fall under no. 2,
4. children who do not fall under no. 1,
5. grandchildren and more distant descendants,
6. parents,
7. further ascendants; among these, the more closely related take precedence over the more distantly related.

### **Section 1610**

Amount of maintenance

(1) The amount of maintenance to be paid is determined according to the position in life of the indigent person (appropriate maintenance).

(2) The maintenance includes all the necessities of life, including the costs of appropriate training for an occupation, and in the case of a person needing education, also the costs of education.

### **Section 1610a**

Presumption of cover in the case of additional expenditure resulting from injury

If social security benefits are claimed for outlays as the result of injury to body or health, then when a maintenance claim is determined, it is presumed that the costs of the outlays are not less than the amount of these social security benefits.

### **Section 1611**

#### Restriction or end of obligation

(1) If the person entitled to maintenance has become indigent as a result of his moral fault, if he has grossly neglected his own obligation to maintain towards the person liable for maintenance or intentionally committed severe misconduct against the person liable for maintenance or a close relative of the person liable for maintenance, the person liable for maintenance need pay a contribution to maintenance only in the amount that is equitable. The obligation lapses completely if it would be grossly inequitable for the person liable for maintenance to be claimed on.

(2) The provisions of subsection (1) do not apply to the obligation of parents to maintain their minor unmarried children.

(3) The indigent person may not, by reason of a restriction of his claim arising under these provisions, claim on other persons liable for maintenance.

### **Section 1612**

#### Nature of maintenance payment

(1) The maintenance is to be rendered by making periodical payments. The person liable for maintenance may demand that he be paid the maintenance in another form if special reasons justify this.

(2) If parents are obliged to pay maintenance to an unmarried child, they may determine in what form and for what period in advance the maintenance is to be paid, provided the necessary account is taken of the concerns of the child. If the child is a minor, a parent who does not have care for the person of the child may make a determination only for the time in which the child is taken into the household of the parent.

(3) Periodical payments must be paid monthly in advance. The person obliged owes the full monthly amount even if the person entitled dies in the course of the month.

### **Section 1612a**

Minimum maintenance of minor children

(1) A minor child may demand from one parent, with whom it does not live together in one household, maintenance as a percentage of the applicable minimum maintenance. The minimum maintenance is based on the double tax allowance for the material subsistence level of a child (child allowance) under section 32 (6) sentence 1 of the Income Tax Act [Einkommensteuergesetz]. The monthly rate, depending on the age of the child, is

1. for the time until the child reaches the age of six (first age bracket) 87 per cent,
2. for the time from the age of seven until the child reaches the age of twelve (second age bracket) 100 per cent and
3. for the time from the age of thirteen on (third age bracket) 117 per cent of a twelfth of the double child allowance.

(2) The percentage must be limited to one decimal place; every further decimal place resulting is not taken into account. The amount resulting from the calculation of the maintenance is to be rounded up to whole euros.

(3) The maintenance of a higher age bracket applies from the beginning of the month in which the child reaches the relevant age.

(4) and (5) (repealed)

### **Section 1612b**

Meeting cash requirements through child benefit

(1) The child benefit for the child is to be used to meet its cash requirements as follows:

1. half of the child benefit if one parent performs his obligation to maintain by caring for the child (section 1606 (3) sentence 2);
2. in all other cases, the complete child benefit.

To this extent, it reduces the cash requirements of the child.

(2) If the child benefit is increased to take account of a child that is not a child of both spouses, it is, in the amount of the increase, not to be taken into account as reducing the requirements.

### **Section 1612c**

Set-off of other child-related payments

Section 1612b applies with the necessary modifications for regularly recurring child-related payments to the extent that they exclude the claim for child benefit.

### **Section 1613**

#### Maintenance for the past

(1) For the past, the person entitled may claim performance or damages for non-performance only from the date on which the person obliged, for the purpose of asserting the maintenance claim, was requested to provide information on his income and his assets, on which the person obliged was in default or on which the maintenance claim became pending at court. The maintenance is owed from the first of the month in which the events referred to fall if the maintenance claim existed in principle on this date.

(2) The person entitled may demand performance for the past without the restriction of subsection (1) 1. by reason of an irregular exceptionally high need (special need); after the end of a one-year period since it arose, this claim may be asserted only if the person obliged is first in default or the claim has become pending at court;

2. for the period in which he

a) for legal reasons or

b) for factual reasons which fall into the area of responsibility of the person liable for maintenance,

was prevented from asserting the maintenance claim.

(3) In the cases of subsection (2) no. 2, performance may not be demanded, may be demanded only in instalments or may be demanded only at a later date to the extent that full or immediate performance would be an inequitable hardship for the person obliged. This also applies to the extent that a third person demands compensation from the person obliged because he has paid maintenance in place of the person obliged.

### **Section 1614**

#### Waiver of maintenance claim; advance performance

(1) Maintenance may not be waived for the future.

(2) Advance performance releases the person obliged, in the case where the person entitled becomes indigent again, only for the period of time laid down in section 760 (2) or, if he himself was to determine the period of time, for a period of time that is appropriate in the circumstances.

## **Section 1615**

Extinction of the maintenance claim

(1) The maintenance claim expires on the death of the person entitled or of the person obliged, to the extent that it is not directed at performance or damages for nonperformance for the past or at such performance to be made in advance as is due at the time of the death of the person entitled or of the person obliged.

(2) In the case of the death of the person entitled, the person obliged bears the costs of the funeral to the extent that payment for it cannot be obtained from the heir.

Subtitle 2

### **Special provisions for the child and its parents who are not married to each other**

#### **Section 1615a**

Applicable provisions

If there is no paternity under section 1592 no. 1 and section 1593 for a child and if the parents also did not conceive the child during their marriage or enter into marriage with each other after its birth, the general provisions of law apply to the extent that the following provisions do not state otherwise.

#### **Sections 1615b to 1615k**

(repealed)

#### **Section 1615l**

Maintenance claim of mother and father by reason of the birth

(1) The father must pay the mother maintenance for a period of six weeks before and eight weeks after the birth of the child. This also applies to the costs that arise as a result of the pregnancy or the delivery outside this period.

(2) To the extent that the mother is not engaged in gainful employment because as a result of the pregnancy or of an illness caused by the pregnancy or the delivery she is incapable of doing so, the father is obliged to pay her maintenance for a period exceeding the period set out in subsection (1) sentence 1. The same applies to the extent that the mother cannot be expected to be engaged in gainful employment by reason of the care or upbringing of the child. The obligation to maintain begins at the earliest four months before the birth and continues for at least three years after the birth. It is extended, as long as and to the extent that this is equitable. Here, particular account is to be taken of the concerns of the child and the existing possibilities of childcare.



(3) The provisions of the obligation to maintain between relatives apply with the necessary modifications. The obligation of the father takes precedence over the obligation of the relatives of the mother. Section 1613 (2) applies with the necessary modifications. The claim does not expire on the death of the father.

(4) If the father cares for the child, he has the claim under subsection (2) sentence 2 against the mother. In this case, subsection (3) applies with the necessary modifications.

**Section 1615m**

Funeral costs for the mother

If the mother dies as a result of the pregnancy or the delivery, the father bears the costs of the funeral to the extent that payment for it cannot be obtained from the heir of the mother.

**Section 1615n**

No expiry on the death of the father or stillbirth

The claims under sections 1615l and 1615m exist even if the father dies before the birth of the child or if the child is stillborn. In the case of a miscarriage, the provisions of sections 1615l and 1615m apply with the necessary modifications.

**Section 1615o**

(repealed)

#### Title 4

### **Legal relationship between the parents and the child in general**

#### **Section 1616**

Birth name in the case of parents with family name

The child receives the family name of its parents as its birth name.

#### **Section 1617**

Birth name in the case of parents without family name and with joint parental custody

(1) If the parents have no family name and if they have joint parental custody, then, by declaration to the registry of births, deaths and marriages, they designate the name that the father or the mother has at the time of the declaration as the birth name of the child. A declaration made after the recording of the birth must be notarially certified. The designation made by the parents also applies for their further children.

(2) If, within one month after the birth of the child, the parents make no designation, the family court transfers the right of designation to one parent. Subsection (1) applies with the necessary modifications. The court may impose a period of time on the parent for the exercise of the right of designation. If, after the period has ended, the right of designation has not been exercised, the child receives the name of the parent to whom the right of designation was transferred.

(3) Where a child is not born on domestic territory, the court transfers to one parent the right of designation under subsection (2) only if a parent or the child applied for this or the entry of the name of the child in a German registry of civil status or in an official German identity document is necessary.

#### **Section 1617a**

Birth name in the case of parents without family name and with sole parental custody

(1) If the parents have no family name and if only one of them has parental custody, the child receives the name that this parent has at the date of the birth of the child.

(2) The parent who has the sole parental custody for an unmarried child may, by declaration to the registry of births, deaths and marriages, give the child the name of the other parent. The giving of the name is subject to the consent of the other parent and, if the child has reached the age of five, also the consent of the child. The declarations must be notarially certified. The consent of the child is governed by section 1617c (1) with the necessary modifications.

### **Section 1617b**

Name in the case of subsequent joint parental custody or ostensible paternity

(1) If joint parental custody begins only when the child already has a name, the name of the child may be newly designated within three months after the beginning of the joint parental custody. If one parent, at the date when the joint parental custody begins, does not have his habitual residence on domestic territory, the period does not end before the end of a one-month period after his return to domestic territory. Where the child has reached the age of five, the designation is effective only if the child agrees with the designation. Section 1617 (1) and section 1617c (1) sentences 2 and 3 and (3) apply with the necessary modifications.

(2) Where it is finally and non-appealably established that a man whose family name has become the birth name of the child is not the father of the child, the child, on its application or, if the child has not yet reached the age of five, also on the application of the man, receives as birth name the name that the mother has at the date of the birth of the child. The application is made by declaration to the registry of births, deaths and marriages, which must be notarially certified. The application of the child is governed by section 1617c (1) sentences 2 and 3 with the necessary modifications.

### **Section 1617c**

Name in the case of change of name by the parents

(1) Where the parents designate a family name after the child has reached the age of five, the family name is also the birth name of the child only if the child agrees with the naming. A child with limited capacity to contract that has reached the age of fourteen may make the declaration only without a representative; the approval of its legal representative is necessary for this. The declaration must be made to the registry of births, deaths and marriages; it must be notarially certified.

(2) Subsection (1) applies with the necessary modifications

1. if the family name, which has become the birth name of a child, is changed or
2. if, in the cases of sections 1617, 1617a and 1617b, the family name of a parent, which has become the birth name of a child, is changed in a different way than through marriage or entering into a civil partnership.

(3) A change of the birth name only affects the family name or the civil partnership name of the child if the spouse or civil partner also agrees with the change of name; subsection (1) sentence 3 applies with the necessary modifications.

### **Section 1618**

#### Bringing child under family name

The parent who has the parental custody for an unmarried child alone or jointly with the other parent and his spouse who is not a parent of the child may, by declaration to the registry of births, deaths and marriages, give their family name to the child that they have taken into their joint household. They may also attach this name in front of or after the name of the child at the date of the declaration; a family name attached earlier in front or after under half-sentence 1 lapses. Giving the name or attaching it in front or after requires the consent of the other parent where he has parental custody jointly with the parent giving the name or the child has his name and, if the child has reached the age of five, also the consent of the child. The family court may substitute the consent of the other parent if the giving of the name or attaching it before or after is necessary for the best interests of the child. The declarations must be notarially certified. Section 1617c applies with the necessary modifications.

### **Section 1618a**

#### Duty of assistance and respect

Parents and children owe each other assistance and respect.

### **Section 1619**

#### Services in house and business

As long as the child belongs to the household of its parents and is brought up or maintained by its parents, it has a duty to perform services for its parents in their household and business in a manner appropriate for its strength and its position in life.

### **Section 1620**

#### Outlays of the child for the household of its parents

If a child of full age belonging to the household of the parents, in order to pay the costs of the household, makes an outlay from its assets, or if it gives the parents something from its assets for this purpose, then in case of doubt it is to be presumed that there is no intention to demand compensation.

### **Sections 1621 - 1623**

(repealed)

### **Section 1624**

Advancement from the parental assets

(1) Whatever is given to a child by its father or its mother with regard to its marriage or to attaining an independent position in life to establish or to maintain a household or a position in life (advancement) is deemed to be a donation, even if there is no duty, only to the extent that the advancement exceeds the degree appropriate to the circumstances, in particular the financial circumstances of the father or the mother.

(2) The duty of the person giving the advancement to give a warranty that there is no error in law or material defect is governed, even to the extent that the advancement is not deemed to be a donation, by the provisions applying to the warranty duty of the donor.

### **Section 1625**

Advancement from the assets of the child

If the father gives an advancement to a child whose assets by reason of parental custody, guardianship or custodianship are subject to the management of the father, then in case of doubt it is to be presumed that he gives it from these assets. This provision applies to the mother with the necessary modifications.

Title 5

## **Parental custody**

### **Section 1626**

Parental custody, principles

(1) The parents have the duty and the right to care for the minor child (parental custody). The parental custody includes the care for the person of the child (care for the person of the child) and the property of the child (care for the property of the child).

(2) In the care and upbringing of the child, the parents take account of the growing ability and the growing need of the child for independent responsible action. They discuss questions of parental custody with the child to the extent that, in accordance with the stage of development of the child, it is advisable, and they seek agreement.

(3) The best interests of the child as a general rule include contact with both parents. The same applies to contact with other persons to whom the child has ties, if maintaining these ties is beneficial for its development.

### **Section 1626a**

Parental custody of parents who are not married to each other; declarations of parental custody

(1) Where the parents, at the date of the birth of the child, are not married to each other, they have joint parental custody if they

1. declare that they wish to take on parental custody jointly (declarations of parental custody), or
2. marry each other.

(2) Apart from this, the mother has the parental custody.

### **Section 1626b**

Special requirements for the effectiveness of the declaration of parental custody

(1) A declaration of parental custody subject to a condition or a stipulation as to time is ineffective.

(2) The declaration of parental custody may be made even before the birth of the child.

(3) A declaration of parental custody is ineffective to the extent that a court decision on parental custody under sections 1671 and 1672 has been made or such a decision has been altered under section 1696 (1).

### **Section 1626c**

Declaring in person; parent with limited capacity to contract

(1) The parents may make the declarations of parental custody only without a representative.

(2) The declaration of parental custody of a parent with limited capacity to contract is subject to the approval of his legal representative. The approval may only be given by the legal representative without a representative; section 1626b (1) and (2) applies with the necessary modifications. The family court must substitute the approval on the application of the parent with limited capacity to contract if the declaration of parental custody does not conflict with the welfare of this parent.

### **Section 1626d**

Form; duty of notification

(1) Declarations of parental custody and approvals must be notarially recorded.

(2) The reporting agency without undue delay notifies the making of declarations of parental custody and approvals, stating the date of birth and place of birth of the child and the name that the child had at the time when its birth was recorded to the youth welfare office competent under section 87c (6) sentence 2 of Book Eight of the Social Security Code [Sozialgesetzbuch] for the purpose of giving information under section 58a of Book Eight of the Social Security Code [Sozialgesetzbuch].

### **Section 1626e**

Ineffectiveness

Declarations of parental custody are ineffective only if they do not satisfy the requirements of the above provisions.

### **Section 1627**

#### Exercise of parental custody

The parents must exercise the parental custody on their own responsibility and in mutual agreement for the best interests of the child. In the case of differences of opinion, they must attempt to agree.

### **Section 1628**

#### Court decision in the case of differences of opinion between the parents

If the parents, in a single matter or in a particular kind of matter of parental custody the arrangements for which are of substantial importance for the child, cannot agree, the family court, on the application of a parent, may transfer the decision to one parent. The transfer may be subject to limitations or conditions.

### **Section 1629**

#### Representation of the child

(1) Parental custody includes the representation of the child. The parents represent the child jointly; where a declaration of intention is to be made to the child, it is sufficient if it is made to one parent.

One parent represents the child alone, to the extent that he exercises parental custody alone or the decision has been transferred to him under section 1628. In the case of imminent danger, each parent is entitled to undertake all legal act that are necessary for the best interests of the child; the other parent is to be informed without undue delay.

(2) The father and the mother may not represent the child to the extent that under section 1795 a guardian is excluded from the representation of the child. If the parental custody for a child is held by the parents jointly, then the parent in whose charge the child is may assert maintenance claims of the child against the other parent. The family court may deprive the father and the mother under section 1796 of the representation; this does not apply to the determination of paternity.

(2a) The father and the mother may not represent the child in court proceedings under section 1598a

(2).

(3) If the parents of the child are married to each other, then one parent, as long as the parents live apart or a matrimonial matter is pending at court between them, may assert maintenance claims of the child against the other parent only in his own name. A court decision obtained by one parent and a court settlement entered into between the parents also take effect for and against the child.

## **Section 1629a**

### Restriction of liability of minors

(1) The liability for obligations that the parents, as part of their statutory power of agency, or other persons entitled to represent, as part of their power of agency, have created with effect for the child by legal transaction or another action, or that have arisen on the basis of an acquisition as a result of death that occurred during the minority, is restricted to the inventory of the assets of the child that are in existence when the child reaches the age of majority; the same applies to obligations arising from legal transactions that the minor under sections 107 and 108 or section 111 entered into with the approval of his parents or for obligations arising from legal transactions for which the parents received the approval of the family court. If the minor who is now of full age relies on the restriction of liability, the provisions of sections 1990 and 1991 for the liability of the heir apply with the necessary modifications.

(2) Subsection (1) does not apply to obligations from the independent operation of a trade or business to the extent that the minor was entitled to do this under section 112, and for obligations from legal transactions that served solely the satisfaction of his personal needs.

(3) The rights of the creditors against co-debtors and those who are jointly liable and their rights arising from a security created for the claim or from a priority notice securing its creation are not affected by subsection (1).

(4) If a member of a community of heirs or an association of persons does not within three months after the minor reaches full age demand the partitioning of the estate or the termination of the association, then in case of doubt it is to be assumed that the obligation arising from such a relationship arose after the minor reached full age; similar provisions apply to the proprietor of a trading business who has reached full age and who does not terminate this within three months after reaching full age. Under the preconditions set out in sentence 1, it is also presumed that the present assets of the person who has reached full age were already in existence when he reached full age.



### **Section 1630**

Parental custody in the case of appointment of a curator or of foster care

- (1) The parental custody does not extend to matters of the child for which a curator has been appointed.
- (2) Where the care for the person of the child or the care for the property of the child is the responsibility of a curator, then the family court decides, if the parents and the curator cannot agree in a matter that relates to both the person and the property of the child.
- (3) If the parents place the child in foster care for a long period of time, the family court, on the application of the parents or of the foster carer, may transfer matters of parental custody to the foster carer. For the transfer on the application of the foster carer, the approval of the parents is required. In the scope of the transfer, the foster carer has the rights and duties of a curator.

### **Section 1631**

Contents and limits of care for the person of the child

- (1) The care for the person of the child includes without limitation the duty and the right to care for, bring up and supervise the child and to specify its abode.
- (2) Children have a right to non-violent upbringing. Physical punishments, psychological injuries and other degrading measures are inadmissible.
- (3) The family court is to support the parents, on application, in exercising care for the person of the child in suitable cases.

#### **Section 1631a**

Training and occupation

In matters of training and of occupation, the parents take account in particular of the aptitude and inclination of the child. If there are doubts, the advice of a teacher or of another suitable person should be obtained.

#### **Section 1631b**

Accommodation associated with deprivation of liberty

Accommodation for the child that is associated with deprivation of liberty requires the approval of the family court. Accommodation is permissible if it is necessary in the child's best interests, in particular in order to avert a danger to the child himself or to a third-party and the danger cannot be remedied by other means, including via other public assistance. Without approval, accommodation is only permissible if delay entails risk; the approval must thereafter be obtained without undue delay.

#### **Section 1631c**

Prohibition of sterilisation

The parents may not consent to a sterilisation of the child. Nor can the child itself consent to the sterilisation. Section 1909 does not apply.

### **Section 1632**

Surrender of the child; determination of contact; order that child remains in foster care

- (1) The care for the person of the child includes the right to require surrender of the child from every person who is unlawfully withholding it from the parents or from one parent.
- (2) The care for the person of the child also includes the right to determine contact for the child, even with effect for and against third parties.
- (3) Disputes that relate to a matter under subsection (1) or 2 are decided by the family court on the application of a parent.
- (4) Where the child has lived in foster care for a long period of time, and where the parents want to remove the child from the foster carer, the family court may, of its own motion or on the application of the foster carer, order that the child remains with the foster carer, if and as long as the best interests of the child would be endangered by the removal.

### **Section 1633**

Care for the person of the child in the case of a married minor

The care for the person of a minor child that is or was married is restricted to representation in the personal matters.

### **Sections 1634 - 1637**

(repealed)

### **Section 1638**

Restriction of care for the property of the child

- (1) The care for the property of the child does not extend to the property which the child acquires as a result of death or which is given free of charge inter vivos if the testator by testamentary disposition or the donor when making the disposition stipulated that the parents were not to manage the property.
- (2) The parents may also not manage whatever the child acquires on the basis of a right that is part of such property or as compensation for the destruction, damage or deprivation of an object that is part of the property or by a legal transaction that relates to the property.
- (3) If it is stipulated by testamentary disposition or when the disposition is made that one parent shall not manage the property, the other parent manages it. In this respect, this parent represents the child.

### **Section 1639**

Directions of the testator or donor

- (1) Whatever the child acquires as a result of death or whatever it is given free of charge inter vivos the parents must manage under the directions that were made by testamentary disposition or when the disposition was made.
- (2) The parents may deviate from the directions to the extent that, under section 1803 (2) and (3), this is permitted to a guardian.

### **Section 1640**

#### Inventory of property

(1) The parents must make an inventory of the property subject to their management which the child acquires as a result of death, affix to the inventory an affirmation that it is correct and complete and submit the inventory to the family court. The same applies to property which the child obtains in another way on the occasion of a death, and to lump sum payments that are made instead of maintenance, and gratuitous dispositions. In the case of household objects, a statement of the total value is sufficient.

(2) Subsection (1) does not apply

1. if the value of an acquisition of property does not exceed 15,000 euros or
2. to the extent that the testator by testamentary disposition or the donor when making the disposition made a direction to the contrary.

(3) If the parents, contrary to subsection (1) or (2), do not submit an inventory, or if the inventory submitted is inadequate, the family court may order that the inventory is recorded by a competent authority or a competent official or notary.

### **Section 1641**

#### Prohibition of donation

The parents may not, in representation of the child, make donations. An exception applies to donations that are made to comply with a moral duty or to show consideration to decency.

### **Section 1642**

#### Investment of money

The parents must invest the money of the child subject to their management in accordance with the principles of efficient management of assets to the extent that it is not to be kept ready to pay expenses.

### **Section 1643**

#### Legal transactions subject to approval

(1) For legal transactions for the child, the parents need the approval of the family court in the cases in which under section 1821 and under section 1822 nos. 1, 3, 5 and 8 to 11 a guardian needs approval.

(2) The same applies to the disclaimer of an inheritance or of a legacy and for the waiver of a compulsory portion. Where the devolution on the child occurs only as the result of the disclaimer of a parent who represents the child alone or jointly with the other parent, the approval is necessary only if the parent was entitled together with the child.

(3) The provisions of sections 1825 and 1828 to 1831 apply with the necessary modifications.

#### **Section 1644**

Surrender of objects of property to the child

The parents may not, without the approval of the family court, surrender to the child, to perform a contract entered into by the child or for its free disposition, objects that they may alienate only with the approval of the family court.

#### **Section 1645**

New trade or business

The parents should not, without the approval of the family court, commence a new trade or business in the name of the child.

#### **Section 1646**

Acquisition with funds of the child

(1) If the parents acquire movable things with the funds of the child, then on the acquisition the ownership passes to the child, unless the parents do not intend to acquire for the account of the child. This applies in particular also to bearer instruments and to instruments made out to order which bear a blank endorsement.

(2) The provisions of subsection (1) apply with the necessary modifications if the parents, with the funds of the child, acquire a right in property of the nature designated or another right for the transfer of which the contract of assignment suffices.

#### **Section 1647**

(repealed)

#### **Section 1648**

Reimbursement of outlays

If the parents, in exercising the care for the person of the child or the care for the property of the child, make outlays which in the circumstances they are permitted to regard as necessary, then they may demand reimbursement from the child except to the extent that the outlays are not borne by themselves.

#### **Section 1649**

Use of the income of the property of the child

(1) The income of the property of the child that is not needed for the proper management of the property is to be used for the maintenance of the child. To the extent that the income of the property is not sufficient, the income may be used which the child acquires as a result of its work or as a result of the independent operation of a trade or business permitted him under section 112.

(2) The parents may use the income of the property which is not needed for the proper management of the property and for the maintenance of the child for their own maintenance and for the maintenance of the minor unmarried siblings of the child, to the extent that this is equitable, taking into

account the property and earnings situation of the persons involved. This power lapses on the marriage of the child.

### **Sections 1650 - 1663**

(repealed)

### **Section 1664**

Limited liability of the parents

(1) In exercising the parental custody, the parents are answerable to the child only for the care they customarily exercise in their own affairs.

(2) If both parents are responsible for damage, they are liable as joint and several debtors.

### **Section 1665**

(repealed)

### **Section 1666**

Court measures in the case of endangerment of the best interests of the child

(1) Where the physical, mental or psychological best interests of the child or its property are endangered and the parents do not wish or are not able to avert the danger, the family court must take the measures necessary to avert the danger.

(2) In general it is to be presumed that the property of the child is endangered if the person with care for the property of the child violates his maintenance obligation towards the child or his duties connected with the care for the property of the child or fails to comply with orders of the court that relate to the care for the property of the child.

(3) The court measures in accordance with subsection (1) include in particular

1. instructions to seek public assistance, such as benefits of child and youth welfare and healthcare,
2. instructions to ensure that the obligation to attend school is complied with,
3. prohibitions to use the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home or to visit certain other places where the child regularly spends time,
4. prohibitions to establish contact with the child or to bring about a meeting with the child,
5. substitution of declarations of the person with parental custody,
6. part or complete removal of parental custody.

(4) In matters of care for the person of the child, the court may also undertake measures with effect against a third party.

### **Section 1666a**

Principle of proportionality; priority of public support measures

(1) Measures which entail a separation of the child from its parental family are admissible only if the danger cannot be countered in another way, not even through public support measures. This also applies if one parent is temporarily or for an indefinite period to be refused use of the family home.

Where a parent or a third party is refused the use of the home in which the child also lives or of another home, then when the duration of the measure is assessed it should also be considered whether this person has the ownership, a heritable building right or usufruct in the plot of land on which the home is located; similar provisions apply to the ownership of an apartment, a permanent residential right and a right of habitation running with the land, or if the parent or third party is the lessee of the home.

(2) The complete care for the person of the child may be withdrawn only if other measures have been unsuccessful or if it is to be assumed that they do not suffice to avert the danger.

### **Section 1667**

Court measures in the case of endangerment of the property of the child

(1) The family court may order that the parents submit an inventory of the property of the child and render an account of the management. The parents must affix to the inventory an affirmation that it is correct and complete. If the inventory submitted is inadequate, the family court may order that the inventory is made by a competent authority or by a competent official or notary.

(2) The family court may order that the money of the child is invested in a particular way and that its approval is necessary for withdrawal. If securities, valuables or Debt Register claims against the Federal Government or a Land are part of the property of the child, the family court may impose on the parent who represents the child the same duties as, under sections 1814 to 1816 and 1818, are imposed on a guardian; sections 1819 and 1820 apply with the necessary modifications.

(3) The family court may require the parent who endangers the property of the child to provide security for the property subject to his management. The nature and the scope of the provision of security is determined by the family court in its discretion. In the creation and cancellation of the security, the cooperation of the child is substituted by the order of the family court. The provision of security may be compelled only by the care for the property of the child being removed in whole or in part under section 1666 (1).

(4) The costs of the measures ordered are borne by the parent who occasioned them.

### **Sections 1668 - 1670**

(repealed)

### **Section 1671**

Living apart and joint parental custody

(1) If parents who have joint parental custody live apart for a period that is not merely temporary, each parent may apply for the family court to transfer parental custody or part of the parental custody to him alone.

(2) The application is to be granted to the extent that

1. the other parent consents, unless the child has reached the age of fourteen and objects to the transfer, or
2. it is to be expected that the termination of the joint parental custody and the transfer to the applicant is most conducive to the best interests of the child.

(3) The application is not to be granted to the extent that the parental custody must be organised differently on the basis of other provisions.

### **Section 1672**

Living apart where the mother has parental custody

(1) If the parents live apart for a period that is not merely temporary and if, under section 1626a (2), the mother has parental custody, the father, with the approval of the mother, may apply for the family court to transfer to him alone the parental custody or part of the parental custody. The application is to be granted if the transfer serves the best interests of the child.

(2) To the extent that a transfer has occurred under subsection (1), the family court, on the application of a parent with the approval of the other parent, may decide that the parents should have joint parental custody, if this is not inconsistent with the best interests of the child. This also applies to the extent that the transfer has later been cancelled under subsection (1).

### **Section 1673**

Suspension of parental custody in the case of a legal obstacle

(1) The parental custody of one parent is suspended if he is incapable of contracting.

(2) The same applies if he has limited capacity to contract. He has the care for the person of the child together with the legal representative of the child; he is not entitled to represent the child. In the case of a difference of opinion, the opinion of the minor parent has precedence, if the legal representative of the child is a guardian or curator; failing this, section 1627 sentence 2 and section 1628 apply.

### **Section 1674**

Suspension of parental custody in the case of a factual obstacle

(1) The parental custody of a parent is suspended if the family court establishes that he cannot in fact exercise the parental custody for a long period of time.

(2) The parental custody revives if the family court establishes that the reason for the suspension no longer applies.

### **Section 1675**

Effect of the suspension

As long as the parental custody is suspended, a parent is not entitled to exercise it.

### **Section 1676**

(repealed)

### **Section 1677**

Termination of parental custody by declaration of death

The parental custody of one parent ends if he is declared dead or the time of his death is established under the provisions of the Missing Persons Act [Verschollenheitsgesetz], at the time that is deemed to be the time of death.

### **Section 1678**

Consequences for the other parent of the actual prevention or of the suspension

(1) Where a parent is actually prevented from exercising parental custody, or where his parental custody is suspended, the other parent exercises the parental custody alone; this does not apply if the parental custody under section 1626a (2), section 1671 or section 1672 (1) was held by the parent alone.

(2) Where the parental custody of the parent, which he had alone under section 1626a (2), is suspended, and where there is no prospect of the reason for the suspension ceasing to apply, the family court must transfer the parental custody to the other parent if this serves the best interests of the child.

### **Section 1679**

(repealed)

### **Section 1680**

Death of a parent or removal of the parental custody

(1) If the parental custody was held by the parents jointly and if one parent has died, the parental custody is held by the surviving spouse.

(2) Where a parent who, under section 1671 or 1672 (1), had the parental custody alone has died, the family court must transfer the parental custody to the other parent, if this is not inconsistent with the best interests of the child. Where the mother, under section 1626a (2), had sole parental custody, the family court must transfer the parental custody to the father if this serves the best interests of the child.

(3) Subsection (1) and subsection (2) sentence 2 apply with the necessary modifications to the extent that one parent, who had the parental custody jointly with the other parent or, under section 1626a (2), alone, is deprived of the parental custody.



### **Section 1681**

Declaration of death of a parent

(1) Section 1680 (1) and (2) applies with the necessary modifications if the parental custody of a parent ends because he is declared dead or the time of his death has been established under the provisions of the Missing Persons Act [Verschollenheitsgesetz].

(2) Where this parent is still alive, the family court, on application, must transfer parental custody to him to the extent to which he held it before the conclusive date under section 1677, if this is not inconsistent with the best interests of the child.

### **Section 1682**

Order that the child remains with persons to whom it relates

Where the child has lived for a long period in a household with one parent and the parent's spouse, and where the other parent, who under sections 1678, 1680 and 1681 may now alone determine the abode of the child, wants to remove the child from the spouse, the family court may of its own motion or on the application of the spouse order that the child remains with the spouse, if and as long as the best interests of the child would be endangered by the removal. Sentence 1 applies with the necessary modifications if the child has lived for a long period in a household with one parent and the parent's civil partner or a person entitled to contact under section 1685 (1).

### **Section 1683**

(repealed)

### **Section 1684**

Contact of the child with its parents

(1) The child has the right to contact with each parent; each parent has a duty and a right of contact with the child.

(2) The parents must refrain from everything that renders more difficult the relationship of the child to the other parent or the upbringing. Similar provisions apply if the child is in the charge of another person.

(3) The family court may decide on the scope of the right of contact and make more detailed provisions on its exercise, including provisions affecting third parties. It may enjoin the parties by orders to fulfil the duty defined in subsection (2). If the obligation in accordance with subsection (2) is considerably violated permanently or repeatedly, the family court may also order custodianship for the implementation of access (access custodianship). Access custodianship includes the right to demand surrender of the child to implement access and to determine where the child is to be for the duration of access. The order is to be time-limited. Section 277 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction applies with the necessary modifications to compensation for expenditure and remuneration of the access custodian.

(4) The family court may restrict or exclude the right of contact or the enforcement of earlier decisions on the right of contact, to the extent that this is necessary for the best interests of the child. A decision that restricts the right of contact or its enforcement for a long period or permanently may only be made if otherwise the best interests of the child would be endangered. The family court may in particular order that contact may take place only if a third party who is prepared to cooperate is present. The third party may also be an agency of the youth welfare service or an association; the latter then determines in each case which individual carries out the task.

#### **Section 1685**

Contact of the child with other persons to whom it relates

(1) Grandparents and siblings have a right to contact with the child if this serves the best interests of the child.

(2) The same applies to persons to whom the child relates closely if these have or have had actual responsibility for the child (social and family relationship). It is in general to be assumed that actual responsibility has been taken on if the person has been living for a long period in domestic community with the child.

(3) Section 1684 (2) to (4) applies with the necessary modifications. The family court may only order access custodianship in accordance with section 1684 (3) sentences 3 to 5 if the prerequisites of section 1666 (1) are met.

#### **Section 1686**

Information on the personal circumstances of the child

Each parent may, in the case of justified interest, demand information from the other parent on the personal circumstances of the child, to the extent that this is not inconsistent with the best interests of the child. Disputes are decided by the family court.

### **Section 1687**

Exercise of joint parental custody when the parents live apart

(1) If parents who have joint parental custody live apart not merely temporarily, then in the case of decisions in matters the arrangement of which is of substantial significance for the child their mutual agreement is necessary. The parent with whom the child, with the consent of the other parent or on the basis of a court decision, customarily resides has the authority to decide alone in matters of everyday life. Decisions in matters of everyday life are as a rule such as frequently occur and that have no effects that are difficult to alter on the development of the child. As long as the child, with the consent of this parent or on the basis of a court decision, resides with the other parent, the latter has the authority to decide alone in matters of actual care. Section 1629 (1) sentence 4 and section 1684 (2) sentence 1 apply with the necessary modifications.

(2) The family court may restrict or exclude the powers under subsection (1) sentences 2 and 4 if this is necessary for the best interests of the child.

### **Section 1687a**

Power to make decision of the parent without parental custody

For each parent who does not have parental custody and with whom the child resides with the consent of the other parent or of another person with parental custody or on the basis of a court decision, section 1687 (1) sentences 4 and 5 and (2) apply with the necessary modifications.

### **Section 1687b**

Parental custody powers of the spouse

(1) The spouse of a parent with sole parental custody who is not a parent of the child has the power, in agreement with the parent with parental custody, to make joint decisions in matters of the everyday life of the child. Section 1629 (2) sentence 1 applies with the necessary modifications.

(2) In the case of imminent danger, each spouse is entitled to undertake all legal act that are necessary for the best interests of the child; the parent with parental custody is to be informed without undue delay.

(3) The family court may restrict or exclude the powers under subsection (1) if this is necessary for the best interests of the child.

(4) The powers under subsection (1) do not exist if the spouses live apart for a not merely temporary period.

### **Section 1688**

Decisions of the foster carer

(1) If a child lives in foster care for a long period, the foster carer is entitled to decide in matters of everyday life and to represent the person with parental custody in such matters. The person is authorised to manage the child's earnings from work and to assert and manage maintenance, insurance, pension and other social security benefits for the child. Section 1629 (1) sentence 4 applies with the necessary modifications.

(2) The foster carer is equivalent to a person who in connection with the help under sections 34, 35 and 35a (1) sentence 2 nos. 3 and 4 of Book Eight of the Social Security Code [Sozialgesetzbuch] has taken on the upbringing of and care for a child.

(3) Subsections (1) and (2) do not apply if the person with parental custody declares otherwise. The family court may restrict or exclude the powers under subsections (1) and (2) if this is necessary for the best interests of the child.

(4) For a person with whom the child, on the basis of a court decision under section 1632 (4) or section 1682, resides, subsections (1) and (3) apply subject to the proviso that the powers set out may be restricted or excluded only by the family court.

### **Sections 1689 - 1692**

(repealed)

### **Section 1693**

Court measures where the parents are prevented

If the parents are prevented from exercising parental custody, the family court must take the measures necessary in the interest of the child.

### **Sections 1694, 1695**

(repealed)

### **Section 1696**

Amendment of judicial decisions and of court-approved settlements

(1) The decision on the right of custody or of access or a court-approved settlement must be amended if this is appropriate for sound reasons which affect the interests of the child in the long term. Section 1672 (2), section 1680 (2) sentence 1, as well as section 1681 (1) and (2), remain unaffected thereby.

(2) A measure under sections 1666 to 1667 or another provision of the Civil Code, which may only be taken if this is necessary to avert a danger to the child's best interests or which is in the child's best interests (measure under the law on child protection) must be cancelled if there is no longer a danger to the best interests of the child or the measure is no longer necessary.

### **Section 1697**

(repealed)

### **Section 1697a**

Principle of best interests of child

To the extent not provided otherwise, the court, in proceedings on the matters provided for in this title, makes the decision that, taking into account the actual circumstances and possibilities and the justified interests of those involved, is most conducive to the best interests of the child.

### **Section 1698**

Surrender of the property of the child; rendering an account

(1) If the parental custody ends or is suspended, or if their care for the property of the child ends for another reason, they must surrender the property to the child and, on request, render an account of the management.

(2) The parents must render account of the emoluments of the property of the child only to the extent that there is reason to assume that they have used the emoluments contrary to the provisions of section 1649.

### **Section 1698a**

Continuation of transactions in ignorance that parental custody has ended

(1) The parents may continue the transactions connected with the care for the person of the child and with the care for the property of the child until they obtain knowledge of the termination of parental custody or until they ought to know of it. A third party cannot rely on this power if, when he undertakes a transaction, he knows of the termination or ought to have knowledge.

(2) These provisions apply with the necessary modifications if the parental custody is suspended.

### **Section 1698b**

Continuation of urgent transactions after the death of the child

If the parental custody ends as the result of the death of the child, the parents must, until the heir can make other arrangements, carry out the transactions which cannot be deferred without danger.

### **Sections 1699 - 1711**

(repealed)

## Title 6

### Legal advisership

#### Section 1712

Youth welfare office as legal adviser; tasks

(1) On the written application of a parent, the youth welfare office becomes the legal adviser of the child for the following tasks:

1. the determination of paternity,
2. the assertion of maintenance claims and the disposition of these claims; if the child is in the foster care of a third party on a payment basis, the legal adviser is entitled to satisfy the third party from the payment made by the person liable for maintenance.

(2) The application may be restricted to individual tasks of those designated in subsection (1).

#### Section 1713

Persons entitled to apply

(1) The application may be made by a parent who, for the area of responsibilities of the legal adviser applied for, has sole parental custody or would have it if the child had already been born. If the parental custody for the child is held jointly by the parents, the application may be made by the parent in whose care the child now is. The application may also be made by a guardian designated under section 1776. It may not be made through an agent.

(2) Before the birth of the child, the mother-to-be may also make the application if the child, if it had already been born, would be under guardianship. If the mother-to-be has limited capacity to contract, she may make the application only without a representative; she does not need the approval of her legal representative for this. For a mother-to-be who is incapable of contracting, only her legal representative may make the application.

#### Section 1714

Occurrence of legal advisership

The legal advisership begins as soon as the application is received by the youth welfare office. This also applies if the application is made before the birth of the child.

#### Section 1715

Termination of legal advisership

(1) The legal advisership ends when the applicant demands this in writing. Section 1712 (2) and section 1714 apply with the necessary modifications.

(2) The legal advisership also ends as soon as the applicant ceases to satisfy any of the requirements set out in section 1713.

## **Section 1716**

Effects of legal advisership

The legal advisership does not restrict the parental custody. Apart from this, the provisions on curatorship, with the exception of those on the supervision of the family court and the rendering of an account apply with the necessary modifications; sections 1791 and 1791c (3) do not apply.

## **Section 1717**

Requirement of habitual residence on domestic territory

The legal advisership only occurs if the child has its habitual residence on domestic territory; it ends if the child establishes its habitual residence abroad. This applies to the legal advisership before the birth of the child with the necessary modifications.

## **Sections 1718 - 1740**

(repealed)

Title 7

## **Adoption**

Subtitle 1

### **Adoption of minors**

#### **Section 1741**

Admissibility of the adoption

(1) Adoption is admissible if it serves the best interests of the child and it is to be expected that a parent-child relationship will arise between the adoptive parent and the child. A person who has taken part for the purpose of adoption in a procurement or transportation of a child that is unlawful or contrary to public policy or who has commissioned a third party with this or rewarded him for this should adopt a child only if this is necessary for the best interests of the child.

(2) A person who is not married may adopt a child only alone. A married couple may adopt a child only jointly. A spouse may adopt a child of his spouse alone. He may also adopt a child alone if the other spouse cannot adopt the child because he is incapable of contracting or has not yet reached the age of twenty-one.

#### **Section 1742**

Adoption only as child of the spouses

An adopted child may, as long as the adoption relationship exists, in the lifetime of an adoptive parent only be adopted by that parent's spouse.

#### **Section 1743**

Minimum age

The adoptive parent must have reached the age of twenty-five, or in the cases of section 1741 (2) sentence 3 the age of twenty-one. In the cases of section 1741 (2) sentence 2, a spouse must have reached the age of twenty-five and the other spouse the age of twenty-one.

#### **Section 1744**

##### Probationary period

The adoption, as a general rule, should not be pronounced until the adoptive parent has had the child in foster care for a reasonable period.

#### **Section 1745**

##### Prohibition of adoption

The adoption may not be pronounced if overriding interests of the children of the adoptive parent or of the child to be adopted prevent it or if it is to be feared that interests of the child to be adopted are endangered by children of the adoptive parent. Property interests should not be decisive.

#### **Section 1746**

##### Consent of the child

(1) For the adoption, the consent of the child is necessary. For a child that is incapable of contracting or is not yet fourteen years old, only its legal representative may give the consent. Apart from this, the child may give the consent only without a representative; the approval of its legal representative is necessary for this. The consent, where the adoptive parent and the child are of different nationalities, is subject to the approval of the family court; this does not apply if the adoption is subject to German law.

(2) If the child has reached the age of fourteen and if it is not incapable of contracting, it may revoke the consent to the family court before the pronouncement of the adoption takes effect. The revocation must be notarially recorded. The approval of the legal representative is not required.

(3) If the guardian or curator refuses the consent or approval without a sound reason, the family court may substitute it; there is no need for a declaration by the parents under subsection (1) to the extent that they irrevocably consented to the adoption under sections 1747 and 1750 or their consent was substituted by the family court under section 1748.



### **Section 1747**

#### Consent of the parents of the child

(1) For the adoption of a child, the consent of the parents is necessary. To the extent that no other man is to be regarded as father under section 1592, then in the meaning of sentences 1 and section 1748 (4), the person is deemed to be the father who credibly establishes the requirements of section 1600d (2) sentence 1.

(2) The consent may not be given until the child is eight weeks old. It is effective even if the person consenting does not know the adoptive parents, who have already been decided on.

(3) If the parents are not married to each other and if they have made no declarations of parental custody,

1. the consent of the father may be given even before the birth;
2. if the father has applied for the transfer of parental custody under section 1672 (1), an adoption may not be pronounced until after there has been a decision on the application of the father;
3. the father may waive the right to apply for the transfer of parental custody under section 1672 (1). The declaration of waiver must be notarially recorded. Section 1750 applies, with the necessary modifications, with the exception of subsection (4) sentence 1.

(4) The consent of one parent is not necessary if he is permanently not in a position to make a declaration or his abode is permanently unknown.

### **Section 1748**

#### Substitution of the consent of a parent

(1) The family court, on the application of the child, must substitute the consent of one parent where that parent has persistently grossly violated his duties to the child or has shown through his conduct that he is indifferent to the child, and where it would be disproportionately disadvantageous to the child if the adoption did not take place. The consent may also be substituted if the violation of duty, although not persistent, is particularly serious and it is probable that it will permanently not be possible to entrust the child to the care of the parent.

(2) The consent may not be substituted on account of indifference that is not at the same time a persistent gross breach of duty until the parent has been instructed by the youth welfare office on the possibility of its substitution and advised under section 51 (2) of Book Eight of the Social Security Code [Sozialgesetzbuch] and at least three months have passed since the instruction; the instruction should point out the limitation period. No instruction is necessary if the parent has changed his residence without leaving his new address and the residence cannot be determined by the youth welfare office within a period of three months despite appropriate research; in this case, the period commences on the first action of the youth welfare office directed towards instruction and advice or towards determining the residence. The periods expire at the earliest five months after the birth of the child.

(3) The consent of a parent may also be substituted where he is permanently incapable of caring for and bringing up the child as the result of a particularly serious psychological illness or a particularly serious mental or psychological handicap and where the child, if the adoption does not take place, could not grow up in a family and the child's development would as a result be seriously endangered.

(4) In the cases of section 1626a (2), the family court must substitute the consent of the father if the fact that the adoption does not take place would be disproportionately disadvantageous to the child.

#### **Section 1749**

##### Consent of the spouse

(1) For one spouse alone to adopt a child, the consent of the other spouse is necessary. The family court may, on the application of the adoptive parent, substitute the consent. The consent may not be substituted if justified interests of the other spouse and or the family conflict with the adoption.

(2) For the adoption of a married person, the consent of his spouse is necessary.

(3) The consent of the spouse is not necessary if he is permanently not in a position to make the declaration or his abode is permanently unknown.

## **Section 1750**

### Declaration of consent

- (1) The consent under sections 1746, 1747 and 1749 must be declared to the family court. The declaration requires notarial recording. The consent becomes effective on the date when it is received by the family court.
- (2) The consent may not be given subject to a condition or a stipulation as to time. It is irrevocable; the provision of section 1746 (2) is unaffected.
- (3) The consent may not be given through an agent. If the person consenting has restricted capacity to contract, his consent does not require the approval of his legal representative. The provision of section 1746 (1) sentences 2 and 3 is unaffected.
- (4) The consent loses its force if the application is withdrawn or the adoption is refused. The consent of one parent also loses its force if the child is not adopted within three years from the date when the consent becomes effective.

## **Section 1751**

### Effect of parental consent, maintenance obligation

- (1) On the consent of one parent to the adoption, the parental custody of this parent is suspended; the power to have personal contact with the child may not be exercised. The youth welfare office becomes the guardian; this does not apply if the other parent exercises parental custody alone or if a guardian has already been appointed. An existing curatorship is unaffected. The adoptive parent, during the time of personal care prior to adoption, is governed by section 1688 (1) and (3) with the necessary modifications. If the mother has consented to the adoption, an application of the father under section 1672 (1) does not require her approval.
- (2) Subsection (1) does not apply to a spouse whose child is adopted by the other spouse.
- (3) Where the consent of one parent has lost its force, the guardianship court must transfer the parental custody to the parents if and to the extent that this does not conflict with the best interests of the child.
- (4) The adoptive parent has an obligation to pay maintenance before the relatives of the child as soon as the parents of the child have given the necessary consent and the child has been taken into the care of the adoptive parent with the purpose of adoption. If a spouse wishes to adopt a child of his spouse, the spouses have an obligation to the child before the other relatives of the child to pay maintenance as soon as the necessary consent of the parents of the child has been given and the child has been taken into the care of the adoptive parent with the purpose of adoption.

### **Section 1752**

Order of the family court, application

- (1) The adoption is pronounced by the family court, on the application of the adoptive parent.
- (2) The application may not be made subject to a condition or to a stipulation as to time or through an agent. It must be notarially recorded.

### **Section 1753**

Adoption after death

- (1) The pronouncement of the adoption may not be made after the death of the child.
- (2) After the death of the adoptive parent, the pronouncement is admissible only if the adoptive parent submitted the application to the family court or at or after the notarial recording of the application commissioned the notary to submit the application.
- (3) Where the adoption is pronounced after the death of the adoptive parent, it has the same effect as if it had been pronounced before the death.

### **Section 1754**

Effect of adoption

- (1) If a married couple adopt a child or if a spouse adopts a child of the other spouse, the child attains the legal position of a child of both the spouses.
- (2) In the other cases the child attains the legal position of a child of the adoptive parent.
- (3) The parental custody is held in the cases of subsection (1) by the spouses jointly, and in the cases of subsection (2) by the adoptive parent.

### **Section 1755**

Extinction of relationships

- (1) On the adoption, the relationship of the child and its descendants to the previous relatives and the rights and duties arising from this are extinguished. Claims of the child that arose before the adoption, in particular to pensions, orphan's allowance and other similar recurring payments are not affected by the adoption; this does not apply to maintenance claims.
- (2) If a spouse adopts the child of his spouse, the extinction of the relationship occurs only in relation to the other parent and his relatives.

### **Section 1756**

Continuation of relationships

- (1) If the adoptive parents are related by blood or by marriage to the child in the second or third degree, only the relationship of the child and of his descendants to the parents of the child and the rights and duties arising from this are extinguished.
- (2) Where a spouse adopts the child of his spouse, the relationship is not extinguished in relation to the relatives of the other parent, if the other parent had the parental custody and has died.

### **Section 1757**

#### Name of the child

(1) The child receives as its birth name the family name of the adoptive parent. The name affixed to the family name of the spouses or the civil partnership name is not deemed to be the family name (section 1355 (4); section 3 (2) of the Civil Partnership Act [Lebenspartnerschaftsgesetz]).

(2) If a married couple adopt a child or if a spouse adopts a child of the other spouse and if the spouses have no family name, they determine the birth name of the child, before the pronouncement of the adoption, by declaration to the family court; section 1617 (1) applies with the necessary modifications. Where the child has reached the age of five, the determination is effective only if the child agrees with the determination, before the pronouncement of the adoption, by declaration to the family court; section 1617c (1) sentence 2 applies with the necessary modifications.

(3) The change of the birth name extends to the family name of the child only if the spouse also agrees with the change of name, before the pronouncement of the adoption, by declaration to the family court; the declaration must be notarially certified.

(4) The family court may, on the application of the adoptive parent, with the consent of the child to the pronouncement of the adoption

1. change the first name of the child or give him one or more than one new first names, if this is conducive to the best interests of the child;
2. attach the previous family name before or after the new family name of the child, if this is necessary for weighty reasons for the best interests of the child.

Section 1746 (1) sentences 2 and 3 and (3) first half-sentence applies with the necessary modifications.

### **Section 1758**

#### Prohibition on disclosure and exploratory questioning

(1) Facts that are suited to reveal the adoption and its circumstances may not be revealed or discovered by exploratory questioning without the approval of the adoptive parent and of the child unless special reasons of the public interest make this necessary.

(2) Subsection (1) applies with the necessary modifications if the consent under section 1747 has been given. The family court may order that the effects of subsection (1) occur if an application for substitution of the consent of a parent has been made.

### **Section 1759**

#### Cancellation of the adoption relationship

The adoption relationship may be cancelled only in the cases of section 1760 and 1763.

## **Section 1760**

### Cancellation for lack of declarations

(1) The adoption relationship may, on application, be cancelled by the family court if it was created without an application of the adoptive parent, without the consent of the child or without the necessary consent of a parent.

(2) The application or consent is ineffective only if the person declaring

a) at the time of the declaration was in a state of unconsciousness or temporary mental disturbance, if the applicant was incapable of contracting or the child, which was incapable of contracting or not yet fourteen years old, gave the consent itself,

b) did not know that it was an adoption, or if he knew this but did not wish to make an application for adoption or did not want to give consent to adoption or if the adoptive parent was mistaken as to the person of the child to be adopted or if the child to be adopted was mistaken in the person of the adoptive parent,

c) was induced to make the declaration by deceit as to material circumstances,

d) was unlawfully induced to make the declaration by duress,

e) gave the consent before the end of the period laid down in section 1747 (2) sentence 1.

(3) The cancellation is excluded if the person declaring, after the end of the incapacity to contract, the unconsciousness, the mental disturbance, the position of constraint resulting from duress, after the discovery of the mistake or after the end of the period laid down in section 1747 (2) sentence 1, made up for the missing application or consent or indicated in another way that the adoption relationship was to be sustained. The provisions of section 1746 (1) sentences 2 and 3, and section 1750 (3) sentences 1 and 2 apply with the necessary modifications.

(4) Cancellation for deceit on material circumstances is also excluded if there has been deceit as to the financial circumstances of the adoptive parent or of the child or if the deceit, without the knowledge of a person entitled to apply or consent, was carried out by a person who is entitled neither to apply nor to consent nor to arrange the adoption.

(5) Where, when the adoption was pronounced, it was wrongly presumed that a parent was permanently incapable or making the declaration or his abode was permanently unknown, then the cancellation is excluded if the parent makes up for the missing consent or has indicated in another way that the adoption relationship is to be maintained. The provision of section 1750 (3) sentences 1 and 2 applies with the necessary modifications.

### **Section 1761**

#### Obstacles to cancellation

(1) The adoption relationship may not be cancelled because a necessary consent has not been obtained or is ineffective under section 1760 (2) if the requirements for the substitution of the consent were satisfied when the adoption was pronounced or if they are satisfied at the time of the decision on the application for cancellation; in this connection, there are no detrimental effects if there was no instruction or advice under section 1748 (2).

(2) The adoption relationship may not be cancelled if as a result of this the best interests of the child would be substantially endangered, unless overriding interests of the adoptive parent require the cancellation.

### **Section 1762**

#### Entitlement to apply; period for filing application, form

(1) The only person who is entitled to apply is a person without whose application or consent the child was adopted. For a child that is incapable of contracting or not yet fourteen years old, and for the adoptive parent who is incapable of contracting, the application may be filed by the legal representatives. In addition, the application cannot be made through an agent. If the person entitled to file has restricted capacity to contract, the approval of his legal representative is not required.

(2) The application may only be made within one year if less than three years have passed since the adoption. The period commences

a) in the cases of section 1760 (2) letter a, at the time when the declarer has attained at least limited capacity to contract or when the legal representative of the adoptive parent who is not capable of contracting or of the child that is not yet fourteen years old or is incapable of contracting becomes aware of the declaration;

b) in the cases of section 1760 (2) letters b and c, at the time when the declarer discovers the mistake or the deceit;

c) in the case of section 1760 (2) letter d, at the time when the position of constraint ends;

d) in the case of section 1760 (2) letter e, at the end of the period laid down in section 1747 (2) sentence 1;

e) in the cases of section 1760 (5), at the time when the parent becomes aware that the adoption took place without his consent.

The provisions of section 206 and 210 that apply to limitation apply with the necessary modifications.

(3) The application must be notarially recorded.

### **Section 1763**

Cancellation by the court of its own motion

- (1) During the minority of the child, the family court may cancel the adoption relationship of its own motion if this is necessary for serious reasons for the best interests of the child.
- (2) If the child has been adopted by a married couple, the adoption relationship existing between the child and one spouse may also be cancelled.
- (3) The adoption relationship may only be cancelled
  - a) if, in the case of subsection (2), the other spouse or if a natural parent is prepared to take on the care and upbringing of the child, and if the exercise of parental custody by that spouse would not be inconsistent with the best interests of the child or
  - b) if the cancellation is intended to make it possible for the child to be adopted again.

### **Section 1764**

Effect of cancellation

- (1) The cancellation has effect only in the future. Where the family court cancels the adoption relationship after the death of the adoptive parent on the application of the adoptive parent or after the death of the child on the application of the child, this has the same effect as if the adoption relationship had been cancelled before the death.
- (2) On the cancellation of the adoption, the relationship, created by the adoption, of the child and its descendants to the previous relatives and the rights and duties arising from this is extinguished.
- (3) At the same time, the relationship of the child and its descendants to the blood relatives of the child, and the rights and duties arising from this, are revived, with the exception of parental custody.
- (4) The family court must reassign the parental custody to the natural parents if and to the extent that this is not inconsistent with the best interests of the child; failing this, it appoints a guardian or curator.
- (5) If the adoption relationship is with a married couple and if the cancellation takes place only with regard to one spouse, then the effects of subsection (2) occur only between the child and its descendants and this spouse and the relatives of this spouse; the effects of subsection (3) do not occur.

### **Section 1765**

Name of the child after the cancellation

- (1) Upon the cancellation of the adoption, the child loses the right to use the family name of the adoptive parent as its birth name. In the cases of section 1754 (1), sentence 1 does not apply if the child uses a birth name under section 1757 (1) and the adoption relationship is cancelled in relation to one parent alone. If the birth name has become the family name or civil partnership name of the child, the name is unaffected.



(2) On the application of the child, the family court may order, together with the cancellation, that the child retains the family name which it acquired as a result of the adoption, if the child has a justified interest in the use of this name. Section 1746 (1) sentences 2 and 3 applies with the necessary modifications.

(3) If the name acquired as a result of the adoption has become the family name or civil partnership name, the family court, upon the joint application of the spouses or civil partners, must order, together with the cancellation, that the spouses or civil partners use as their family name or civil partnership name the birth name which the child used before the adoption.

### **Section 1766**

Marriage between adoptive parent and child

If an adoptive parent, contrary to the provisions of family law, enters into marriage with the adopted child or with one of its descendants, then upon the marriage, the legal relationship created between them by the adoption is cancelled. Sections 1764 and 1765 do not apply.

Subtitle 2

### **Adoption of persons of full age**

#### **Section 1767**

Admissibility of adoption, applicable provisions

(1) A person of full age may be adopted if the adoption is morally justified; this is to be assumed in particular if a parent-child relationship has already developed between the adoptive parent and the person to be adopted.

(2) The adoption of persons of full age is governed by the provisions on the adoption of minors with the necessary modifications, except as otherwise provided in the following provisions. Section 1757

(3) applies with the necessary modifications if the adopted person has entered into a civil partnership and his birth name has been determined as the civil partnership name. For the adoption of a person who is a partner in a civil partnership, the consent of the civil partner is necessary.

#### **Section 1768**

Application

(1) The adoption of a person of full age is pronounced by the family court upon the application of the adoptive parent and the person to be adopted. Sections 1742, 1744, 1745, 1746 (1) and (2) and section 1747 do not apply.

(2) For a person to be adopted who is incapable of contracting, the application may be made only by his legal representative.

#### **Section 1769**

Prohibition of adoption

The adoption of a person of full age may not be pronounced if overriding interests of the children of the adoptive parent or of the person to be adopted are inconsistent with it.

### **Section 1770**

#### Effect of adoption

(1) The effects of the adoption of a person of full age do not extend to the relatives of the adoptive parent. The spouse or civil partner of the adoptive parent does not become a relative by marriage of the person adopted, and the spouse or civil partner of the person adopted does not become a relative by marriage of the adoptive parent.

(2) The rights and duties arising from the relationship between the person adopted and his descendants and their relatives are not affected by the adoption except as otherwise provided by law.

(3) The adoptive parent is obliged to pay maintenance to the person adopted and the descendants of the person adopted before the blood relatives of the person adopted.

### **Section 1771**

#### Cancellation of the adoption relationship

The family court may, on the application of the adoptive parent and of the person adopted, cancel an adoption relationship to a person of full age that has been pronounced, if there is a compelling reason. Apart from this, the adoption relationship may be cancelled only by applying the provisions of section 1760 (1) to (5) with the necessary modifications. The application of the person to be adopted takes the place of the consent of the child.

### **Section 1772**

#### Adoption with the effects of the adoption of a minor

(1) The family court may, when pronouncing the adoption of a person of full age, on the application of the adoptive parent and of the person to be adopted, rule that the effects of the adoption are based on the provisions on the adoption of a minor or of a related minor (sections 1754 to 1756) if

- a) a minor who is the brother or the sister of the person to be adopted has been adopted by the adoptive parent or is adopted at the same time or
- b) the person to be adopted was taken into the family of the adoptive parent when he was a minor or
- c) the adoptive parent adopts the child of his spouse or
- d) the person to be adopted is not yet of full age at the time at which the application for adoption is filed with the family court.

Such a provision may not be made if overriding interests of the parents of the person to be adopted are inconsistent with it.

(2) The adoption relationship may, in the cases of subsection (1), be cancelled only by applying the provisions of section 1760 (1) to (5) with the necessary modifications. The application of the person to be adopted takes the place of the consent of the child.

### Division 3

## **Guardianship, legal curatorship, custodianship**

### Title 1

## **Guardianship**

### Subtitle 1

## **Creation of guardianship**

### **Section 1773**

#### Requirements

(1) A minor is given a guardian if he is not subject to parental custody or if the parents are not entitled to represent the minor either in matters affecting the person or in matters affecting property.

(2) A minor is also given a guardian if his personal status cannot be determined.

### **Section 1774**

#### Order by the court of its own motion

The family court must order guardianship of its own motion. If it is to be assumed that a child needs a guardian upon birth, then even before the birth of the child a guardian may be appointed; the appointment takes effect on the birth of the child.

### **Section 1775**

#### More than one guardian

The family court may appoint a married couple jointly as guardians. Apart from this, the family court, insofar as there are no special reasons to appoint more than one guardian, should appoint only one guardian for the ward and, if guardians are to be appointed for siblings, for all wards.

### **Section 1776**

#### Right of the parents to name the guardian

(1) The person who is named by the parents of the ward as guardian is designated guardian.

(2) If the father and the mother have named different persons, the naming by the parent who died later applies.

### **Section 1777**

#### Requirements of the right to name the guardian

(1) The parents may only name a guardian if at the time of their death they have the parental custody for the person and the property of the child.

(2) The father may name a guardian for a child that is born only after his death where he would be entitled to do this if the child had been born before his death.

(3) The guardian is named by testamentary disposition.

### **Section 1778**

Passing over the guardian named

(1) A person who under section 1776 is designated guardian may be passed over without his consent only

1. if under sections 1780 to 1784 he cannot or should not be appointed guardian,
2. if he is prevented from assuming the guardianship,
3. if he delays the assumption,
4. if his appointment would endanger the best interests of the ward,
5. if the ward, who has reached the age of fourteen, opposes the appointment, unless the ward is incapable of contracting.

(2) If the person designated is prevented only temporarily, the family court must, after the obstacle ends, appoint him guardian in place of the previous guardian upon his application.

(3) For a minor spouse, the other spouse may be appointed guardian before the persons designated under section 1776.

(4) In addition to the person designated, a co-guardian may be appointed only with the approval of that person.

### **Section 1779**

Selection by the family court

(1) If the guardianship is not to be transferred to a person designated under section 1776, the family court must select the guardian after hearing the youth welfare office.

(2) The family court should choose a person who is suitable to act as guardian in view of his personal circumstances and his financial situation, and also in view of the other circumstances. When a selection is made between several suitable person, the presumed wishes of the parents, the personal ties of the ward, the relationship by blood or marriage with the ward and the religious denomination of the ward are to be taken into account.

(3) In selecting the guardian, the family court should hear relatives by blood or marriage of the ward if this can be done without substantial delay and without disproportionate costs. The relatives by blood and marriage may require reimbursement of their expenses from the ward; the amount of the expenses is specified by the family court.

### **Section 1780**

Lack of capacity to be a guardian

A person who is incapable of contracting may not be appointed a guardian.

### **Section 1781**

Unsuitability to be a guardian

The following persons should not be appointed guardians:

1. a person who is a minor,
2. a person for whom a custodian has been appointed.

### **Section 1782**

Exclusion by the parents

(1) A person should not be appointed a guardian who has been excluded from the guardianship by a direction of the parents of the ward. If the parents have given directions that contradict each other, the direction of the parent who died later applies.

(2) The exclusion is governed by the provisions of section 1777.

### **Section 1783**

(repealed)

### **Section 1784**

Official or church officer as guardian

(1) An official or church officer, who under Land legislation needs a special authorisation to assume a guardianship, should not be appointed guardian without the prescribed authorisation.

(2) This authorisation may only be refused if there is a compelling official reason.

### **Section 1785**

Duty to assume guardianship

Every German must assume the guardianship for which he is selected by the family court insofar as his appointment as guardian is not prevented by one of the reasons set out in sections 1780 to 1784.

## **Section 1786**

### Right to refuse

(1) The assumption of the guardianship may be refused by the following:

1. a parent who principally cares for two or more children who are not yet of school age or credibly establishes that the care for the family for which he is responsible permanently makes the exercise of the office particularly difficult,
2. a person who has reached the age of sixty,
3. a person who has the care for the person or the property of more than three minor children,
4. a person who as the result of illness or of infirmity is prevented from conducting the guardianship properly,
5. a person who, because of the distance of his residence from the seat of the family court, cannot conduct the guardianship without particular inconvenience,
6. (repealed)
7. a person who is to be appointed to conduct the guardianship jointly with another person,
8. a person who conducts more than one guardianship, custodianship or curatorship; the guardianship or curatorship of more than one sibling is regarded as only one; conducting two supervisory guardianships is equivalent to conducting one guardianship.

(2) The right to refuse expires if it is not asserted to the family court before the appointment.

## **Section 1787**

### Consequences of unjustified refusal

(1) A person who refuses to assume the guardianship without a reason is, if he is at fault, responsible for the damage that the ward suffers as a result of the appointment of the guardian being delayed.

(2) If the family court declares that the refusal is unjustified, the person who refused, notwithstanding the appeals to which he is entitled, must provisionally assume the guardianship at the request of the family court.

## **Section 1788**

### Coercive fine

(1) The family court may enjoin the person selected to be guardian to assume the guardianship by imposing coercive fines.

(2) The coercive fines may be imposed only at intervals of at least one week. More than three coercive fines may not be imposed.

## **Section 1789**

### Appointment by the family court

The guardian is appointed by the family court committing him to conduct the guardianship faithfully and conscientiously. The undertaking should be given by a handshake in lieu of an oath.

### **Section 1790**

Appointment subject to a reservation

When the guardian is appointed, there may be a reservation of the removal of the guardian in the eventuality that a particular event occurs or does not occur.

### **Section 1791**

Certificate of appointment

- (1) The guardian receives a certificate of appointment.
- (2) The certificate of appointment should contain the name and the date of birth of the ward, the name of the guardian, of the supervisory guardian and the co-guardians, and in the case of the division of the guardianship the nature of the division.

### **Section 1791a**

Guardianship by association

- (1) An association having legal personality may be appointed guardian if it has been declared to be suitable for this by the Land youth welfare office. The association may be appointed guardian only if a person suitable as voluntary sole guardian is not available or if it is designated as guardian under section 1776; the appointment requires the consent of the association.
- (2) The appointment is made by order of the family court; sections 1789 and 1791 do not apply.
- (3) In conducting the guardianship, the association avails itself of individual members or employees of the association; a person who cares for the ward as an educator in a home of the association may not exercise the tasks of the guardian. The association is answerable to the ward for the fault of the member or of the employee in the same way as for the fault of an agent appointed under its constitution.
- (4) If the family court wishes to have a co-guardian together with the association or if it wishes to appoint a supervisory guardian, it should hear the association before the decision.

### **Section 1791b**

Official guardianship of the youth welfare office by appointment

- (1) If a person suitable as a voluntary sole guardian is not available, the youth welfare office may be appointed guardian. The youth welfare office may be neither named nor excluded by the parents of the ward.
- (2) The appointment is made by order of the family court; sections 1789 and 1791 do not apply.

### **Section 1791c**

#### Statutory official guardianship of the youth welfare office

(1) Upon the birth of a child whose parents are not married to each other and which requires a guardian, the youth welfare office becomes the guardian if the child has its habitual residence in the area of application of this Code; this does not apply if a guardian is appointed even before the birth of the child. If paternity under section 1592 no. 1 or 2 has been cancelled by contestation and if the child needs a guardian, the youth welfare office becomes the guardian at the time at which the decision becomes final and absolute.

(2) If the youth welfare office has been the curator of a child whose parents are not married to each other, and if the curatorship ends by operation of law and the child needs a guardian, the youth welfare office that was previously the curator becomes the guardian.

(3) The family court must without undue delay issue to the youth welfare office a certificate on the beginning of the guardianship; section 1791 does not apply.

### **Section 1792**

#### Supervisory guardian

(1) In addition to the guardian, a supervisory guardian may be appointed. If the youth welfare office is the guardian, no supervisory guardian may be appointed; the youth welfare office may be supervisory guardian.

(2) A supervisory guardian should be appointed if management of assets is connected with the guardianship, unless the management is not material or the guardianship is to be conducted jointly by more than one guardian.

(3) If the guardianship of more than one guardian is not to be conducted jointly, one guardian may be appointed supervisory guardian of the other.

(4) The designation and appointment of the supervisory guardian are governed by the provisions applying to the creation of the guardianship.



Subtitle 2

## **Conducting of the guardianship**

### **Section 1793**

Duties of the guardian, liability of the ward

(1) The guardian has the right and the duty to care for the person and the property of the ward, and in particular to represent the ward. Section 1626 (2) applies with the necessary modifications. If the ward is taken into the household of the guardian for a long period, sections 1618a, 1619 and 1664 also apply with the necessary modifications.

(2) For liabilities that arise against the ward in connection with the power of agency under subsection (1), the ward is liable under section 1629a with the necessary modifications.

### **Section 1794**

Restriction as a result of curatorship

The right and the duty of the guardian to care for the person and the property of the ward does not extend to matters of the ward for which a curator has been appointed.

### **Section 1795**

Exclusion of power of agency

(1) The guardian may not represent the ward:

1. in a legal transaction between his spouse, his civil partner or one of his lineal relatives on the one hand and the ward on the other hand, unless the legal transaction consists solely in the performance of an obligation,
2. in a legal transaction the subject of which is the transfer or encumbrance of a claim of the ward against the guardian secured by pledge, mortgage, ship mortgage or suretyship or the cancellation or reduction of this security or which creates an obligation of the ward to effect such a transfer, encumbrance, cancellation or reduction,
3. in a legal dispute between the persons designated in no. 1 and in a legal dispute on a matter of the kind designated in no. 2.

(2) The provision of section 181 is unaffected.

### **Section 1796**

Withdrawal of power of agency

(1) The family court may withdraw from the guardian the power of agency for individual matters or for a specified group of matters.

(2) The withdrawal should occur only if the interest of the ward is to a substantial degree contrary to the interest of the guardian or of a third party represented by the guardian or of one of the persons designated in section 1795 no. 1.

### **Section 1797**

More than one guardian

(1) More than one guardian conduct the guardianship jointly. In the case of a difference of opinion, the family court decides, unless otherwise provided upon the appointment.

(2) The family court may allocate the conducting of the guardianship between more than one guardian according to specified spheres of responsibility. Within the sphere of responsibility allocated to him, each guardian conducts the guardianship independently.

(3) Provisions which the father or the mother has made for the determination of differences of opinion between the guardians named by them and for the distribution of the transactions among them in accordance with section 1777 must be followed by the family court except to the extent that pursuing them would endanger the interest of the ward.

### **Section 1798**

Differences of opinion

If the care for the person and the care for the property of the ward are the responsibility of different guardians, then in the case of a difference of opinion on the undertaking of an act relating to both the person and the property of the ward the family court decides.

### **Section 1799**

Duties and rights of the supervisory guardian

(1) The supervisory guardian must take care that the guardian conducts the guardianship in accordance with his duty. He must notify the family court without undue delay of breaches of duty by the guardian and of every case in which the family court is called on to intervene, in particular the death of the guardian or the occurrence of another circumstance as a result of which the office of the guardian ends or the removal of the guardian becomes necessary.

(2) On request, the guardian must give information to the supervisory guardian on the conducting of the guardianship and permit inspection of the papers relating to the guardianship.

### **Section 1800**

Scope of care for the person

The right and the duty of the guardian to care for the person of the ward are governed by sections 1631 to 1633.

### **Section 1801**

Religious education

(1) The care for the religious education of the ward may be removed from the sole guardian by the family court if the guardian does not belong to the denomination in which the ward is to be brought up.

(2) If the youth welfare office or an association as guardian has to decide on the accommodation of the ward, then in this connection the religious denomination or the ideology of the ward and of his family are to be taken into account.

### **Section 1802**

#### Inventory of property

(1) The guardian must make a list of the assets that are available when the guardianship is ordered or that accrue to the ward later and submit the list to the family court, after providing it with a declaration of correctness and completeness. If there is a supervisory guardian, the guardian must involve him when making the list; the list must be provided with a declaration of correctness and completeness by the supervisory guardian too.

(2) The guardian, when making the list, may avail himself of the help of an official, a notary or another expert.

(3) If the inventory submitted is inadequate, the family court may order that the inventory is made by a competent public authority or by a competent official or notary.

### **Section 1803**

#### Management of assets in the case of inheritance or donation

(1) The guardian must manage whatever the ward acquires as a result of death or is gratuitously bestowed on him by a third party inter vivos in accordance with the instructions of the deceased or of the third party if the instructions are made by the deceased by testamentary disposition or by the third party at the time of the gift.

(2) With the approval of the family court, the guardian may deviate from the instructions if complying with them would endanger the interest of the ward.

(3) For a deviation from the instructions made by a third party at the time of a disposition inter vivos, the approval of the third party, during his lifetime, is necessary and sufficient. The approval of the third party may be substituted by the family court if the third party is permanently unable to make a declaration or the abode of the third party is permanently unknown.

### **Section 1804**

#### Donations made by the guardian

The guardian may not, in representation of the ward, make donations. An exception applies to donations that are made to comply with a moral duty or to show consideration to decency.

### **Section 1805**

#### Use for the guardian

The guardian may not use assets of the ward either for himself nor for the supervisory guardian. If the youth welfare office is the guardian or supervisory guardian, the investment of money held in trust for a ward under section 1807 is also admissible in the corporation in which the youth welfare office is established.

### **Section 1806**

Investment of money held in trust for a ward

The guardian must invest the money that is part of the assets of the ward at interest, except to the extent that it is to be held ready to satisfy expenses.

### **Section 1807**

Nature of investment

(1) The investment of money held in trust for a ward laid down in section 1806 should occur only

1. in debts for which there is a secure mortgage of a plot of land within the country, or in secure land charges or annuity land charges on plots of land within the country;
2. in securitised debts of the Federal Government or a Land and in debts that are entered in the Federal Debt Register or Land Debt Register of a Land;
3. in securitised debts whose interest is guaranteed by the Federal Government or by a Land;
4. in securities, in particular mortgage bonds, and in securitised debts of all kinds of a domestic municipal corporation or the credit institution of such a corporation, to the extent that the securities or the debt have been declared by the Federal Government with the approval of the Federal Council [Bundesrat] to be suitable for the investment of money held in trust for a ward;
5. with a domestic public savings bank if it has been declared by the competent public authority of the Land in which it has its seat suitable for the investment of money held in trust for a ward, or with another credit institution which belongs to an institution furnishing security that is sufficient for the investment.

(2) The Land legislation may lay down, for the plots of land situated within its area of application, the basic principles under which the security of a mortgage, a land charge or an annuity land charge is to be determined.

### **Section 1808**

(repealed)

### **Section 1809**

Investment with blocking note

The guardian should invest money held in trust for a ward under section 1807 (1) no. 5 only subject to the provision that the approval of the supervisory guardian or of the family court is required for the collection of the money.

### **Section 1810**

Cooperation of supervisory guardian or family court

The guardian should effect the investment laid down in sections 1806 and 1807 only with the approval of the supervisory guardian; the approval of the supervisory guardian is substituted by the approval of the family court. If there is no supervisory guardian, the investment should be made only with the

approval of the family court, to the extent that the guardianship is not conducted by more than one guardian jointly.

#### **Section 1811**

Other investment

The family court may permit the guardian to make a different investment than that laid down in section 1807. The permission should be refused only if the intended manner of investment, in the circumstances of the case, would be contrary to the efficient management of assets.

#### **Section 1812**

Dispositions of claims and securities

(1) The guardian may dispose of a claim or of another right by which the ward may demand performance, and of a security of the ward, only with the approval of the supervisory guardian, except to the extent that the approval of the family court is required under sections 1819 to 1822. The same applies to the assumption of the duty to make such a disposition.

(2) The approval of the supervisory guardian is substituted by the approval of the family court.

(3) If there is no supervisory guardian, the approval of the family court takes the place of the approval of the supervisory guardian, except to the extent that the guardianship is conducted by more than one guardian jointly.

#### **Section 1813**

Transactions not requiring approval

(1) The guardian does not require the approval of the supervisory guardian to accept performance owed:

1. if the object of the performance does not consist in money or securities,
2. if the claim is for not more than 3,000 euros,
3. if money that the guardian invested is paid back,
4. if the claim is part of the emoluments of the property of the ward,
5. if the claim is directed to the reimbursement of the costs of giving notice or to the prosecution of rights or to other collateral performance.

(2) The exemption under subsection (1) nos. 2 and 3 does not extend to the collection of money upon the investment of which a provision to the contrary was made. Nor does the exemption under subsection (1) no. 3 apply to the collection of money which is invested under section 1807 (1) nos. 1 to 4.

#### **Section 1814**

Deposit of bearer instruments

The guardian must deposit the bearer instruments that are part of the property of the ward, together with the renewal certificates, with a depository institution or with one of the credit institutions named in

section 1807 (1) no. 5, subject to the condition that the return of the instruments may be demanded only with the approval of the family court. The deposit of bearer instruments that under section 92 are consumable things, and of interest, annuity or dividend coupons is not necessary. Instruments made out to order and endorsed in blank are equivalent to bearer instruments.

### **Section 1815**

Change of registration and conversion of bearer instruments

(1) The guardian may, instead of depositing the bearer instruments under section 1814, have their registration changed to the name of the ward, subject to the condition that he may dispose of them only with the approval of the family court. If the instruments are issued by the Federal Government or a Land, he may have them converted, subject to the same condition, into Debt Register claims against the Federal Government or the Land.

(2) If bearer instruments that may be converted into Debt Register claims against the Federal Government or a Land are to be deposited, the family court may order that they are converted into Debt Register claims under subsection (1).

### **Section 1816**

Blocking of registered claims

If Debt Register claims against the Federal Government or a Land are part of the property of the ward at the time when the guardianship is ordered, or if the ward later acquires such claims, the guardian is to have a memorandum entered in the Debt Register that he may dispose of the claims only with the approval of the family court.

### **Section 1817**

Exemption

(1) The family court may, on the application of the guardian, exempt him from the duties imposed on him under sections 1806 to 1816, to the extent that

1. the scope of the management of assets justifies this and
2. an endangerment of the assets is not to be feared.

The requirements of no. 1 are as a rule satisfied if the value of the property, without taking real property into account, does not exceed 6,000 euros.

(2) The family court may, for special reasons, exempt the guardian from the duties imposed on him under sections 1814 and 1816 even if the requirements of subsection (1) no. 1 are not satisfied.

### **Section 1818**

Order of deposit

The family court may, for special reasons, order that the guardian is also to deposit in the manner set out in section 1814 such securities as are part of the property of the ward which he is not obliged under section 1814 to deposit, and also valuables of the ward; on the application of the guardian, the

deposit of interest, annuity and dividend coupons may be ordered, even if there is not a special reason.

### **Section 1819**

Approval in the case of deposit

As long as the securities or valuables deposited under section 1814 or under section 1818 have not been taken back, the guardian requires the approval of the family court for a disposition of them and, if mortgage, land charge or annuity land charge certificates have been deposited, for a disposition of the mortgage claim, the land charge or the annuity land charge. The same applies to the assumption of the duty to make such a disposition.

### **Section 1820**

Approval after change of registration and conversion

(1) If bearer instruments have had their registration changed to the name of the ward or been converted to Debt Register claims under section 1815, the guardian also requires the approval of the family court for the assumption of the duty to make a disposition of the principal claims arising from the change of registration or the conversion.

(2) The same applies if, in the case of a Debt Register claim of the ward, the memorandum referred to in section 1816 is entered.

### **Section 1821**

Approval of transactions relating to plots of land, ships or ships under construction

(1) The guardian requires the approval of the family court:

1. for a disposition of a plot of land or of a right in a plot of land;
2. for a disposition of a claim that is directed to the transfer of the ownership of a plot of land or to the creation or transfer of a right in a plot of land or to the release of a plot of land from such a right;
3. for a disposition of a registered ship or ship under construction or of a claim that is directed to the transfer of the ownership of a registered ship or ship under construction;
4. for the assumption of a duty to make one of the dispositions set out in nos. 1 to 3;
5. for a contract which is directed at the nongratuitous acquisition of a plot of land, a registered ship or ship under construction or a right in a plot of land.

(2) The rights in a plot of land in the meaning of this provision do not include mortgages, land charges and annuity land charges.

## **Section 1822**

### Approval for other transactions

The guardian requires the approval of the family court:

1. for a legal transaction by which the ward is obliged to make a disposition of his property as a whole or of an inheritance that has accrued to him or of his future share of the inheritance on intestacy or of his future compulsory portion, and a disposition of the share of the ward in an inheritance,
2. to disclaim an inheritance or a legacy, to waive a compulsory portion and for a contract for the division of an inheritance,
3. for a contract which is directed to the nongratuitous acquisition or the disposal of a trade or business and for a shareholders' or partnership agreement that is entered into to operate a trade or business,
4. for a usufructuary lease of a farm or a commercial business,
5. for a lease or usufructuary lease or another contract which obliges the ward to make periodical payments, if the contractual relationship is to continue for more than one year after the ward reaches the age of majority,
6. for an apprenticeship agreement that is entered into for longer than one year,
7. for a contract directed to the assumption of a service or employment relationship if the ward is to be obliged to render performance in person for longer than one year,
8. for taking out a loan against the credit of the ward,
9. for issuing a bearer bond or for the assumption of an obligation under a bill of exchange or another instrument that may be transferred by endorsement,
10. for the assumption of the liability of a third party, in particular for the assumption of a guarantee,
11. for the granting of a full commercial power of agency,
12. for a settlement or an arbitration agreement, unless the object of the dispute or of the uncertainty can be assessed in money and does not exceed the value of 3,000 euros, or the settlement corresponds to a judicial settlement suggestion made in writing or recorded by the court,
13. for a legal transaction that cancels or reduces the existing security for a claim of the ward or creates a duty to cancel or reduce it.

## **Section 1823**

### Approval where the ward has a trade or business

The guardian should not without the approval of the family court commence a new trade or business in the name of the ward or terminate an existing trade or business of the ward.



#### **Section 1824**

Approval for the permission for the ward to use objects

The guardian may not permit the ward to use objects for the disposal of which the approval of the supervisory guardian or of the family court is necessary, for the performance of a contract entered into by the ward or at the free disposal of the ward, without this approval.

#### **Section 1825**

General authorisation

(1) The family court may give the ward a general authorisation for legal transactions for which under section 1812 the approval of the supervisory guardian is necessary and for the legal transactions set out in section 1822 nos. 8 to 10.

(2) The authorisation should only be given if it is necessary for the purpose of management of assets, in particular for the operation of a trade or business.

#### **Section 1826**

Hearing of the supervisory guardian before giving the approval

Before the decision on the approval necessary for an act of the ward, the family court should hear the supervisory guardian, if one exists and the hearing is convenient.

#### **Section 1827**

(repealed)

#### **Section 1828**

Pronouncement of approval

The family court may pronounce the approval of a legal transaction only to the guardian.

#### **Section 1829**

Subsequent approval

(1) If the guardian enters into a contract without the necessary approval of the family court, the effectiveness of the contract is subject to the subsequent approval of the family court. The approval and its refusal take effect in relation to the other party only when the guardian notifies the other party of it.

(2) Where the other party requests the guardian to notify it whether the approval has been granted, the notification of the approval may occur only before the end of a period of four weeks after the receipt of the request; if it is not given, the approval is deemed to have been refused.

(3) If the ward has reached the age of majority, the approval of the ward takes the place of the approval of the family court.

### **Section 1830**

Right of revocation of the other party

If the guardian has claimed to the other party, untruthfully, that the family court has given its approval, the other party is entitled to revoke the contract until it is informed of the subsequent approval of the family court, unless it knew of the lack of approval when it entered into the contract.

### **Section 1831**

Unilateral legal transaction without approval

A unilateral legal transaction which the guardian enters into without the necessary approval of the family court is ineffective. Where the guardian, with this approval, enters into such a legal transaction with another person, the legal transaction is ineffective if the guardian does not provide the approval and the other person for this reason and without undue delay rejects the legal transaction.

### **Section 1832**

Approval of the supervisory guardian

To the extent that the guardian requires the approval of the supervisory guardian for a legal transaction, the provisions of sections 1828 to 1831 apply with the necessary modifications; in derogation from section 1829 (2), the period for notification of approval of the supervisory guardian is two weeks.

### **Section 1833**

Liability of the guardian

(1) The guardian is answerable to the ward for the damage arising from a breach of duty if he is at fault. The same applies to the supervisory guardian.

(2) If more than one person together are responsible for the damage, they are liable as joint and several debtors. If, in addition to the guardian, the supervisory guardian or a co-guardian is responsible only by reason of breach of his duty to supervise, then as between them the guardian alone is liable.

### **Section 1834**

Duty to pay interest

If the guardian uses money belonging to the ward for his own purposes, he must pay interest on it from the date when it is used.

## **Section 1835**

### Reimbursement of outlays

(1) If the guardian, for the purpose of conducting the guardianship, incurs outlays, then under the provisions applying to mandate of sections 669 and 670 he may require an advance or reimbursement from the ward; the reimbursement of travelling expenses is governed by the arrangement made for experts in section 5 of the Court Payment and Reimbursement Act [Justizvergütungs- und -entschädigungsgesetz] with the necessary modifications. The supervisory guardian has the same right. Claims for reimbursement are extinguished if they are not asserted at court within fifteen months after they arise; here, the assertion of the claim at the family court is also deemed to be an assertion vis-à-vis the ward.

(1a) The family court may lay down a period deviating from subsection (1) sentence 3 of a minimum of two months. The fixing of the period must contain information on the consequences of failure to observe the time limit. On application, the period may be extended by the family court. The claim expires to the extent that it is not quantified within the period.

(2) Outlays also include the costs of reasonable insurance against damage that may be caused to the ward by the guardian or the supervisory guardian or that may be suffered by the guardian or supervisory guardian because he is obliged to compensate a third party for damage caused by the conduct of the guardianship; this does not apply to the costs of the third-party liability insurance of the keeper of a motor vehicle. Sentence 1 does not apply if the guardian or supervisory guardian receives payment under section 1836 (1) sentence 2 in conjunction with the Guardians and Custodians Payment Act [Vormünder- und Betreuervergütungsgesetz].

(3) Such services of the guardian or of the supervisory guardian as belong to his business, trade or profession are also deemed to be outlays.

(4) If the ward is destitute, the guardian may require advance payment and reimbursement from the public treasury. Subsection (1) sentence 3 and subsection (1)a apply with the necessary modifications.

(5) The youth welfare office or an association, as guardian or supervisory guardian, may require no advance payment and may require reimbursement only to the extent that the income and property of the ward to be applied is sufficient. General management costs including the costs under subsection (2) are not reimbursed.

## **Section 1835a**

### Reimbursement for expenses

(1) For the discharge of his claim to compensation for expenses, the guardian, as reimbursement for expenses, may demand, for each guardianship for which he is not entitled to payment, a sum of money which for one year corresponds to nineteen times the amount that may be granted to a witness as the maximum amount of reimbursement for one lost working hour (section 22 of the Court Payment and Reimbursement Act [Justizvergütungs- und -entschädigungsgesetz]) (reimbursement for expenses). If the guardian has already received an advance payment or compensation for such outlays, the reimbursement for expenses is correspondingly reduced.

(2) The reimbursement for expenses is to be paid annually, for the first time one year after the appointment of the guardian.

(3) If the ward is destitute, the guardian may demand the reimbursement for expenses from the public treasury; maintenance claims of the ward against the guardian are not to be taken into account in this respect when income is assessed under section 1836c no. 1.

(4) The claim to reimbursement for expenses expires if it is not asserted within three months after the end of the year in which the claim arises; the assertion of the claim at the family court is also deemed to be an assertion vis-à-vis the ward.

(5) No reimbursement for expenses may be granted to the youth welfare office or to an association.

1. under section 87 of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] his income, to the extent that, together with the income of his spouse or civil partner who is not living apart, it exceeds the conclusive income limit under sections 82, 85 (1) and 86 of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] for help under the Fifth to Ninth Chapters of the Twelfth Book of the Social Security Code [Sozialgesetzbuch]. If, in the individual case, the provision of part of the income to satisfy a particular need as part of the help under the Fifth to Ninth Chapters of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] is expected or required, this part of the income may no longer be taken into account in the assessment as to how far the provision of the income is to be used to pay the costs of the guardianship. Income is also deemed to include maintenance claims and the annuities payable by reason of the withdrawal of such a claim;

2. his property under section 90 of the Twelfth Book of the Social Security Code [Sozialgesetzbuch].

### **Section 1836**

#### Payment of the guardian

(1) The guardianship is conducted gratuitously. It is, exceptionally, conducted nongratically if the court finds when the guardian is appointed that the guardian is conducting the guardianship as an occupation or profession. The details are governed by the Guardians and Custodians Payment Act [Vormünder- und Betreuervergütungsgesetz].

(2) Where the court does not make a finding under subsection (1) sentence 2, it may nevertheless grant to the guardian, and for special reasons also to the supervisory guardian, a reasonable payment if the extent or the difficulty of the guardianship transactions justifies this; this does not apply if the ward is destitute.

(3) No payment may be granted to the youth welfare office or to an association.

### **Sections 1836a and 1836b**

(repealed)

### **Section 1836c**

#### Funds to be provided by the ward

The ward must provide the following:

1. under section 87 of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] his income, to the extent that, together with the income of his spouse or civil partner who is not living apart, it exceeds the conclusive income limit under sections 82, 85 (1) and 86 of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] for help under the Fifth to Ninth Chapters of the Twelfth Book of the Social Security Code [Sozialgesetzbuch]. If, in the individual case, the provision of part of the income to satisfy a particular need as part of the help under the Fifth to Ninth Chapters of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] is expected or required, this part of the income may no longer be taken into account in the assessment as to how far the provision of the income is to be used to pay the costs of the guardianship. Income is also deemed to include maintenance claims and the annuities payable by reason of the withdrawal of such a claim;
2. his property under section 90 of the Twelfth Book of the Social Security Code [Sozialgesetzbuch].

### **Section 1836d**

#### Destitution of the ward

The ward is deemed to be destitute if, with regard to the compensation for expenses or the payment from his income or property to be applied,

1. he cannot raise it or can raise it only in part or in instalments or
2. he can raise it only by the judicial assertion of maintenance claims.

### **Section 1836e**

#### Statutory passing of claim

(1) To the extent that the public treasury satisfies the guardian or supervisory guardian, claims of the guardian or supervisory guardian against the ward pass to the public treasury. The claim that has passed expires in ten years from the end of the year in which the public treasury paid the outlays or made the payment. After the death of the ward, his heir is liable only for the value of the estate available at the date of the devolution of the inheritance; section 102 (3) and (4) of the Twelfth Book of the Social Security Code [Sozialgesetzbuch] applies with the necessary modifications; section 1836c does not apply to the heir.

(2) To the extent that claims under section 1836c no. 1 sentence 2 are to be applied, section 850b of the Code of Civil Procedure [Zivilprozessordnung], for the benefit of the public treasury, does not apply.

#### Subtitle 3

### **Care and supervision of the family court**

#### **Section 1837**

##### Advice and supervision

(1) The family court advises the guardians. It assists in introducing them to their tasks.

(2) The family court is to supervise all the activity of the guardian and of the supervisory guardian and to intervene against breaches of duty by suitable orders and prohibitions. It may instruct the guardian and the supervisory guardian to take out insurance against damage that they may cause to the ward.

(3) The family court may enjoin the guardian and the supervisory guardian to observe its directions by imposing coercive fines. No coercive fine is imposed on the youth welfare office or an association.

(4) Sections 1666 and 1666a and section 1696 apply with the necessary modifications.

#### **Section 1838**

(repealed)

#### **Section 1839**

##### Duty of information of the guardian

The family court must, on request, at any time give information to the guardian and the supervisory guardian on the conduct of the guardianship and on the personal circumstances of the ward.

### **Section 1840**

#### Report and rendering of account

- (1) The guardian must report to the family court at least once a year on the personal circumstances of the ward.
- (2) The guardian must render an account to the family court of his management of the assets.
- (3) The account is to be rendered annually. The accounting year is laid down by the family court.
- (4) If the management is of a small extent, the family court, after the account has been rendered for the first year, may order that the account is to be rendered for longer periods, of a maximum of three years.

### **Section 1841**

#### Contents of the account

- (1) The account should contain an organised record of the receipts and expenditure, on disposals and acquisitions of assets and, to the extent that it is customary to provide supporting documents, to be provided with supporting documents.
- (2) If a trade or business is operated with commercial bookkeeping, then a financial statement drawn up from the books is sufficient as an account. The family court may, however, require the books and other supporting documents to be submitted.

### **Section 1842**

#### Cooperation of the supervisory guardian

If there is a supervisory guardian or a supervisory guardian is to be appointed, the guardian must submit the account to him, with proof of the amount of the assets. The supervisory guardian must make on the account the annotations which the examination gives him cause to make.

### **Section 1843**

#### Examination by the family court

- (1) The family court must examine the account from an accounting point of view and objectively and, to the extent that this is necessary, arrange for its correction and supplementation.
- (2) Claims that remain disputed between the guardian and the ward may be judicially asserted even before the termination of the guardianship relationship.

### **Section 1844**

(repealed)

### **Section 1845**

(repealed)

### **Section 1846**

#### Interim measures of the family court

If a guardian has not yet been appointed or if the guardian is prevented from carrying out his duties, the family court must take the measures that are necessary in the interest of the person affected.

## **Section 1847**

Hearing of the relatives

In important matters, the familycourt should hear relatives by blood or marriage of the ward if this can be done without substantial delay and without disproportionate costs. Section 1779 (3) sentence 2 applies with the necessary modifications.

## **Section 1848**

(repealed)

Subtitle 4

## **Cooperation of the youth welfare office**

### **Sections 1849, 1850**

(repealed)

## **Section 1851**

Duties of notification

(1) The familycourt must notify the youth welfare office of the order of guardianship, designating the guardian and the supervisory guardian, and of a change of the person and the termination of the guardianship.

(2) If the habitual residence of a ward is moved to the area of another youth welfare office, the guardian must notify the youth welfare office of the previous habitual residence, and that youth welfare office must notify the youth welfare office of the new habitual residence, of the move.

(3) If an association is guardian, subsections (1) and (2) do not apply.

Subtitle 5

## **Exempted guardianship**

### **Section 1852**

Exemption by the father

(1) The father may, when he names a guardian, exclude the appointment of a supervisory guardian.

(2) The father may direct that the guardian named by him should not be subject in the investment of money to the restrictions laid down in sections 1809 and 1810 and should not require the approval of the supervisory guardian or of the familycourt for the legal transactions set out in section 1812. These directions are to be regarded as having been made if the father has excluded the appointment of a supervisory guardian.

### **Section 1853**

Exemption from deposit and blocking

The father may exempt the guardian named by him from the duty to deposit bearer instruments and instruments made out to order and to have the memorandum mentioned in section 1816 entered in the Federal Debt Register or the Debt Register of a Land.



#### **Section 1854**

Exemption from duty to render an account

(1) The father may exempt the guardian named by him from the duty to render account for the duration of his office.

(2) In such a case, the guardian must, after a period of two years in each case, file with the family court a summary of the amount of the assets subject to his management. The family court may direct that the summary is filed at longer intervals of a maximum of five years.

(3) If there is a supervisory guardian or a supervisory guardian is to be appointed, the guardian must submit the summary to him, with proof of the amount of the assets. The supervisory guardian must make on the summary the annotations which the examination gives him cause to make.

#### **Section 1855**

Exemption by the mother

If the mother designates a guardian, she may make the same directions as the father may under sections 1852 to 1854.

#### **Section 1856**

Requirements of exemption

The directions admissible under sections 1852 to 1855 are governed by the provisions of section 1777. If the parents have given directions that contradict each other, the direction of the parent who died later applies.

#### **Section 1857**

Cancellation of the exemption by the family court

The directions of the father or the mother may be cancelled by the family court if compliance with them would endanger the interest of the ward.

#### **Section 1857a**

Exemption of the youth welfare office and the association

The youth welfare office and an association as guardian are entitled to the exemptions admissible under section 1852 (2) and sections 1853 and 1854.

#### **Sections 1858 - 1881**

(repealed)

Subtitle 6

## **Termination of the guardianship**

### **Section 1882**

Cessation of the requirements

The guardianship ends when the requirements laid down for the commencement of the guardianship in section 1773 cease to be satisfied.

### **Section 1883**

(repealed)

### **Section 1884**

Ward missing and declaration of death of the ward

(1) If the ward is missing, the guardianship ends only when it is cancelled by the familycourt. The familycourt must cancel the guardianship if it obtains knowledge of the death of the ward.

(2) If the ward is declared to be dead or if his date of death is determined under the provisions of the Missing Persons Act [Verschollenheitsgesetz], the guardianship ends when the order on the declaration of death or the determination of the time of death becomes final and absolute.

### **Section 1885**

(repealed)

### **Section 1886**

Removal of the sole guardian

The familycourt must remove the sole guardian if the continuation of the office, in particular by reason of conduct in breach of duty of the guardian, would endanger the interest of the ward or if one of the reasons set out in section 1781 is present in the person of the guardian.

### **Section 1887**

Removal of the youth welfare office or association

(1) The familycourt must remove the youth welfare office or the association as guardian and appoint another guardian if this serves the welfare of the ward and another suitable person is available as guardian.

(2) The decision is made by the court of its own motion or on application. A ward who is fourteen years of age, and every person who asserts a justified interest of the ward, is entitled to apply. The youth welfare office or the association should make the application as soon as they learn that the requirements of subsection (1) are satisfied.

(3) The familycourt should, before its decision, also hear the youth welfare office or the association.

### **Section 1888**

#### Removal of officials and church officers

Where an official or a church officer is appointed guardian, the familycourt must remove him if the authorisation that is necessary under the Land statutes on the assumption of guardianship or for the continuation of the guardianship assumed before entry into the civil service or service relationship ends or is withdrawn or if the prohibition of continuation of the guardianship that is admissible under the Land statutes occurs.

### **Section 1889**

#### Removal on the application of the guardian himself

(1) The familycourt must remove the sole guardian on his application if there is a compelling reason; a compelling reason includes but is not limited to the occurrence of a circumstance that would entitle the guardian under section 1786 (1) nos. 2 to 7 to refuse the assumption of the guardianship.

(2) The familycourt must remove the youth welfare office or the association as guardian on its application if another person suited as guardian is available and this measure is not inconsistent with the best interests of the ward. In addition, an association is to be removed on its application if there is a compelling reason.

### **Section 1890**

#### Delivery of assets and rendering an account

After the termination of his office, the guardian must deliver to the ward the assets managed and render an account of the management. To the extent that he has rendered an account to the familycourt, reference to this account is sufficient.

### **Section 1891**

#### Cooperation of the supervisory guardian

(1) If there is a supervisory guardian, the ward must submit the account to the supervisory guardian. The supervisory guardian must make on the account the annotations which the examination gives him cause to make.

(2) The supervisory guardian must, on request, provide information on the conduct of the supervisory guardianship and, to the extent that he is capable of doing this, on the assets managed by the guardian.

### **Section 1892**

#### Examination and approval of the account

(1) The guardian must file the account, after he has submitted it to the supervisory guardian, with the familycourt.

(2) The familycourt must examine the account from an accounting point of view and objectively and arrange its acceptance by negotiation with the parties involved, involving the supervisory guardian. To the extent that the account is approved as correct, the familycourt must record the acceptance.

**Section 1893**

Continuation of transactions after the termination of the guardianship, return of certificates

(1) In the case of the termination of the guardianship or of the office of guardian, the provisions of sections 1698a and 1698b apply with the necessary modifications.

(2) After the termination of his office, the guardian must return the certificate of appointment to the familycourt. In the cases of sections 1791a and 1791b, the order of the familycourt is to be returned, and in the case of section 1791c the certificate on the commencement of the guardianship.

**Section 1894**

Notification on death of the guardian

(1) The heir of the guardian must notify the familycourt without undue delay of the death of the guardian.

(2) The guardian must give notification without undue delay of the death of the supervisory guardian or of a co-guardian.

**Section 1895**

Termination of office of the supervisory guardian

The provisions of sections 1886 to 1889, 1893 and 1894 apply with the necessary modifications to the supervisory guardian.

## Title 2

### Legal custodianship

#### Section 1896

##### Requirements

(1) If a person of full age, by reason of a mental illness or a physical, mental or psychological handicap, cannot in whole or in part take care of his affairs, the custodianship court, on his application or of its own motion, appoints a custodian for him. The application may also be made by a person incapable of contracting. To the extent that the person of full age cannot take care of his affairs by reason of a physical handicap, the custodian may be appointed only on the application of the person of full age, unless the person is unable to make his will known.

(1a) A custodian may not be appointed against the free will of the person of full age.

(2) A custodian may be appointed only for groups of tasks in which the custodianship is necessary. The custodianship is not necessary to the extent that the affairs of a person of full age may be taken care of by an authorised person who is not one of the persons set out in section 1897 (3), or by other assistants for whom no legal representative is appointed, just as well as by a custodian.

(3) The assertion of rights of the person under custodianship vis-à-vis the person authorised by him may also be defined as a group of tasks.

(4) The decision on the telecommunications of the person under custodianship and on the receipt, opening and withholding of his post are included in the group of tasks of the custodian only if the court has expressly ordered this.

#### Section 1897

##### Appointment of a natural person

(1) The custodianship court appoints as custodian a natural person who is suited to take care of the affairs of the person under custodianship from a legal point of view within the group of tasks determined by the court and to take care of his person to the extent necessary.

(2) The employee of a custodianship association recognised under section 1908f who is solely or partly employed there as a custodian (association custodian) may be appointed only with the consent of the association. The same applies to the employee of a public authority competent in custodianship matters who is solely or partly employed there as custodian (public authority custodian).

(3) A person who is in a situation of dependence or in another close connection to an institution, a home or another establishment to which the person of full age has been committed or in which he lives may not be appointed custodian.

(4) If the person of full age suggests a person who may be appointed custodian, this suggestion should be followed unless it is inconsistent with the best interests of the person of full age. If he suggests that a particular person should not be appointed, this should be taken into account.

Sentences 1 and 2 also apply to suggestions that the person of full age made before the custodianship proceedings, unless he discernibly does not wish to uphold these suggestions.

(5) If the person of full age suggests no-one who may be appointed custodian, then when the custodian is selected, account must be taken of the family and other personal ties of the person of full age, in particular the ties to parents, to children, to the spouse and to the civil partner, and of the danger of conflicts of interest.

(6) A person who conducts custodianships as part of the exercise of his occupation or profession should be appointed custodian only if no other suitable person is available who is prepared to conduct the custodianship on a voluntary basis. If the custodian becomes aware of circumstances which indicate that the person of full age can be cared for by one or more than one other suitable persons outside the exercise of an occupation or profession, he must notify the court of this.

(7) If a person, under the conditions of subsection (6) sentence 1, is appointed a custodian for the first time in the district of the custodianship court, the court should before this hear the competent public authority on the suitability of the selected custodian and on the findings to be made under section 1 (1) sentence 1 second alternative of the Guardians and Custodians Payment Act [Vormünder- und Betreuervergütungsgesetz]. The competent authority should request the person to submit a certificate of good conduct and a status report from the debtors' list.

(8) If a person is appointed under the condition of subsection (6) sentence 1, he must declare the number and volume of the custodianships he is conducting professionally.

### **Section 1898**

#### Duty to assume custodianship

(1) The person selected by the custodianship court is under a duty to assume the custodianship if he is suitable as a custodian and he can be expected to assume it, taking into account his family, professional and other circumstances.

(2) The person selected may be appointed a custodian only when he has stated that he is prepared to assume the custodianship.

### **Section 1899**

#### More than one custodian

(1) The custodianship court may appoint more than one custodian if better care can be taken of the affairs of the person under custodianship as a result of this. In this case, it determines which custodian is entrusted with which group of tasks. There is no appointment of more than one custodian who receive payment except in the cases dealt with in subsections (2) and (4) and section 1908i (1) sentence 1 in conjunction with section 1792.

(2) A special custodian must always be appointed for the decision on consent to a sterilisation of the person under custodianship.

(3) To the extent that more than one custodian is entrusted with the same group of tasks, they may take care of the affairs of the person under custodianship only jointly, unless the court has ordered otherwise or delay entails risk.

(4) The court may also appoint more than one custodian in such a way that one is to take care of the affairs of the person under custodianship only to the extent that the other is prevented.

### **Section 1900**

#### Custodianship by association or public authority

(1) If the person of full age cannot be adequately cared for by one or more than one natural persons, the custodianship court appoints a recognised custodianship association as custodian. The appointment requires the consent of the association.

(2) The association transfers the exercise of the custodianship to individual persons. In doing this, it must comply with suggestions of the person of full age, to the extent that there are no compelling reasons against this. The association notifies the court at once to whom it has transferred the exercise of the custodianship.

(3) If the committee becomes aware of circumstances which indicate that the person of full age can be cared for adequately by one or more than one natural persons, he must notify the court of this.

(4) If the person of full age cannot be cared for adequately by one or more than one natural persons or by an association, the court appoints the competent public authority as custodian. Subsections (2) and (3) apply with the necessary modifications.

(5) The decision on consent to a sterilisation of the person under custodianship may not be transferred to associations or to public authorities.

## **Section 1901**

Scope of the custodianship, duties of the custodian

- (1) The custodianship includes all activities that are necessary to attend to the affairs of the person under custodianship from a legal point of view in accordance with the following provisions.
- (2) The custodian must attend to the affairs of the person under custodianship in a manner that is conducive to his welfare. The best interests of the person under custodianship also includes the possibility for him, within his capabilities, to shape his life according to his own wishes and ideas.
- (3) The custodian must comply with wishes of the person under custodianship to the extent that this is not inconsistent with the best interests of the latter and can be expected of the custodian. This also applies to wishes which the person under custodianship expressed before the appointment of the custodian, unless he discernibly does not wish to uphold these wishes. Before the custodian deals with important matters, he discusses them with the person under custodianship, to the extent that this is not inconsistent with the best interests of the latter.
- (4) Within his group of tasks, the custodian must help towards possibilities being used to remove or improve the illness or handicap of the person under custodianship, to prevent its deterioration or to mitigate its consequences. If the custodianship is conducted professionally, then in suitable cases the custodian must, on the order of the court, draw up a custodianship plan at the commencement of the custodianship. The custodianship plan must set out the aims of the custodianship and the measures to be undertaken to achieve them.
- (5) If the custodian becomes aware of circumstances which enable the cancellation of the custodianship, he is to notify the custodianship court of this. The same applies to circumstances which enable a restriction of the group of tasks or require its extension, the appointment of a further custodian or the order of a reservation of consent (section 1903).

### **Section 1901a**

Wishes in writing with regard to custodianship, enduring power of attorney

A person who is in possession of a document in which a person, for the contingency that he is under custodianship, has communicated suggestions on the choice of the custodian or wishes for the conduct of the custodianship, must without undue delay deliver it to the custodianship court after he obtains knowledge that proceedings for the appointment of a custodian have been commenced. Similarly, the possessor must inform the custodianship court of documents in which the person concerned has authorised another person to take care of his affairs. The custodianship court may require a copy to be submitted.



## **Section 1902**

Representation of the person under custodianship

In his group of tasks, the custodian represents the person under custodianship in court and from court.

## **Section 1903**

Reservation of consent

(1) To the extent that this is necessary to prevent a substantial danger for the person or the property of the person under custodianship, the custodianship court orders that the person under custodianship requires the consent of the custodian for a declaration of intention that relates to the group of tasks of the custodian (reservation of consent). Sections 108 - 113, 131 (2) and section 210 apply with the necessary modifications.

(2) A reservation of consent may not extend to declarations of intention that are directed to entering into a marriage or creating a civil partnership, to dispositions mortis causa and to declarations of intention for which a person with limited capacity to contract under the provisions of Books Four and Five does not need the consent of his legal representative.

(3) Where a reservation of consent is ordered, the custodian nevertheless does not require the consent of his custodian if the declaration of intention merely confers a legal advantage on the person under custodianship. To the extent that the court does not order otherwise, this also applies if the declaration of intention relates to a trivial matter of everyday life.

(4) Section 1901 (5) applies with the necessary modifications.

## **Section 1904**

Approval of the custodianship court in the case of medical measures

(1) The consent of the custodian to an examination of the state of health of the person under custodianship, to therapeutic treatment or to an operation is subject to the approval of the custodianship court if the justified danger exists that the person under custodianship will die or will suffer serious injury to his health that lasts for a long period by reason of the measure. Without the approval, the measure may be carried out only if delay entails danger.

(2) Subsection (1) also applies to the approval given by an authorised person. It is effective only if the power of attorney is given in writing and expressly includes the measures set out in subsection (1) sentence 1.

## **Section 1905**

### **Sterilisation**

(1) Where the operation is a sterilisation of the person under custodianship to which the person may not consent, the custodian may consent only if

1. the sterilisation is not inconsistent with the intention of the person under custodianship,
2. the person under custodianship will permanently remain incapable of consenting,
3. it is to be assumed that without the sterilisation there would be a pregnancy,
4. as a result of this pregnancy a danger for the life of the pregnant woman or the danger of a serious adverse effect on her physical or psychological state of health were to be expected which could not be prevented in a reasonable way, and
5. the pregnancy cannot be prevented by other reasonable means.

A serious danger for the psychological state of health of the pregnant woman also includes the danger of serious and persistent suffering which would threaten her because custodianship court measures which would entail separating her from her child (sections 1666 and 1666a) would have to be taken against her.

(2) The consent must be approved by the custodianship court. The sterilisation may not be carried out until two weeks after the approval takes effect. In the sterilisation, preference is always to be given to the method that permits a refertilisation.

## **Section 1906**

### **Approval of the custodianship court with regard to accommodation**

(1) It is admissible for the custodian to put the person under custodianship in accommodation that is associated with deprivation of liberty only as long as this is necessary for the best interests of the person under custodianship because

1. by reason of a mental illness or mental or psychological handicap of the person under custodianship there is a danger that he will kill himself or cause substantial damage to his own health, or
2. an examination of the state of health of the person under custodianship, therapeutic treatment or an operation is necessary without which the accommodation of the person under custodianship cannot be carried out and the person under custodianship, by reason of a mental illness or mental or psychological handicap, cannot recognise the necessity of the accommodation or cannot act in accordance with this realisation.

(2) The accommodation is admissible only with the approval of the custodianship court. Without the approval, the accommodation is admissible only if delay entails risk; the approval must thereafter be obtained without undue delay.

(3) The custodian must terminate the accommodation if its requirements cease to be satisfied. He must notify the custodianship court of the termination of the accommodation.

(4) Subsections (1) to (3) apply with the necessary modifications if the person under custodianship who is in an institution, a home or another establishment without being accommodated there is to be deprived of his liberty by mechanical devices, by medical drugs or in another way for a long period of time or regularly.

(5) The accommodation by an authorised person and the consent of an authorised person to measures under subsection (4) require that the power of attorney be granted in writing and expressly covers the measures set out in subsections (1) and (4). Apart from this, subsections (1) to (4) apply with the necessary modifications.

### **Section 1907**

Approval of the custodianship court on abandonment of rented home

(1) The custodian requires the approval of the custodianship court for the termination of a lease of residential space which the person under custodianship rented. The same applies to a declaration of intention that is directed to the termination of such a lease.

(2) Where other circumstances occur by reason of which the termination of the lease is taken into consideration, the custodian must notify the custodianship court of this without undue delay if his group of tasks includes the lease or the determination of residence. If the custodian wishes to abandon residential space of the person under custodianship in another way than by notice of termination or cancellation of a lease, he must notify this too without undue delay.

(3) The custodian requires the approval of the custodianship court for a lease or usufructuary lease or another contract by which the person under custodianship is obliged to make periodical payments if the contractual relationship is to last longer than four years or residential space is to be leased by the custodian.

### **Section 1908**

Approval of the custodianship court with regard to advancement

The custodian may promise or grant an advancement from the property of the person under custodianship only with the approval of the custodianship court.

### **Section 1908a**

Precautionary appointment of a custodian and order of reservation of consent for minors

Measures under sections 1896 and 1903 may also be made for a minor who is seventeen years of age if it can be assumed that they will be necessary when he is of full age. The measures take effect only when he reaches the age of majority.

### **Section 1908b**

#### Removal of the custodian

- (1) The custodianship court must remove the custodian if his suitability to care for the affairs of the person under custodianship is no longer guaranteed or there is another compelling reason for the removal. A compelling reason also exists if the custodian has intentionally issued an incorrect statement of costs. The court should remove the custodian appointed under section 1897 (6) if the person under custodianship can be cared for by one or more than one other persons outside the exercise of an occupation or profession.
- (2) The custodian may require his removal if after his appointment circumstances arise on the basis of which he can no longer be expected to conduct the custodianship.
- (3) The court may remove the custodian if the person under custodianship suggests an equally suitable person who is prepared to assume the custodianship.
- (4) The association custodian must also be removed if the association applies for this. If the removal is not necessary for the best interests of the person under custodianship, the custodianship court may instead declare, with the agreement of the custodian, that the custodian will continue the custodianship in future as a private person. Sentences 1 and 2 apply with the necessary modifications for the public authority custodian.
- (5) The association or the public authority is to be removed as soon as the person under custodianship can be adequately cared for by one or more than one natural persons.

### **Section 1908c**

#### Appointment of a new custodian

If the custodian dies or if he is removed, a new custodian is to be appointed.

### **Section 1908d**

#### Cancellation or alteration of custodianship and reservation of consent

- (1) The custodianship is to be cancelled if its requirements cease to be satisfied. If these requirements cease to be satisfied for only part of the tasks of the custodian, his group of tasks is to be restricted.
- (2) If the custodian was appointed at the application of the person under custodianship, the custodianship, on the application of that person, is to be cancelled, unless custodianship of the court's own motion is necessary. The application may also be made by a person incapable of contracting. Sentences 1 and 2 apply with the necessary modifications for the restriction of the group of tasks.
- (3) The group of tasks of the custodian is to be extended if this becomes necessary. The provisions on the appointment of the custodian apply here with the necessary modifications.
- (4) Subsections (1) and (3) apply to the reservation of consent with the necessary modifications.

### **Section 1908e**

(repealed)

### **Section 1908f**

Recognition as custodianship association

(1) An association having legal personality may be recognised as a custodianship association if it guarantees that it

1. has a sufficient number of suitable employees and will supervise and give further education to these and insure them appropriately for damage that they may cause to others in the course of their activity,
2. methodically endeavours to acquire voluntary custodians, introduces them to their tasks, gives them further education and advises them and authorised representatives,
- 2a. methodically gives information on enduring powers of attorney and custodianship orders,
3. enables an exchange of experience between the employees.

(2) The recognition applies for the relevant Land; it may be restricted to individual parts of a Land. It is revocable and may be given subject to conditions.

(3) Details are laid down in Land law. It may also provide further requirements for recognition.

(4) The recognised custodianship associations may, in the individual case, advise persons in the creation of an enduring power of attorney.

### **Section 1908g**

Public authority custodian

(1) No coercive fine under section 1837 (3) sentence 1 is imposed on a public authority custodian.

(2) The public authority custodian may also invest money of the person under custodianship under section 1807 in the corporation in which he is employed.

### **Section 1908h**

(repealed)

### **Section 1908i**

Provisions applicable with the necessary modifications

(1) Apart from this, the following sections apply with the necessary modifications to custodianship: section 1632 (1) to (3), sections 1784, 1787 (1), section 1791a (3) sentence 1 second half-sentence and sentence 2, sections 1792, 1795 to 1797 (1) sentence 2, sections 1798, 1799, 1802, 1803, 1805 to 1821, 1822 nos. 1 to 4 and 6 to 13, sections 1823 to 1826, 1828 to 1836, 1836c to 1836e, 1837 (1) to (3), sections 1839 to 1843, 1846, 1857a, 1888, 1890 to 1895. Law of a Land may lay down that provisions that relate to the supervision of the custodianship court with regard to property law and to the entering into of apprenticeship agreements and contracts of employment do not apply with respect to the competent authority.

(2) Section 1804 applies with the necessary modifications, but the custodian, in representation of the person under custodianship, may also give occasional presents if this is consistent with the wish of the person under custodianship and is customary in accordance with his standard of living. Section 1857a applies with the necessary modifications to the custodianship by the father, the mother, the spouse, the civil partner or a descendant of the person under custodianship and to the association custodian and the public authority custodian to the extent that the custodianship court does not direct otherwise.

### **Section 1908k**

(repealed)

### Title 3

#### **Curatorship**

##### **Section 1909**

###### Supplementary curatorship

- (1) A person who is subject to parental custody or guardianship is given a curator for matters which the parents or the guardian are prevented from carrying out. In particular, he is given a curator to manage the property that he acquires as a result of death or that is given to him free of charge inter vivos if the testator by testamentary disposition or the donor when making the disposition stipulated that the parents or the guardian were not to manage the property.
- (2) If a curatorship becomes necessary, the parents or the ward must notify this without undue delay to the family court.
- (3) The curatorship must also be ordered if the requirements for the ordering of a guardianship are satisfied but a guardian has not yet been appointed.

##### **Section 1910**

(repealed)

##### **Section 1911**

###### Curatorship of absentees

- (1) An absent person of full age whose abode is unknown is given a curator of absentees for his property matters to the extent that they require care. Such a curator must in particular also be appointed for him if he has made arrangements by giving a mandate or a power of attorney but circumstances have arisen that give reason to revoke the mandate or the power of attorney.
- (2) The same applies to an absentee whose abode is known but who is prevented from returning and from taking care of his property matters.

##### **Section 1912**

###### Curatorship for an unborn child

- (1) An unborn child is given a curator for the safeguarding of its future rights to the extent that these require care.
- (2) The care is, however, the right of the parents to the extent that they would have parental custody if the child had already been born.

##### **Section 1913**

###### Curatorship for unknown persons involved

If it is unknown or uncertain who is the person involved in a matter, then a curator may be appointed for the person for this matter to the extent that care is necessary. In particular, a subsequent heir who has not yet been conceived or whose identity is only to be established by a future event, may be given a curator for the time until the subsequent succession takes effect.

#### **Section 1914**

##### Curatorship for collected property

Where, by public collection, property has been collected for a temporary purpose, a curator may be appointed for the purpose of the management and application of the property if the persons named to manage and apply it are no longer available.

#### **Section 1915**

##### Application of guardianship law

(1) The curatorship is governed by the provisions applying to guardianship with the necessary modifications to the extent that the law does not lead to a different conclusion. Notwithstanding section 3 (1) to (3) of the Guardians and Custodians Payment Act [Vormünder- und Betreuervergütungsgesetz], the amount of a payment to be granted under section 1836 (1) is determined by the specialised knowledge of the curator that is useful for the curatorship business and by the scope and difficulty of the curatorship business, provided that the person subject to curatorship is not destitute. The custodianship court replaces the family court; this does not apply to curatorship for minors or for an unborn child.

(2) The appointment of a supervisory guardian is not necessary.

(3) Section 1793 (2) does not apply to curatorship for persons of full age.

#### **Section 1916**

##### Designation as supplementary curator

The curatorship to be ordered under section 1909 is not governed by the provisions on designation of guardianship.

#### **Section 1917**

##### Naming of the supplementary curator by testator and third parties

(1) If the order for a curatorship under section 1909 (1) sentence 2 is necessary, then whoever was named by testamentary disposition or at the time of the disposition is designated as curator; the provisions of section 1778 apply with the necessary modifications.

(2) For the person named curator, the exemptions set out in sections 1852 to 1854 may be ordered by testamentary disposition or at the time of the disposition. The family court may cancel the orders if they endanger the interest of the person under curatorship.

(3) For deviation from the directions of the donor, during his lifetime, his consent is necessary and sufficient. If he is permanently not in a position to make a declaration or his abode is permanently unknown, the family court may substitute the consent.



### **Section 1918**

Termination of the curatorship by operation of law

- (1) The curatorship for a person under parental custody or under guardianship ends on the termination of the parental custody or the guardianship.
- (2) The curatorship for an unborn child terminates on the birth of the child.
- (3) The curatorship to take care of a single matter terminates when the matter is completed.

### **Section 1919**

Cancellation of the curatorship on cessation of reason

The curatorship must be cancelled if the reason for the order of the curatorship has ceased to exist.

### **Section 1920**

(repealed)

### **Section 1921**

Cancellation of the curatorship of absentees

- (1) The curatorship for an absent person is to be cancelled when the absent person is no longer prevented from attending to his property matters.
- (2) If the absent person dies, the curatorship ends only when it is cancelled by the custodianship court. The custodianship court must cancel the curatorship if it obtains knowledge of the death of the absent person.
- (3) If the absent person is declared to be dead or if his date of death is determined under the provisions of the Missing Persons Act [Verschollenheitsgesetz], the curatorship ends when the order on the declaration of death or the determination of the time of death becomes final and absolute.

Book 5

## **Law of Succession**

Division 1

### **Succession**

#### **Section 1922**

Universal succession

(1) Upon the death of a person (devolution of an inheritance), that person's property (inheritance) passes as a whole to one or more than one other persons (heirs).

(2) The share of a co-heir (share of the inheritance) is governed by the provisions relating to inheritance.

#### **Section 1923**

Capacity to inherit

(1) Only a person who is alive at the time of the devolution of an inheritance may be an heir.

(2) A person who is not yet alive at the time of the devolution of an inheritance, but has already been conceived, is deemed to have been born before the devolution of an inheritance.

#### **Section 1924**

Heirs on intestacy of the first degree

(1) Heirs on intestacy of the first degree are the descendants of the deceased.

(2) A descendant living at the time of the devolution of an inheritance excludes the descendants related to the deceased through himself from the succession.

(3) If a descendant is no longer living at the time of the devolution of an inheritance, the descendants related to the deceased through him take his place (succession per stirpes).

(4) Children inherit in equal shares.

#### **Section 1925**

Heirs on intestacy of the second degree

(1) Heirs on intestacy of the second degree are the parents of the deceased and their descendants.

(2) If the parents are living at the time of the devolution of an inheritance, they inherit alone and in equal shares.

(3) If at the time of the devolution of an inheritance the father or the mother is no longer living, the place of the deceased parent is taken by his descendants under the provisions governing succession by heirs of the first degree. If there are no descendants, the surviving parent inherits alone.

(4) In the cases under section 1756, the adopted child and the descendants of the natural parents or of the other parent of the child are not heirs of the second degree in relation to each other.

### **Section 1926**

Heirs on intestacy of the third degree

- (1) Heirs on intestacy of the third degree are the grandparents of the deceased and their descendants.
- (2) If the grandparents are living at the time of the devolution of an inheritance, they inherit alone and in equal shares.
- (3) If the grandfather or the grandmother of one set of grandparents is no longer living at the time of the devolution of an inheritance, the place of the deceased grandparent is taken by his descendants. Where there are no descendants, the share of the deceased grandparent falls to the other grandparent and, if the other grandparent is no longer living, to the other grandparent's descendants.
- (4) If one set of grandparents are no longer living at the time of the devolution of an inheritance and there are no descendants of the deceased grandparents, the other grandparents or their descendants inherit alone.
- (5) To the extent that descendants take the place of their parents or more remote forebears, the provisions governing succession by heirs of the first degree apply.

### **Section 1927**

More than one share of the inheritance in the case of multiple relationship

If a person belongs to more than one stirps in the first, the second or the third degree, he receives the shares due to him in each of these stirpes. Each share is deemed to be a separate share of the inheritance.

### **Section 1928**

Heirs on intestacy of the fourth degree

- (1) Heirs on intestacy of the fourth degree are the great-grandparents of the deceased and their descendants.
- (2) If great-grandparents are living at the time of the devolution of an inheritance, they inherit alone; more than one inherit in equal shares, irrespective of whether they belong to the same line or different lines.
- (3) If great-grandparents are no longer living at the time of the devolution of an inheritance, the one of their descendants who is most closely related to the deceased by degree inherits; more than one equally closely related descendant inherit in equal shares.

### **Section 1929**

More distant degrees

- (1) Heirs on intestacy of the fifth degree and of the more distant degrees are the more distant forebears of the deceased and their descendants.
- (2) The provision of section 1928 (2) and (3) applies with the necessary modifications.

### **Section 1930**

Priority of the degrees

A relative is not entitled to inherit as long as a relative of a preceding degree survives.

### **Section 1931**

Right of intestate succession of the spouse

(1) The surviving spouse of the deceased as an heir on intestacy is entitled to one quarter of the inheritance together with relatives of the first degree, and to one half of the inheritance together with relatives of the second degree or together with grandparents. If there are both grandparents and descendants of grandparents living, the spouse also receives the share of the other half that under section 1926 would pass to the descendants.

(2) If there are relatives neither of the first nor of the second degree nor grandparents living, the surviving spouse receives the whole inheritance.

(3) The provision of section 1371 is unaffected.

(4) If at the time of the devolution of the inheritance there was separation of property and if one or two children of the deceased are entitled as heirs on intestacy together with the surviving spouse, the surviving spouse and each child inherit in equal shares; section 1924 (3) applies in this case too.

### **Section 1932**

Preferential benefit of the spouse

(1) If the surviving spouse is an heir on intestacy together with relatives of the second degree or together with grandparents, the spouse has a right, in addition to the shares of the inheritance, to the objects belonging to the marital household, to the extent that these are not accessories to a plot of land, and to the wedding presents, as a preferential benefit. If the surviving spouse is an heir on intestacy together with relatives of the first degree, the spouse has a right to these objects to the extent that he needs them to maintain a reasonable household.

(2) The preferential benefit is governed by the provisions applying to legacies.

### **Section 1933**

Exclusion of the right of succession of the spouse

The right of succession of the surviving spouse and the right to the preferential benefit are excluded if at the time of the death of the deceased the requirements for the dissolution by divorce of the marriage were satisfied and the deceased had petitioned for or consented to the divorce. The same applies if the deceased was entitled to petition for the annulment of the marriage and had filed the petition. In these cases, the spouse is entitled to maintenance under sections 1569 to 1586b.

#### **Section 1934**

Right of succession of spouse who is a relative

If the surviving spouse is one of the relatives entitled to inherit, he inherits at the same time as a relative. The share of the inheritance that passes to him by reason of the relationship is deemed to be a separate share of the inheritance.

#### **Section 1935**

Consequences of increase of share of the inheritance

If an heir on intestacy ceases to be an heir before or after the devolution of an inheritance, and if as a result of this the share of the inheritance of another heir on intestacy is increased, the proportion by which the share of the inheritance increases is deemed to be a separate share of the inheritance with regard to the legacies and testamentary burdens to which this heir or the heir who has ceased to be an heir is subject, and with regard to the duty to adjust advancements.

#### **Section 1936**

Right of intestate succession of the treasury

(1) If at the time of the devolution of the inheritance neither a relative, nor a civil partner, nor a spouse of the deceased is living, the treasury of the state [Bundesstaat] of which the deceased was a citizen at the time of his death is the heir on intestacy. If the deceased was a citizen of more than one state [Bundesstaat], the treasury of each of these states [Bundesstaat] is entitled to inherit in equal shares.

(2) If the deceased was a German who was not a citizen of any state [Bundesstaat], the [Reich] treasury is the heir on intestacy.

#### **Section 1937**

Appointment of heir by testamentary disposition

The deceased may appoint an heir by a unilateral disposition mortis causa (will, testamentary disposition).

#### **Section 1938**

Disinheritance without appointment of an heir

The deceased may by will exclude a relative, his spouse or his civil partner from intestate succession without appointing an heir.

#### **Section 1939**

Legacy

The deceased may by will give a material benefit to another person without appointing the other person as heir (legacy).

#### **Section 1940**

Testamentary burden

The deceased may by will oblige his heir or a legatee to perform an act without giving another person a right to the performance (testamentary burden).

## **Section 1941**

### Contract of inheritance

- (1) The deceased may appoint an heir and grant legacies and impose testamentary burdens by contract (contract of inheritance).
- (2) Both the other party to the contract and a third party may be appointed as an heir (contractual heir) or as a legatee.

### Division 2

## **Legal position of the heir**

### Title 1

## **Acceptance and disclaimer of the inheritance; supervision of the probate court**

### **Section 1942**

#### Devolution and disclaimer of the inheritance

- (1) The inheritance passes to the entitled heir irrespective of the right to disclaim it (devolution of the inheritance).
- (2) The treasury may not disclaim the inheritance that devolves on it as the heir on intestacy.

### **Section 1943**

#### Acceptance and disclaimer of the inheritance

The heir may no longer disclaim the inheritance if he has accepted it or if the period laid down for disclaimer has passed; on the expiry of the period, the inheritance is deemed to have been accepted.

### **Section 1944**

#### Period for disclaimer

- (1) Disclaimer may be made only within six weeks.
- (2) The period begins on the date on which the heir obtains knowledge of the devolution and of the reason for his entitlement. If the heir is entitled by a disposition mortis causa, the period does not begin before the notification of the disposition mortis causa by the probate court. The provisions of sections 206 and 210, governing limitation, apply with the necessary modifications to the running of the period.
- (3) The period is six months if the deceased had his last residence only abroad or if the heir is resident abroad at the beginning of the period.

### **Section 1945**

#### Form of disclaimer

(1) The disclaimer is made by a declaration to the probate court; the declaration must be made in the presence of and recorded by the probate court or in notarially certified form.

(2) The record of the probate court is made under the provisions of the Notarial Recording Act [Beurkundungsgesetz].

(3) An authorised representative must have a notarially certified power of attorney. The power of attorney must be enclosed with the declaration or submitted later within the disclaimer period.

### **Section 1946**

#### Date for acceptance or disclaimer

The heir may accept or disclaim the inheritance as soon as the devolution of the inheritance has occurred.

### **Section 1947**

#### Condition and stipulation as to time

The acceptance and the disclaimer may not be made subject to a condition or a stipulation as to time.

### **Section 1948**

#### More than one ground of entitlement

(1) A person who is entitled to inherit by disposition mortis causa may, if he would be entitled as an heir on intestacy without the disposition, disclaim the inheritance as an appointed heir and accept it as an heir on intestacy.

(2) A person who is entitled as heir by will and by contract of inheritance may accept the inheritance by reason of the one ground of entitlement and disclaim it for the other ground.

### **Section 1949**

#### Mistake as to the ground of entitlement

(1) Acceptance is deemed not to have been made if the heir was mistaken as to the ground of entitlement.

(2) In case of doubt, the disclaimer extends to all grounds of entitlement that are known to the heir at the time of the declaration.

### **Section 1950**

#### Partial acceptance; partial disclaimer

The acceptance and the disclaimer may not be limited to part of the inheritance. The acceptance or disclaimer of a part is ineffective.

### **Section 1951**

More than one share of the inheritance

- (1) A person who is entitled to more than one share of the inheritance may, if the entitlement is based on more than one ground, accept one share of the inheritance and disclaim the other.
- (2) Where the entitlement is based on the same ground, the acceptance or disclaimer of one share of the inheritance also applies to the other, even if the other devolves only later. The entitlement is based on the same ground even if it is directed in more than one will or by contract in more than one contract of inheritance entered into between the same persons.
- (3) If the deceased leaves an heir more than one share of the inheritance, he may permit the heir by disposition mortis causa to accept one share of the inheritance and disclaim the other.

### **Section 1952**

Inheritability of the right of disclaimer

- (1) The right of the heir to disclaim the inheritance is inheritable.
- (2) If the heir dies before the expiry of the period for disclaimer, the period does not end before the expiry of the period for disclaimer laid down for the inheritance of the heir.
- (3) Of more than one heir of the heir, each may disclaim the part of the inheritance corresponding to his share of the inheritance.

### **Section 1953**

Effect of disclaimer

- (1) If the inheritance is disclaimed, it is deemed that the inheritance did not devolve on those disclaiming.
- (2) The inheritance devolves on the person who would be entitled if the person disclaiming had not been alive at the time of the devolution of the inheritance; the devolution is deemed to have taken place simultaneously with the devolution of the inheritance.
- (3) The probate court should notify the disclaimer to the person on whom the inheritance has devolved as a result of the disclaimer. It must permit inspection by every person who credibly establishes a legal interest.



#### **Section 1954**

##### Period of avoidance

- (1) If the acceptance or the disclaimer may be avoided, the avoidance may be effected only within six weeks.
- (2) In the case of avoidance for duress, the period begins on the date on which the position of constraint ceases, and in the other cases on the date on which the person entitled to avoid obtains knowledge of the ground for avoidance. The running of the period is governed by the provisions applying to limitation of sections 206, 210 and 211 with the necessary modifications.
- (3) The period is six months if the deceased had his last residence only abroad or if the heir is resident abroad at the beginning of the period.
- (4) The avoidance is excluded if thirty years have passed since the acceptance or the disclaimer.

#### **Section 1955**

##### Form of avoidance

The avoidance of the acceptance or the disclaimer is made by declaration to the probate court. The declaration is governed by the provisions of section 1945.

#### **Section 1956**

##### Avoidance of failure to disclaim in good time

Failure to disclaim in good time may be avoided in the same way as acceptance.

#### **Section 1957**

##### Effect of avoidance

- (1) The avoidance of the acceptance is deemed to be a disclaimer; the avoidance of the disclaimer is deemed to be an acceptance.
- (2) The probate court should notify the avoidance of the disclaimer to the person on whom the inheritance devolved as a result of the disclaimer. The provision of section 1953 (3) sentence 2 applies.

#### **Section 1958**

##### Judicial assertion of claims against the heir

Before the acceptance of the inheritance, a claim directed against the estate may not be judicially asserted against the heir.

### **Section 1959**

Management before the disclaimer

(1) If the heir carries out transactions relating to the inheritance before the disclaimer, he has the rights and duties towards the person who becomes an heir of an agent without specific authorisation.

(2) Where the heir disposes of an object of the estate before the disclaimer, the effectiveness of the disposal is not affected by the disclaimer if it was not possible to postpone the disposal without detriment to the estate.

(3) A legal transaction that must be entered into with the heir as the heir remains effective even after the disclaimer if it is entered into before the disclaimer with the person disclaiming.

### **Section 1960**

Securing the estate; curator of the estate

(1) Until the inheritance is accepted, the probate court is to ensure that the estate is secured, to the extent that this is necessary. The same applies if the heir is unknown or if it is uncertain whether he has accepted the inheritance.

(2) The probate court may, in particular, order the attachment of seals, the deposit of money, securities and valuables and the drawing up of an estate inventory, and it may appoint a curator for the person who becomes heir (curator of the estate).

(3) The provision of section 1958 does not apply to the curator.

### **Section 1961**

Curatorship of the estate on application

In the cases of section 1960 (1), the probate court is to appoint a curator of the estate if the appointment is applied for by the person entitled for the purpose of judicially asserting a claim that is directed against the estate.

### **Section 1962**

Jurisdiction of the probate court

For the curatorship of the estate, the probate court takes the place of the family court or custodianship court.

### **Section 1963**

Maintenance for the mother-to-be of an heir

Where at the time of the devolution of the inheritance the birth of an heir is to be expected, the mother-to-be, if she is unable to maintain herself, may claim appropriate maintenance from the estate until the birth or, if other persons are also entitled as heirs, from the share of the inheritance of the child. When the share of the inheritance is calculated, it is to be assumed that only one child will be born.

#### **Section 1964**

Presumption that the treasury is heir

- (1) If the heir is not determined within a period appropriate to the circumstances, the probate court must determine that there is no existing heir other than the treasury.
- (2) The determination gives rise to the presumption that the treasury is the heir on intestacy.

#### **Section 1965**

Public invitation to notify the rights of succession

- (1) The determination must be preceded by a public invitation to notify the rights of succession, laying down a period for notification; the nature of the invitation and the length of the notification period are determined under the principles governing public notice procedure. The invitation may be omitted if the costs are disproportionately high with regard to the amount of the estate.
- (2) A right of succession is not taken into account if it is proved to the probate court within three months after the expiry of the notification period that the right of succession exists or that it has been asserted against the treasury in a legal action. If there has been no public invitation, the three-month period begins when the judicial invitation to prove the right of succession or the filing of the claim is made.

#### **Section 1966**

Legal position of the treasury before determination

A right may be asserted by the treasury as heir on intestacy and against the treasury as heir on intestacy only after the probate court has determined that no other heir exists.

## Title 2

### **Liability of the heir for the obligations of the estate**

#### Subtitle 1

#### **Obligations of the estate**

##### **Section 1967**

Liability of heir, obligations of the estate

- (1) The heir is liable for the obligations of the estate.
- (2) The obligations of the estate include, in addition to the debts of the deceased, the obligations borne by the heirs as such, in particular the obligations arising from rights to a compulsory portion, legacies and testamentary burdens.

##### **Section 1968**

Costs of funeral

The heir bears the costs of the funeral of the deceased.

##### **Section 1969**

Maintenance for thirty days

- (1) The heir has a duty in the first thirty days after the occurrence of the devolution of the inheritance to grant maintenance to family members of the deceased, if they belong to the household of the deceased and have been receiving maintenance from him at the time of his death, to the same extent as the deceased did and to permit them to use the home and the household objects. The deceased may by testamentary disposition make different arrangements.
- (2) The provisions on legacies apply with the necessary modifications.

#### Subtitle 2

### **Public notice to the creditors of the estate**

##### **Section 1970**

Notification of the claims

The creditors of the estate may be requested by way of public notice procedure to notify their claims.

##### **Section 1971**

Creditors not affected

Pledgees and creditors who are equivalent to pledgees in insolvency proceedings, and creditors who on execution of judgment against the immovable property have a right to satisfaction from this property are, insofar as it is a question of satisfaction from the objects subject to their claims, not affected by the public notice procedure. The same applies to creditors whose claims are secured by a priority notice or who have a right of separation of assets in the insolvency proceedings, with regard to the objects subject to their rights.

## **Section 1972**

### Rights not affected

Rights to a compulsory portion, legacies and testamentary burdens are not affected by the public notice, notwithstanding the provision in section 2060 no. 1.

## **Section 1973**

### Exclusion of creditors of the estate

(1) The heir may refuse the satisfaction of a creditor of the estate excluded in the public notice procedure to the extent that the estate is completely exhausted in the satisfaction of the creditors who are not excluded. However, the heir must satisfy the excluded creditor before the obligations arising from rights to compulsory portions, legacies and testamentary burdens unless the creditor asserts his claim only after the discharge of these obligations.

(2) The heir must return a surplus for the purpose of satisfying the creditor by way of execution of judgment under the provisions on the return of unjust enrichment. He may prevent the return of the objects of the estate still in existence by paying the value. The final and absolute judgment ordering the heir to satisfy an excluded creditor has the same effect with regard to another creditor as satisfaction.

## **Section 1974**

### Defence of withheld information

(1) A creditor of the estate who asserts his claim to the heir later than five years after the devolution of the inheritance is on the same footing as an excluded creditor, unless the claim became known to the heir before the expiry of the five years or was notified in the public notice procedure. If the deceased is declared to be dead or if his date of death is determined under the provisions of the Missing Persons Act [Verschollenheitsgesetz], the period does not begin before the order containing the declaration of death or the determination of the time of death becomes final and absolute.

(2) The obligation imposed on the heir under section 1973 (1) sentence 2 arises in the interrelationship of obligations under rights to a compulsory portion, legacies and testamentary burdens only to the extent that the creditor would have priority in the case of estate insolvency proceedings.

(3) To the extent that a creditor is, under section 1971, not affected by the public notice, the provisions of subsection 1 do not apply to him.

### Subtitle 3

#### **Restriction of the liability of the heir**

##### **Section 1975**

Administration of estate; estate insolvency

The liability of the heir for the obligations of the estate is restricted to the estate if curatorship is ordered in order to satisfy the creditors of the estate (administration of the estate) or estate insolvency proceedings are instituted.

##### **Section 1976**

Effect on legal relationships extinguished by merger

If administration of the estate has been ordered or estate insolvency proceedings have been instituted, the legal relationships extinguished on the devolution of the inheritance by merger of right and obligation or of right and encumbrance are deemed not to be extinguished.

##### **Section 1977**

Effect on a set-off

(1) If a creditor of the estate, before administration of the estate was ordered or before estate insolvency proceedings were instituted, set off without the approval of the heir his claim against a claim of the heir that does not form part of the estate, then after the administration of the estate is ordered or estate insolvency proceedings are instituted, the set-off is to be deemed not to have taken place.

(2) The same applies if a creditor who is not a creditor of the estate has set off his claim on the heir against a claim belonging to the estate.

##### **Section 1978**

Responsibility of the heir for previous administration, reimbursement of expenses

(1) If administration of the estate has been ordered or estate insolvency proceedings have been instituted, the heir is as responsible to the creditors of the estate for the previous management of the estate as if he had had to manage the estate for them as their agent from the date of acceptance of the inheritance on. The transactions relating to the inheritance carried out by the heir before the acceptance of the inheritance are governed by the provisions on agency without specific authorisation, with the necessary modifications.

(2) The claims of the creditors of the estate under subsection (1) are deemed to belong to the estate.

(3) Expenses are to be reimbursed to the heir from the estate to the extent that he could require reimbursement under the provisions on mandate or on agency without specific authorisation.

### **Section 1979**

#### Discharge of obligations of the estate

The discharge of an obligation of the estate by the heir must be treated by the creditors of the estate as having been made for the account of the estate if the heir in the circumstances was entitled to assume that the estate was sufficient to discharge all obligations of the estate.

### **Section 1980**

#### Application for institution of estate insolvency proceedings

(1) If the heir has obtained knowledge of the insolvency or overindebtedness of the estate, he must without undue delay apply for the institution of estate insolvency proceedings. If he infringes this duty, he is liable to the creditors for the damage resulting from this. In assessing the adequacy of the estate, the liabilities in the form of legacies and testamentary burdens are not taken into account.

(2) Ignorance arising from negligence is equivalent to knowledge of insolvency or overindebtedness. It is deemed in particular to be negligence if the heir does not apply for public notice for the creditors of the estate although he has reason to assume that there are unknown obligations of the estate; public notice is not necessary if the costs of the proceedings are disproportionately high in relation to the amount of the estate.

### **Section 1981**

#### Order of administration of the estate

(1) The administration of the estate must be ordered by the probate court if the heir applies for the order.

(2) The administration of the estate must be ordered on the application of a creditor of the estate if there is reason to assume that the satisfaction of the creditors of the estate from the estate is endangered by the conduct or the financial situation of the heir. The application may no longer be made if two years have passed since the acceptance of the inheritance.

(3) The provision of section 1785 does not apply.

### **Section 1982**

#### Refusal to order administration of the estate for insufficiency of assets

There may be a refusal to order administration of the estate if the assets are insufficient to pay the costs.

### **Section 1983**

#### Public notice

The probate court must publish the order of administration of the estate in the newspaper chosen for its notices.

### **Section 1984**

#### Effect of the order

(1) On the order of administration of the estate, the heir loses the authority to manage the estate and dispose of it. The provisions of sections 81 and 82 of the Insolvency Code [Insolvenzordnung] apply with the necessary modifications. A claim directed against the estate may be asserted only against the administrator of the estate.

(2) Execution of judgment against the estate and attachment of the estate in favour of a creditor who is not a creditor of the estate are excluded.

### **Section 1985**

#### Duties and liability of the administrator of the estate

(1) The administrator must manage the estate and discharge the obligations of the estate from the estate.

(2) The administrator is also responsible to the creditors of the estate for the management of the estate. The provisions of section 1978 (2) and sections 1979 and 1980 apply with the necessary modifications.

### **Section 1986**

#### Delivery of the estate

(1) The administrator may pay out the estate to the heir only when the known obligations of the estate have been discharged.

(2) Where the discharge of a liability is not possible at the time, or where a liability is disputed, the estate may be paid out only if security is provided to the creditor. The provision of security is not necessary for a conditional claim if the possibility of the condition being fulfilled is so remote that the claim does not have a current asset value.

### **Section 1987**

#### Payment of the administrator of the estate

The administrator may request appropriate payment for carrying out his office.

### **Section 1988**

#### End and cancellation of administration of the estate

(1) The administration of the estate ends on the institution of the estate insolvency proceedings.

(2) The administration of the estate may be cancelled if it is shown that the assets are insufficient to pay the costs.

### **Section 1989**

#### Defence by the heir of exhaustion of assets

If the estate insolvency proceedings are ended by distribution of the assets or by an insolvency plan, the liability of the heir is governed by the provision of section 1973 with the necessary modifications.



### **Section 1990**

Defence by the heir of insufficiency of assets

(1) If the order of administration of the estate or the institution of estate insolvency proceedings is not appropriate by reason of lack of sufficient assets to pay the costs, or if for this reason the administration of the estate is cancelled or the insolvency proceedings are suspended, the heir may refuse to satisfy a creditor of the estate to the extent that the estate is insufficient. In this case, the heir is obliged to deliver the estate for the purpose of satisfying the creditor by way of execution of judgment.

(2) The right of the heir is not excluded by the fact that the creditor, after the date of the devolution of the inheritance, by way of execution of judgment or enforcement of seizure or arrest, has obtained a pledge or a mortgage or, by way of interim injunction, a priority notice.

### **Section 1991**

Consequences of defence of insufficiency of assets

(1) If the heir exercises the right to which he is entitled under section 1990, his responsibility and the reimbursement of his expenses are governed by sections 1978 and 1979.

(2) The legal relationships extinguished as a result of the devolution of the inheritance by merger of right and obligation or of right and encumbrance are deemed in the relationship between the creditor and the heir not to be extinguished.

(3) The final and absolute judgment ordering the heir to satisfy a creditor has the same effect with regard to another creditor as satisfaction.

(4) The liabilities arising from rights to a compulsory share, legacies and testamentary burdens must be discharged by the heir in the same way as they would be satisfied in the case of insolvency proceedings.

### **Section 1992**

Overindebtedness as a result of legacies and testamentary burdens

If the overindebtedness of the estate results from legacies and testamentary burdens, the heir, even if the conditions of section 1990 are not satisfied, is entitled to effect the discharge of these liabilities under the provisions of sections 1990 and 1991. He may prevent the return of the objects of the estate still in existence by paying the value.

#### Subtitle 4

### **Filing of an inventory, unlimited liability of the heir**

#### **Section 1993**

##### Filing of an inventory

The heir is entitled to file a list of the estate (inventory) at the probate court (filing of an inventory).

#### **Section 1994**

##### Inventory period

(1) On the application of a creditor of the estate, the probate court must fix a period (inventory period) for the heir to file the inventory. After the expiry of the period, the heir has unlimited liability for the obligations of the estate, unless the inventory is filed before this.

(2) The applicant must credibly establish his claim. The effectiveness of the fixing of the period is unaffected if the claim does not exist.

#### **Section 1995**

##### Length of the period

(1) The inventory period should be at least one month and at most three months. It begins on the service of the order setting the period.

(2) If the period is fixed before the acceptance of the inheritance, it begins only on the acceptance of the inheritance.

(3) On the application of the heir, the probate court may, at its discretion, extend the period.

#### **Section 1996**

##### Fixing a new period

(1) If the heir has been prevented without his own fault from filing the inventory in good time, from applying for the extension of the inventory period where this is justified in the circumstances or from observing the two-week period specified in subsection 2, then on his application the probate court must fix a new inventory period for him.

(2) The application must be made within two weeks after the removal of the obstacle and at the latest before the expiry of one year after the end of the period first fixed.

(3) Before the decision, the creditor of the estate on whose application the first period was laid down should be heard if appropriate.

#### **Section 1997**

##### Suspension of the expiry of the period

The running of the inventory period and of the period of two weeks fixed in section 1996 (2) are governed by the provisions applying to limitation in section 210 with the necessary modifications.

### **Section 1998**

Death of the heir before expiry of the period

If the heir dies before the expiry of the inventory period or of the period of two weeks fixed in section 1996 (2), the period does not end before the expiry of the period laid down for disclaimer of the inheritance of the heir.

### **Section 1999**

Notice to the court

If the heir is subject to parental custody or to guardianship, the probate court should notify the family court of the fixing of the inventory period. If the matter relating to the estate falls under the tasks of a custodian, the family court is replaced by the custodianship court.

### **Section 2000**

Ineffectiveness of the fixing of the period

The fixing of an inventory period becomes ineffective if administration of the estate is ordered or estate insolvency proceedings are instituted. During the period of the administration of the estate or of the estate insolvency proceedings, an inventory period may not be fixed. If the estate insolvency proceedings are terminated by distribution of the insolvency estate or by an insolvency plan, the filing of an inventory is not necessary in order to avoid unlimited liability.

### **Section 2001**

Contents of the inventory

(1) The inventory should state in full the objects of the estate that are in existence at the date of the devolution of the inheritance and the obligations of the estate.

(2) In addition, the inventory should contain a description of the objects of the estate, to the extent that such is necessary to assess the value, and a statement of the value.

### **Section 2002**

Preparation of the inventory by the heir

The heir must call in a competent authority or a competent official or notary for the preparation of the inventory.

### **Section 2003**

Official preparation of the inventory

(1) On the application of the heir, the probate court must either prepare the inventory itself or entrust the preparation to a competent authority or a competent official or notary. The filing of the application preserves the inventory period.

(2) The heir is obliged to give the information that is necessary for the preparation of the inventory.

(3) The inventory is to be filed at the probate court by the authority, the official or the notary.

#### **Section 2004**

##### Reference to an existing inventory

Where an inventory complying with the provisions of sections 2002 and 2003 is already at the probate court, it is sufficient if the heir, before the expiry of the inventory period, declares to the probate court that the inventory is to be deemed to have been filed by himself.

#### **Section 2005**

##### Unlimited liability of the heir if the inventory is incorrect

(1) If the heir intentionally causes a substantial incompleteness of the statement of objects of the estate contained in the inventory, or if, with the intention to disadvantage the creditors of the estate, causes a non-existent obligation of the estate to be included, he has unlimited liability for the obligations of the estate. The same applies if, in the case of section 2003, he refuses to give the information or intentionally delays to a substantial degree in giving it.

(2) If the statement of the objects of the estate is incomplete but this is not a case of subsection (1), a new inventory period may be fixed for the heir to complete the statement.

#### **Section 2006**

##### Declaration in lieu of an oath

(1) At the request of a creditor of the estate, the heir must make a declaration in lieu of an oath, to be recorded by the probate court, that to the best of his knowledge he has stated the objects of the estate as fully as he can.

(2) Before filing the declaration in lieu of an oath, the heir may complete the inventory.

(3) If the heir refuses to make the declaration in lieu of an oath, he has unlimited liability to the creditor who made the application. The same applies if he appears neither at the hearing nor at a new hearing fixed at the application of the creditor, unless there is a reason that sufficiently justifies his non-appearance at this hearing.

(4) The same creditor or another creditor may request the declaration in lieu of an oath to be made again only if there is reason to assume that the heir learnt of the existence of further objects of the estate after making the statutory declaration.

#### **Section 2007**

##### Liability in the case of more than one share of the inheritance

If an heir is entitled to more than one share of the inheritance, his liability for the obligations of the estate with regard to each of the shares of the inheritance is determined in the same way as if the shares in the inheritance belonged to different persons. In the cases of accrual and of section 1935, this applies only if the shares of the inheritance are differently encumbered.

### **Section 2008**

Inventory for an inheritance that is part of marital property

(1) Where a spouse living under the regime of community of property is an heir and where the inheritance is part of the marital property, the fixing of the inventory period is effective only if it is also made towards the other spouse, if the other spouse manages the marital property alone or together with the first spouse. As long as the period has not expired with regard to the second spouse, it does not end with regard to the spouse who is the heir either. The filing of the inventory by the other spouse also benefits the spouse who is an heir.

(2) The provisions of subsection (1) also apply after the end of the community of property.

### **Section 2009**

Effect of filing of inventory

If the inventory is filed in good time, it is presumed in the relationship between the heir and the creditors of the estate that at the time of the devolution of the inheritance no further objects of the estate apart from those stated were in existence.

### **Section 2010**

Inspection of the inventory

The probate court must permit inspection of the inventory by every person who credibly establishes a legal interest.

### **Section 2011**

No inventory period for the treasury as heir

No inventory period may be fixed for the treasury as heir on intestacy. The treasury is obliged towards the creditors of the estate to supply information on the amount of the estate.

### **Section 2012**

No inventory period for the curator and administrator of the estate

(1) No inventory period may be fixed for a curator of the estate appointed under sections 1960 and 1961. The treasury is obliged towards the creditors of the estate to supply information on the amount of the estate. The curator may not waive the limitation of the liability of the heir.

(2) These provisions also apply to the administrator of the estate.

### **Section 2013**

Consequences of the unlimited liability of the heir

(1) If the heir has unlimited liability for the obligations of the estate, the provisions of sections 1973 to 1975, 1977 to 1980 and 1989 to 1992 do not apply; the heir is not entitled to apply for an order of administration of the estate. However, the heir may rely on a limitation of liability occurring under section 1973 or under section 1974 if the case of section 1994 (1) sentence 2 or of section 2005 (1) later arises.

(2) The provisions of sections 1977 to 1980 and the right of the heir to apply for an order of administration of the estate are not excluded by the fact that the heir has unlimited liability towards individual creditors of the estate.

Subtitle 5

### **Suspensive defences**

#### **Section 2014**

Defence within three months

The heir is entitled to refuse to discharge an obligation of the estate before the end of the first three months after the acceptance of the inheritance, but not past the date when the inventory is filed.

#### **Section 2015**

Defence of the public notice procedure

(1) If the heir has made the application for the initiation of the public notice procedure for the creditors of the estate within one year after the acceptance of the inheritance and if the application has been admitted, the heir is entitled to refuse to discharge an obligation of the estate before the end of the public notice procedure.

(2) (repealed)

(3) If the exclusory order is passed or the application for the order to be passed is rejected, the public notice procedure is not to be deemed as terminated until the order has gained legal force .

#### **Section 2016**

Exclusion of defences in the case of unlimited liability of the heir

(1) The provisions of sections 2014 and 2015 do not apply if the heir has unlimited liability.

(2) The same applies to the extent that a creditor under section 1971 is not affected by the public notice to the creditors of the estate, subject to the proviso that a right acquired only after the date of the devolution of the inheritance by way of execution of judgment or enforcement of seizure or arrest and a priority notice obtained only after this date by way of interim injunction are disregarded.

#### **Section 2017**

Beginning of the period of time in the case of curatorship of the estate

If, before the inheritance is accepted, a curator is appointed to manage the estate, the periods laid down in section 2014 and 2015 (1) commence on the date of the appointment.

### Title 3

#### **Claim to inheritance**

##### **Section 2018**

Duty of surrender of the possessor of the inheritance

The heir may request every person who, on the basis of a right of succession that he does not really have, has acquired something from the inheritance (possessor of the inheritance) to surrender the item or items acquired.

##### **Section 2019**

Direct substitution

(1) Items that the possessor of the inheritance acquires by legal transaction with means from the inheritance are also deemed to have been obtained from the inheritance.

(2) Only when the debtor obtains knowledge that a claim acquired in such a way is part of the inheritance must the debtor allow this to be asserted against him; the provisions of sections 406 to 408 apply with the necessary modifications.

##### **Section 2020**

Emoluments and fruits

The possessor of the inheritance must surrender to the heir the emoluments taken: the duty of surrender also relates to fruits whose ownership he has acquired.

##### **Section 2021**

Duty of surrender under principles of unjust enrichment

To the extent that the possessor of the inheritance is not able to surrender the emoluments, his obligation is governed by the provisions on the return of unjust enrichment.

##### **Section 2022**

Reimbursement of outlays and expenses

(1) The possessor of the inheritance is obliged to surrender the things belonging to the inheritance in return for reimbursement of all outlays only to the extent that the outlays are not covered by set-off against the enrichment to be returned under section 2021. The provisions of sections 1000 to 1003 applying to the claim to ownership apply.

(2) The outlays also include the expenses that the possessor of the inheritance incurs in paying charges on the inheritance or in discharging obligations of the estate.

(3) To the extent that the heir must make reimbursement to a greater extent for expenses that were not incurred in relation to individual things, in particular for the expenses set out in subsection (2), under the general provisions, this does not affect the claim of the possessor of the inheritance.

##### **Section 2023**

Liability after litigation is pending and for emoluments and outlays

(1) If the possessor of the inheritance is to surrender things belonging to the inheritance, then from the date when the matter becomes pending on the claim of the heir to damages for deterioration,

destruction or impossibility of surrender for another reason is governed by the provisions that apply to the relationship between the owner and the possessor from the date when the claim to ownership became pending.

(2) The same applies to the claim of the heir for surrender of or payment for emoluments and of the claim of the possessor of the inheritance to the reimbursement of outlays.

#### **Section 2024**

Liability with knowledge

If the possessor of the inheritance is not in good faith at the beginning of his possession of the inheritance, he is liable in the same way as if the claim of the heir had at this time become pending. If the possessor of the inheritance later discovers that he is not an heir, he is liable in the same way from the date when he obtained the knowledge. This does not affect a more extensive liability for default.

#### **Section 2025**

Liability in the case of tort

If the possessor of the inheritance has obtained an object of the inheritance through a criminal offence or has obtained a thing that is part of the inheritance through unlawful interference with possession, he is liable under the provisions on damages for torts. A possessor of the inheritance in good faith, however, is liable for unlawful interference with possession under these provisions only if the heir has already actually taken possession of the thing.

#### **Section 2026**

No reliance on acquisition by prescription

The possessor of the inheritance, as long as the claim to the inheritance is not statute-barred, may not rely as against the heir on the acquisition by prescription of a thing that he has in his possession as belonging to the inheritance.

#### **Section 2027**

Duty of information of the possessor of the inheritance

(1) The possessor of the inheritance is obliged to give the heir information on the amount of the inheritance and on the whereabouts of the objects of the inheritance.

(2) A person who, without being the possessor of the inheritance, takes possession of a thing from the estate before the heir has actually taken possession has the same obligation.



### **Section 2028**

Duty of information of occupant of house

(1) A person who, at the time of the devolution of the inheritance, lived in the same household as the deceased, is obliged to inform the heir on request what transactions relating to the inheritance he conducted and what he knows of the whereabouts of the objects of the inheritance.

(2) If there is reason to assume that the information was not given with the necessary care, the person obliged must, on the request of the heir, declare in lieu of an oath, to be recorded in writing, that he made his statements, to the best of his knowledge, as fully as he was able.

(3) The provisions of section 259 (3) and section 261 apply.

### **Section 2029**

Liability in the case of individual claims by the heir

The liability of the possessor of the inheritance with regard to the claims to which the heir is entitled with respect to the individual objects of the inheritance is also governed by the provisions on the claim to the inheritance.

### **Section 2030**

Legal position of the acquirer of the inheritance

A person who acquires the inheritance by contract from a possessor of the inheritance is, in relation to the heir, equivalent to a possessor of the inheritance.

### **Section 2031**

Claim of person declared dead for surrender

(1) If a person who is declared dead or the time of whose death is established under the provisions of the Missing Persons Act [Verschollenheitsgesetz] survives the date that is deemed to be the date of his death, the person may require the return of his property under the provisions governing the claim to inheritance. As long as the person is still alive, his claim does not become statute-barred before the expiry of a one-year period after the date on which he obtained knowledge of the declaration of death or of the determination of the time of death.

(2) The same applies if the death of a person has been wrongly assumed without a declaration of death or determination of the time of death.

#### Title 4

#### **More than one heir**

##### Subtitle 1

#### **Legal relationship of the heirs between themselves**

#### **Section 2032**

##### Community of heirs

(1) If the deceased leaves more than one heir, the estate becomes the joint property of the heirs.

(2) Until the partitioning, the provisions of section 2033 to 2041 apply.

#### **Section 2033**

##### Right of disposition of the co-heir

(1) Every co-heir may dispose of his share in the estate. The contract by which a co-heir disposes of his share must be notarially recorded.

(2) A co-heir may not dispose of his share in the individual objects of the estate.

#### **Section 2034**

##### Right of preemption as against seller

(1) If a co-heir sells his share to a third party, the other co-heirs have a right of preemption.

(2) The period for exercising the right of preemption is two months. The right of preemption is inheritable.

#### **Section 2035**

##### Right of preemption as against buyer

(1) If the share sold has been transferred to the buyer, the co-heirs may exercise against the buyer the right of preemption to which they are entitled under section 2034 against the seller. The right of preemption as against the seller expires upon the transfer of the share.

(2) The seller must inform the co-heirs of the transfer without undue delay.

#### **Section 2036**

##### Liability of buyer of share of the inheritance

Upon the transfer of the share to the co-heirs, the buyer is released from liability for the obligations of the estate. However, his liability continues to the extent that he is responsible to the creditors of the estate under sections 1978 to 1980; the provisions of sections 1990 and 1991 apply with the necessary modifications.

#### **Section 2037**

##### Resale of the share of the inheritance

If the buyer transfers the share to another person, the provisions of sections 2033, 2035 and 2036 apply with the necessary modifications.

### **Section 2038**

Joint management of the estate

(1) The heirs are jointly entitled to the management of the estate. Every co-heir is obliged to the others to cooperate in measures that are necessary for due management; the measures necessary for preservation may be undertaken by each co-heir without the cooperation of the others.

(2) The provisions of sections 743, 745, 746 and 748 apply. The division of the fruits does not take place until the partitioning. If the partitioning is excluded for more than one year, each co-heir may request the division of the net income at the end of every year.

### **Section 2039**

Estate claims

If a claim is part of the estate, the person obliged may perform only to all heirs jointly, and each co-heir may claim only performance to all heirs. Every co-heir may require that the person obliged deposit the thing to be surrendered for all heirs or, if it is not suitable for deposit, delivers it to a custodian to be appointed by the court.

### **Section 2040**

Disposal of objects of the estate, set-off

(1) The heirs may dispose of an object of the estate only jointly.

(2) If a claim is part of the estate, the debtor may not set off against it a claim he has against an individual co-heir.

### **Section 2041**

Direct substitution

Whatever is acquired under a right that is part of the estate or as compensation for the destruction, damage or removal of an object of the estate or by a legal transaction relating to the estate is part of the estate. A claim acquired by such a legal transaction is governed by the provision of section 2019

(2).

### **Section 2042**

Partitioning

(1) Every co-heir may at any time request the partitioning of the estate, unless sections 2043 to 2045 lead to a different conclusion.

(2) The provisions of section 749 (2) and (3) and of sections 750 to 758 apply.

### **Section 2043**

#### Postponement of partitioning

(1) To the extent that the shares of the inheritance are still undetermined because the birth of a co-heir is expected, the partitioning is excluded until the indeterminacy is removed.

(2) The same applies to the extent that the shares of the inheritance are still undetermined because the decision on an application for adoption, on the cancellation of the adoption relationship or on the recognition of a foundation created by the deceased as having legal personality is still outstanding.

### **Section 2044**

#### Exclusion of partitioning

(1) The deceased may by testamentary disposition exclude the partitioning with regard to the estate or individual objects of the estate or make it dependent on a notice period. The provisions of section 749

(2) and (3), and sections 750 and 751 and of section 1010 (1) apply with the necessary modifications.

(2) The testamentary disposition ceases to be effective if thirty years have passed since the date of the devolution of the inheritance. However, the testator may provide that the disposition is to remain effective until the occurrence of a particular event relating to the person of a co-heir or, if he provides for subsequent succession or a legacy, until the occurrence of the subsequent succession or until the devolution of the legacy. If the co-heir in relation to whom the event is to occur is a legal person, the thirty-year period applies.

### **Section 2045**

#### Postponement of partitioning

Every co-heir may require that the partitioning be postponed until the termination of the public notice procedure admissible under section 1970 or until the expiry of the notification period laid down in section 2061. Where the application for the initiation of the public notice procedure has not yet been filed or the public notice under section 2061 has not yet been issued, the postponement may be requested only if the application is made or the notice is issued without undue delay.

### **Section 2046**

#### Discharge of obligations of the estate

(1) The obligations of the estate are first to be discharged from the estate. If an obligation of the estate is not yet due or if it is disputed, the amount necessary to discharge the obligation must be kept back.

(2) If an obligation of the estate encumbers only a few co-heirs, they may request the discharge to be made only from the part of the estate that accrues to them in the partitioning.

(3) For the purpose of discharge, the estate, so far as necessary, is to be converted into money.

### **Section 2047**

Distribution of the surplus

(1) The surplus remaining after the discharge of the obligations of the estate is due to the heirs in the proportion of their shares of the inheritance.

(2) Documents relating to the personal circumstances of the deceased or of his family or to the whole estate remain joint property.

### **Section 2048**

Directions by the deceased for partitioning

The testator may by testamentary disposition give directions for the partitioning. He may in particular direct that the partitioning should be carried out by a third party exercising equitable discretion. The decision made by the third party on the basis of the direction is not binding on the heirs if it is evidently inequitable; the decision is made by judicial decision of a court in this case.

### **Section 2049**

Taking over of a farm

(1) If the deceased directed that one of the co-heirs is to have the right to take over a farm that is part of the estate, then in case of doubt it is to be assumed that the farm is to be reported at its income value.

(2) The income value is based on the net income that the farm, in accordance with its economic purpose to date, can give in the long term if properly managed.

### **Section 2050**

Duty to adjust advancements for descendants as heirs on intestacy

(1) Descendants who inherit as heirs on intestacy are obliged to have whatever they received from the deceased during his lifetime as an advancement adjusted in the partitioning between the heirs, unless the deceased directed otherwise when giving the advancement.

(2) Contributions that were given in order to be used as income, and expenses for training for an occupation, are to be adjusted to the extent that they exceeded the degree appropriate for the financial circumstances of the deceased.

(3) Other gifts inter vivos must be adjusted if the deceased directed adjustment when he made the gift.

### **Section 2051**

Duty to adjust advancements if a descendant does not inherit

(1) If a descendant who would be obliged to adjust advancements as an heir ceases to be an heir before or after the devolution of the inheritance, the gifts made to him must be adjusted by the descendant who takes his place.

(2) If the deceased appointed a substitute heir for the heir who ceases to be an heir, then in case of doubt it is to be assumed that the substitute heir should not receive more than the descendant would receive, taking into account the duty to adjust advancements.

### **Section 2052**

Duty to adjust advancements for descendants as heirs by will

If the deceased has appointed the descendants as heirs to what they would receive as heirs on intestacy, or if he has defined their shares of the inheritance in such a way that they have the same proportion to each other as the shares of the inheritance on an intestacy, then in case of doubt it is to be assumed that the descendants are to be obliged to adjust their advancements under sections 2050 and 2051.

### **Section 2053**

Gift to more remote or adopted descendant

(1) A gift that was received from the deceased by a more remote descendant before the closer descendant who excluded him from the succession ceased to be an heir, or by a descendant who took the place of a descendant as a substitute heir, is not to be adjusted unless the deceased directed adjustment when he made the gift.

(2) The same applies if a descendant received a gift from the deceased before attaining the legal position of a descendant.

### **Section 2054**

Gift from the marital property

(1) Half of a gift made from marital property under the community of property regime is deemed to have been made by each of the spouses. However, if the gift is made to one descendant who is descended from only one of the spouses, or if one of the spouses must reimburse the marital property for the gift, it is deemed to have been made by that spouse.

(2) These provisions apply with the necessary modifications to a gift made from marital property under continued community of property.

### **Section 2055**

Carrying out the adjustment

(1) When the inheritance is partitioned, the value of the gift that each co-heir has to have adjusted is counted towards the share of the inheritance of that co-heir. The value of all the gifts that are to be adjusted is added to the estate to the extent that the estate is due to the co-heirs among whom the adjustment takes place.

(2) The value is assessed according to the time at which the gift was made.

### **Section 2056**

Excess gifts

If a co-heir has received more in the gift than he would be entitled to on partitioning, he is not obliged to pay out the surplus. In such a case, the estate is divided between the other heirs in such a way that the value of the gift and the share of the inheritance of the co-heir are excluded from the adjustment.

## **Section 2057**

### Duty of information

Every co-heir is obliged, on request, to give the other co-heirs information on the gifts that he is to have adjusted under sections 2050 to 2053. The provisions of sections 260 and 261 on the obligation to make a declaration in lieu of an oath apply with the necessary modifications.

## **Section 2057a**

### Duty to adjust advancements in the case of special payments by one descendant

(1) A descendant who, as a result of work over a long period in the household, occupation or business of the deceased, of substantial financial contributions or in another way has to a particular degree contributed to the preservation or increase of the property of the deceased, may, in the partitioning, demand adjustment between the descendants who inherit as heirs on intestacy together with him; section 2052 applies with the necessary modifications. This also applies to a descendant who cared for the deceased for a long period, giving up employment income.

(2) An adjustment may not be demanded if appropriate payment was made or agreed for the work, or to the extent that the descendant, on account of his work, has a claim on another legal basis. It does not conflict with the duty to adjust advancements if the work was done under sections 1619 and 1620.

(3) The adjustment amount is to be assessed in such a way as is equitable with regard to the duration and scope of the work and to the value of the estate.

(4) In the partitioning, the adjustment amount is added to the share of the inheritance of the co-heir entitled to adjustment. All the adjustment amounts are deducted from the value of the estate, to the extent that this is due to the co-heirs among whom the adjustment takes place.

## Subtitle 2

### **Legal relationship between the heirs and the creditors of the estate**

#### **Section 2058**

##### Joint and several liability

The heirs are liable for the joint obligations of the estate as joint and several debtors.

#### **Section 2059**

##### Liability until division

(1) Until the division of the estate, each co-heir may refuse the discharge of the obligations of the estate from the property that he has apart from his share in the estate. If he has unlimited liability for an obligation of the estate, he does not have this right with regard to the part of the obligation that corresponds to his share of the inheritance.

(2) The right of the creditors of the estate to demand satisfaction from all the co-heirs from the undivided estate is unaffected.

#### **Section 2060**

##### Liability after division

After the division of the estate, each co-heir is liable only for the part of an obligation of the estate that corresponds to his share of the inheritance.

1. if the creditor is excluded in the public notice procedure; in this respect, the public notice also extends to the creditors set out in section 1972 and to the creditors towards whom the co-heir has unlimited liability;
2. if the creditor asserts his claim more than five years after the date determined in section 1974 (1), unless the claim became known to the co-heir before the expiry of the five-year period or was notified in the public notice procedure; the provision does not apply to the extent that the creditor under section 1971 is not affected by the public notice;
3. if estate insolvency proceedings have been instituted and have been terminated by distribution of the insolvency estate or by an insolvency plan.

#### **Section 2061**

##### Public notice to the creditors of the estate

(1) Every co-heir may publicly request the creditors of the estate to notify their claims within six months to him or to the probate court. If the public notice has been given, then after the division every co-heir is liable only for the part of a claim corresponding to his share of the inheritance, unless the claim was notified before the end of the period or he knows of the claim at the time of the division.

(2) The public notice must be published in the Federal Gazette [Bundesanzeiger] and by the newspaper selected for the notices of the probate court. The period begins on the last insertion. The costs are borne by the heir who issues the public notice.



## **Section 2062**

Application for administration of the estate

The order of the administration of the estate may be applied for only jointly by the heirs; it is excluded after the estate has been partitioned.

## **Section 2063**

Filing of an inventory, limitation of liability

(1) The filing of the inventory by a co-heir also works in favour of the other heirs, to the extent that their liability for the obligations of the estate is not unlimited.

(2) A co-heir may rely on the limitation of his liability in relation to the other heirs even if he has unlimited liability towards the other creditors of the estate.

Division 3

## **Will**

Title 1

### **General provisions**

#### **Section 2064**

Made in person

The testator may make a will only in person.

#### **Section 2065**

Determination by third parties

(1) The testator may not make a testamentary disposition in such a way that another person has to determine whether it should be effective or not.

(2) The testator may not leave to another person the specification of the person who is to receive a gift and the specification of the object of the gift.

#### **Section 2066**

Heirs on intestacy of the testator

If the testator has made provision for his heirs on intestacy without more precise identification, provision is made to the persons who would be his heirs on intestacy at the time of the devolution of the inheritance in accordance with the proportions of their shares of the inheritance on intestacy.

Where the gift is made subject to a condition precedent or together with the specification of a date of commencement, and where the condition is satisfied or the date occurs only after the devolution of the inheritance, then in case of doubt provision is to be seen as made to those persons who would be the heirs on intestacy if the testator had died at the time when the condition was satisfied or on the date of the commencement.

### **Section 2067**

#### Relatives of the testator

If the testator has made provision for his relatives or his next of kin without more precise identification, then in case of doubt provision is to be regarded as having been made to those relatives who would be his heirs on intestacy at the time of the devolution of the inheritance, in accordance with the proportions of their shares of the inheritance on intestacy. The provision of section 2066 sentence 2 applies.

### **Section 2068**

#### Children of the testator

If the testator has made provision for his children without more precise identification and if a child died before the making of the will, leaving descendants, then in case of doubt it is to be assumed that the provision has been made to the descendants to the extent that they would take the place of the child in intestate succession.

### **Section 2069**

#### Descendants of the testator

If the testator has made provision for one of his descendants and if after the will is made this descendant ceases to be an heir, then in case of doubt it is to be assumed that provision is made for this descendant's descendants to the extent that they would take his place in intestate succession.

### **Section 2070**

#### Descendants of a third party

Where the testator has made provision for the descendants of a third party without more precise identification, then in case of doubt it is to be assumed that provision is not made for the descendants who have not been conceived at the time of the devolution of the inheritance or, if the gift is made subject to a condition precedent or together with the specification of a date of commencement and the condition is satisfied or the date occurs only after the devolution of the inheritance, at the time when the condition is satisfied or on the date of the commencement.

### **Section 2071**

#### Group of persons

If the testator has made provision, without more precise identification, for a class of persons or for persons who have an employment or business relationship with him, then in case of doubt it is to be assumed that provision is made for those who at the time of the devolution of the inheritance belong to the class stated or are in the stated relationship.

### **Section 2072**

The poor

If the testator has made provision, without more precise identification, for the poor, then in case of doubt it is to be assumed that provision is made to the public poor relief fund of the community in whose district he had his last residence, subject to the testamentary burden that it must distribute the gift among poor persons.

### **Section 2073**

Ambiguous designation

If the testator has designated the person provided for in a way that applies to more than one person, and if it cannot be determined which of them was to be provided for, they are regarded as provided for in equal shares.

### **Section 2074**

Condition precedent

Where the testator has made a testamentary gift subject to a condition precedent, then in case of doubt it is to be assumed that the gift is only to be made if the person provided for is living at the date when the condition is satisfied.

### **Section 2075**

Condition subsequent

Where the testator has made a testamentary gift subject to the condition that the person provided for refrains from doing or continues to do something for an indefinite period, then, if the ceasing or continuing is purely at the discretion of the person provided for, in case of doubt it is to be assumed that the gift is to be dependent on the condition subsequent that the person provided for undertakes the action or refrains from it.

### **Section 2076**

Condition for the benefit of a third party

If the condition subject to which a testamentary gift is made is intended to benefit a third party, then in case of doubt it is held to have been satisfied if the third party refuses the cooperation necessary to satisfy it.

### **Section 2077**

Ineffectiveness of testamentary dispositions on dissolution of marriage or engagement

(1) A testamentary disposition in which the testator has made provision for his spouse is ineffective if the marriage was dissolved before the testator's death. It is equivalent to dissolution of marriage if at the time of the death of the testator the requirements for divorce were satisfied and the testator had petitioned for divorce or consented to it. The same applies if the deceased at the time of his death was entitled to petition for the annulment of the marriage and had filed the petition.

(2) A testamentary disposition in which the testator has made provision for the person to whom he is engaged is ineffective if the engagement was dissolved before the testator's death.

(3) The disposition is not ineffective if it is to be assumed that the testator would have made it even in such a case.

### **Section 2078**

Avoidance for mistake or duress

(1) A testamentary disposition may be avoided to the extent that the testator was mistaken as to the contents of his declaration or had no intention whatsoever of making a declaration with these contents and it is to be assumed that if he had known the situation he would not have made the declaration.

(2) The same applies to the extent that the testator was induced to make the disposition by the mistaken assumption or expectation that a circumstance would occur or not occur, or was unlawfully induced by duress.

(3) The provision of section 122 does not apply.

### **Section 2079**

Avoidance for omission of a person entitled to a compulsory portion

A testamentary disposition may be avoided if the testator has omitted a person entitled to a compulsory portion who is in existence at the time of the devolution of the inheritance, the existence of whom was unknown to the testator when he made the testamentary disposition or who was born or became entitled to a compulsory portion only after the making of the testamentary disposition.

Avoidance is excluded to the extent that it is to be assumed that the testator would have made the disposition even if he had known the circumstances.

### **Section 2080**

#### Person entitled to avoid

- (1) The person who would be directly benefited by the cancellation of the testamentary disposition is entitled to avoid it.
- (2) Where, in the cases of section 2078, the mistake relates only to a particular person and where this person is entitled to avoid or would be entitled to avoid if he had been alive at the time of the devolution of the inheritance, no other person is entitled to avoid.
- (3) In the case of section 2079, only the person entitled to a compulsory portion is entitled to avoid.

### **Section 2081**

#### Declaration of avoidance

- (1) The avoidance of a testamentary disposition that appoints an heir, excludes an heir on intestacy from succession, appoints an executor or cancels a disposition of such a kind is effected by a declaration made to the probate court.
- (2) The probate court should communicate the declaration of avoidance to the person who is directly benefited by the disposition avoided. It must permit inspection by every person who credibly establishes a legal interest.
- (3) The provision of subsection 1 also applies to the avoidance of a testamentary disposition that does not create a right for another person, in particular to the avoidance of a testamentary burden.

### **Section 2082**

#### Period of avoidance

- (1) The avoidance may be made only within one year.
- (2) The period begins on the date on which the person entitled to avoidance obtains knowledge of the ground of avoidance. The running of the period is governed by the provisions applying to limitation of sections 206, 210 and 211 with the necessary modifications.
- (3) The avoidance is excluded if thirty years have passed since the devolution of the inheritance.

### **Section 2083**

#### Defence of voidability

If a testamentary disposition that creates an obligation to perform is voidable, the person with the obligation may refuse performance, even if avoidance is excluded under section 2082.

### **Section 2084**

#### Interpretation favouring effectiveness

If the contents of a testamentary disposition permit more than one interpretation, then in case of doubt preference is to be given to the interpretation under which the disposition may be effective.

### **Section 2085**

#### Partial ineffectiveness

The ineffectiveness of one of a number of dispositions contained in a will results in the ineffectiveness of the other dispositions only if it is to be assumed that the testator would not have made them without the ineffective disposition.

### **Section 2086**

#### Reservation of right to make addition

If a testamentary disposition contains the reservation of a right to make an addition but the addition has not been made, the disposition is effective unless it is to be assumed that its effectiveness was intended to be dependent on the addition.

#### Title 2

### **Appointment of heirs**

#### **Section 2087**

##### Gift of property, of fraction of property or of individual objects

(1) If the testator has given his property or a fraction of his property to the person provided for, the disposition is to be regarded as the appointment of an heir even if the person provided for is not described as an heir.

(2) If the person provided for has been given only individual objects, then in case of doubt it is not to be assumed that he is intended to be an heir, even if he is described as an heir.

#### **Section 2088**

##### Appointment to fractions

(1) If the testator has appointed only one heir and has restricted the appointment to a fraction of the inheritance, the remainder of the inheritance passes under the rules of intestate succession.

(2) The same applies if the testator has appointed more than one heir, restricting each of them to a fraction, and the fractions do not exhaust the whole.

#### **Section 2089**

##### Increase of the fractions

Where the appointed heirs, by the will of the testator, are to be the only heirs, then, if each of them inherits a fraction of the inheritance and the fractions do not exhaust the whole, the fractions are proportionately increased.

#### **Section 2090**

##### Reduction of the fractions

If each of the appointed heirs is appointed to a fraction of the inheritance and the fractions exceed the whole, a proportionate reduction of the fractions takes place.

### **Section 2091**

#### Undetermined fractions

If more than one heir is appointed without the shares of the inheritance being determined, they are appointed in equal shares, unless sections 2066 to 2069 lead to a different conclusion.

### **Section 2092**

#### Partial appointment to fractions

(1) If, of more than one heir, some are appointed to fractions and the others without fractions, the latter receive the part of the inheritance that remains.

(2) If the determined fractions exhaust the inheritance, there is a proportionate reduction of the fractions in such a way that each of the heirs appointed without a fraction receives as much as the heir appointed to the smallest fraction.

### **Section 2093**

#### Joint share of the inheritance

If more than one of several heirs is appointed to one and the same fraction of the inheritance (joint share of the inheritance), then with regard to the joint share of the inheritance the provisions of sections 2089 to 2092 apply with the necessary modifications.

### **Section 2094**

#### Accrual

(1) If more than one heir is appointed in such a way that they exclude intestate succession, and if one of the heirs ceases to be an heir before or after the date of the devolution of the inheritance, the share of the inheritance of that heir accrues to the other heirs in proportion to their shares of the inheritance. If some of the heirs are appointed to a joint share of the inheritance, the accrual is first effected between them.

(2) If the appointment of an heir disposes of only part of the inheritance and if intestate succession applies with regard to the remainder, then accrual takes place between the appointed heirs only to the extent that they are appointed to a joint share of the inheritance.

(3) The testator may exclude the accrual.

### **Section 2095**

#### Accrued share of the inheritance

The share of the inheritance that passes to an heir through accrual is deemed to be a separate share of the inheritance with regard to the legacies and testamentary burdens with which this heir or the heir who ceased to be heir is encumbered and with regard to the duty to adjust advancements.

### **Section 2096**

#### Substitute heir

The testator may, to provide for the case where an heir ceases to be heir before or after the date of the devolution of the inheritance, appoint another person as heir (substitute heir).

### **Section 2097**

Rule of interpretation in the case of substitute heir

If a person is appointed substitute heir for the case where the heir first appointed cannot be heir or for the case where the heir first appointed does not wish to be heir, then in case of doubt it is to be assumed that he is appointed for both cases.

### **Section 2098**

Mutual appointment as substitute heir

(1) If the heirs are appointed mutually or if for one of them the others are appointed as substitute heirs, then in case of doubt it is to be assumed that they are appointed substitute heirs in the proportion of their shares of the inheritance.

(2) If the heirs are appointed mutually as substitute heirs, then in case of doubt heirs who are appointed to a joint share of the inheritance take priority over the others as substitute heirs for this share of the inheritance.

### **Section 2099**

Substitute heir and accrual

The right of the substitute heir takes priority over the right of accrual.

Title 3

## **Appointment of a subsequent heir**

### **Section 2100**

Subsequent heir

The testator may appoint an heir in such a way that the person only becomes an heir after another heir has first been heir (subsequent heir).

### **Section 2101**

Subsequent heir not yet conceived

(1) If a person not yet conceived at the time of the devolution of the inheritance is appointed heir, then in case of doubt it is to be assumed that the person is appointed as subsequent heir. If it does not reflect the intention of the testator that the person appointed should be subsequent heir, the appointment is ineffective.

(2) The same applies to the appointment of a legal person that comes into existence only after the devolution of the inheritance; the provision of section 84 is unaffected.

### **Section 2102**

Subsequent heir and substitute heir

(1) The appointment as a subsequent heir, in case of doubt, also contains the appointment as a substitute heir.

(2) If it is doubtful whether a person is appointed substitute heir or subsequent heir, he is deemed to be a substitute heir.



### **Section 2103**

Order to surrender the inheritance

If the testator has directed that the heir, on a particular date or on the occurrence of a particular event, is to surrender the inheritance to another person, then it is to be assumed that the other person is appointed subsequent heir.

### **Section 2104**

Heirs on intestacy as subsequent heirs

Where the testator has directed that the heir is to be heir only until a particular date or the occurrence of a particular event, without providing who is then to receive the inheritance, then it is to be assumed that the persons appointed as subsequent heirs are those who would be the heirs on intestacy of the testator if he had died on the date or at the time of the occurrence of the event. The treasury is not one of the heirs on intestacy within the meaning of this provision.

### **Section 2105**

Heirs on intestacy as prior heirs

(1) If the testator has directed that the appointed heir is to receive the inheritance only on a particular date or on the occurrence of a particular event, without determining who is to be heir until that date, then the heirs on intestacy of the testator are the prior heirs.

(2) The same applies if the identity of the heir is to be established by an event that occurs only after the devolution of the inheritance or if the appointment of a person who has not yet been conceived at the time of the devolution of the inheritance or a legal person that is not yet in existence at this time as an heir under section 2101 is to be regarded as the appointment of a subsequent heir.

### **Section 2106**

Occurrence of subsequent succession

(1) If the testator has appointed a subsequent heir without determining the time of the event at or on which the subsequent succession is to occur, the inheritance accrues to the subsequent heir on the death of the prior heir.

(2) If the appointment of a person not yet conceived as an heir is to be regarded under section 2101

(1) as the appointment of a subsequent heir, the inheritance accrues to the subsequent heir on his birth. In the case of section 2101 (2), the accrual occurs on the creation of the legal person.

### **Section 2107**

Childless prior heir

If the testator has determined a subsequent heir for the time after the death of a descendant who at the time when the testamentary disposition is made has no descendants or of whom the testator does not know at this time that he has a descendant, then it is to be assumed that the subsequent heir is appointed only for the case where the descendant remains without issue.

### **Section 2108**

Capacity to inherit; inheritability of the subsequent succession

- (1) The provision of section 1923 applies to the subsequent succession with the necessary modifications.
- (2) If the appointed subsequent heir dies before the circumstances giving rise to subsequent succession occur, but after the date of the devolution of the inheritance, then his right passes to his heirs, unless it is to be assumed that the testator intended otherwise. If the subsequent heir is appointed subject to a condition precedent, the provision of section 2074 applies.

### **Section 2109**

End of effectiveness of subsequent succession

- (1) The appointment of a subsequent heir becomes ineffective at the end of a period of thirty years after the devolution of the inheritance, if the circumstances giving rise to subsequent succession do not occur before this time. It remains effective even after this time
  1. if subsequent succession is directed for the case where a particular event occurs in relation to the prior heir or to the subsequent heir and the person in relation to whom the event is to occur is living at the time of the devolution of the inheritance,
  2. if it is provided that , if a brother or a sister is born to the prior heir or to a subsequent heir, the brother or the sister is his the subsequent heir.
- (2) If the prior heir or the subsequent heir in relation to whose person the event is to occur is a legal person, the thirty-year period applies.

### **Section 2110**

Scope of the right of subsequent succession

- (1) The right of the subsequent heir extends, in case of doubt, to a share of the inheritance that accrues to the prior heir as the result of a co-heir ceasing to be heir.
- (2) The right of the subsequent heir does not extend, in case of doubt, to a preferential legacy given to the prior heir.

### **Section 2111**

#### Direct substitution

(1) The inheritance includes whatever the prior heir acquires on the basis of a right that is part of the inheritance or as compensation for the destruction, damage or removal of an object of the inheritance or by legal transaction with funds from the inheritance, unless the acquisition is due to him as emoluments. Only when the debtor obtains knowledge that a claim acquired by legal transaction is part of the inheritance must the debtor allow this to be asserted against him; the provisions of sections 406 to 408 apply with the necessary modifications.

(2) The inheritance also includes what the prior heir introduces into the inventory of a plot of land that is part of the inheritance.

### **Section 2112**

#### Right of disposal of the prior heir

The prior heir may dispose of the objects belonging to the inheritance except insofar as the provisions in sections 2113 to 2115 lead to a different conclusion.

### **Section 2113**

#### Dispositions of plots of land, ships and ships under construction; gifts

(1) The disposition by the prior heir of a plot of land or right in a plot of land that is part of the inheritance or of a registered ship or ship under construction that is part of the inheritance is, in the case where subsequent succession occurs, ineffective to the extent that it would defeat or adversely affect the right of the subsequent heir.

(2) The same applies to the disposition of an object of the inheritance that is made free of charge or for the purpose of fulfilling the promise of a gift made by the prior heir. An exception applies to donations that are made to comply with a moral duty or to show consideration to decency.

(3) The provisions in favour of those who derive rights from an unauthorised person apply with the necessary modifications.

### **Section 2114**

#### Dispositions of mortgage claims, land charges and annuity land charges

If a mortgage claim, a land charge, an annuity land charge or a ship's mortgage claim is part of the inheritance, the prior heir has the right of termination and seizure. However, the prior heir may require only that the capital be paid to him and the consent of the subsequent heir is provided or that it is deposited for himself and the subsequent heir. Other dispositions of the mortgage claim, the land charge, the annuity land charge or the ship's mortgage claim are governed by the provisions of section 2113.

### **Section 2115**

Dispositions in execution of judgment against prior heir

A disposition of an object of the inheritance that is effected by way of execution of judgment or enforcement of seizure or arrest or by the administrator in insolvency proceedings is, in the case where the subsequent succession occurs, ineffective to the extent that it would defeat or adversely affect the right of the subsequent heir. The disposition is effective without restriction if the claim of a creditor of the estate or a right existing in an object of the inheritance is asserted and this right is effective as against the subsequent heir in the case where subsequent succession commences.

### **Section 2116**

Deposit of securities

(1) At the request of the subsequent heir, the prior heir must deposit the bearer instruments that are part of the inheritance together with the renewal coupons with a depositary institution or with the [Reichsbank], with the [Deutsche Zentralgenossenschaftskasse] or with the [Deutsche Girozentrale] [(Deutsche Kommunalbank)] subject to the condition that surrender may be required only with the approval of the subsequent heir. The deposit of bearer instruments that under section 92 are consumable things, and of interest, annuity or dividend coupons may not be demanded. Instruments made out to order and endorsed in blank are equivalent to bearer instruments.

(2) The prior heir may dispose of the deposited instruments only with the approval of the subsequent heir.

### **Section 2117**

Change of registration; conversion

The prior heir may, instead of depositing the bearer instruments under section 2116, have them registered in his name subject to the condition that he may dispose of them only with the approval of the subsequent heir. If the instruments are issued by the Federal Government or by a Land, he may have them converted, subject to the same condition, into registered claims against the Federal Government.

### **Section 2118**

Blocking note in debt ledger

If registered claims against the Federal Government or a Land are part of the inheritance, the prior heir is obliged, at the request of the subsequent heir, to have a note entered in the debt ledger that he may dispose of the claims only with the approval of the subsequent heir.

### **Section 2119**

Investment of money

Money that is to be invested in the long-term under the rules of proper management may be invested by the prior heir only under the provisions applying to the investment of money held in trust for a ward.

### **Section 2120**

#### Duty of subsequent heir to consent

If, for proper management, in particular in order to discharge obligations of the estate, a disposition is necessary that the prior heir may not make with effect against the subsequent heir, then the subsequent heir has a duty to the prior heir to grant his consent to the disposition. On request, the consent must be declared in notarially certified form. The costs of the certification are borne by the prior heir.

### **Section 2121**

#### List of objects of inheritance

(1) On request, the prior heir must give the subsequent heir a list of the objects that are part of the inheritance. The list must state the date when it was drawn up and be signed by the prior heir; on request, the prior heir must have his signature notarially certified.

(2) The subsequent heir may require that he be involved in drawing up the list.

(3) The prior heir is entitled, and on the request of the subsequent heir obliged, to have the list drawn up by the competent authority or by a competent official or notary.

(4) The costs of drawing up the list and certifying it are borne by the inheritance.

### **Section 2122**

#### Determination of the condition of the inheritance

The prior heir may have the condition of the things that are part of the inheritance determined by experts at his own cost. The subsequent heir has the right to do this too.

### **Section 2123**

#### Economic plan

(1) If a forest is part of the inheritance, both the prior heir and the subsequent heir may require that the degree of use and the nature of the economic treatment be laid down in an economic plan. If a substantial change of circumstances occurs, each party may require a corresponding change of the economic plan. The costs are borne by the inheritance.

(2) The same applies if a mine or another installation designed to extract components of the ground is part of the inheritance.

### **Section 2124**

#### Costs of maintenance

(1) The prior heir bears the customary cost of maintenance towards the subsequent heir.

(2) The prior heir may pay from the inheritance other expenses that he is permitted to regard in the circumstances as necessary for the purpose of preserving objects of the inheritance. If he pays them from his own property, then the subsequent heir is obliged to reimburse him in the case where subsequent succession occurs.

### **Section 2125**

Outlays; right to remove

(1) If the prior heir makes outlays in relation to the inheritance that do not fall under the provision of section 2124, then the subsequent heir, in the case where subsequent succession occurs, is obliged to reimburse under the provisions on agency without specific authorisation.

(2) The prior heir is entitled to remove an installation with which he has provided a thing that is part of the inheritance.

### **Section 2126**

Extraordinary burdens

The prior heir is not obliged, in relation to the subsequent heir, to bear the extraordinary burdens, which are to be regarded as charged on the original value of the objects of the inheritance. These burdens are governed by the provision in section 2124 (2).

### **Section 2127**

Right to information of subsequent heir

The subsequent heir is entitled to require information from the prior heir on the condition of the inheritance if there is reason to assume that the prior heir is substantially injuring the rights of the subsequent heir by his management.

### **Section 2128**

Provision of security

(1) If the conduct of the prior heir or his unfavourable financial situation give rise to the concern that there may be a substantial injury to the rights of the subsequent heir, the subsequent heir may require the provision of security.

(2) The provisions of section 1052 applying to the obligation of the usufructuary to provide security apply with the necessary modifications.

### **Section 2129**

Effect of deprivation of management

(1) If the prior heir is deprived of the management under the provision of section 1052, he loses the right to dispose of objects of the inheritance.

(2) The provisions in favour of those who derive rights from an unauthorised person apply with the necessary modifications. For the claims that are part of the inheritance, the deprivation of management is effective towards the debtor only if he obtains knowledge of the order made or if a notification of the order is served on him. The same applies to the termination of the deprivation.

### **Section 2130**

Duty to surrender after the occurrence of subsequent succession, duty to render account

(1) The prior heir is obliged, after the occurrence of subsequent succession, to surrender the inheritance to the subsequent heir in the condition that results from a continued proper management until the date of the surrender. The surrender of an agricultural plot of land is governed by the provision of section 596a, and the surrender of a farm is governed by the provisions of sections 596a and 596b with the necessary modifications.

(2) On request, the prior heir must render an account.

### **Section 2131**

Scope of duty of care

With regard to the management, the prior heir owes the subsequent heir only the care that he customarily exercises in his own affairs.

### **Section 2132**

No liability for ordinary wear and tear

The prior heir is not responsible for alterations or deteriorations of things of the inheritance that are caused by proper use.

### **Section 2133**

Improper or excessive taking of fruits

If the prior heir takes fruits contrary to the rules of proper management, or if he takes fruits in excess because this has become necessary as a result of a particular event, he is only entitled to the value of the fruits to the extent that the fruits due to him are adversely affected by the improper or excessive taking of fruits, and the value of the fruits is not to be used to restore the thing under the rules of proper management.

### **Section 2134**

Own use

If the prior heir has used an object of the inheritance for himself, then after subsequent succession begins he is obliged to the subsequent heir to reimburse the value. This does not affect a more extensive liability for fault.

### **Section 2135**

Lease and usufructuary lease in subsequent succession

Where a prior heir has leased a plot of land or registered ship on a lease or a usufructuary lease that is part of the inheritance, then, if the lease or usufructuary lease still exists at the date when subsequent succession occurs, the provision of section 1056 applies with the necessary modifications.

### **Section 2136**

Release of the prior heir

The testator may release the prior heir from the restrictions and obligations of section 2113 (1) and sections 2114, 2116 to 2119, 2123, 2127 to 2131, 2133 and 2134.

### **Section 2137**

Rule of interpretation for the release

(1) If the testator has appointed the subsequent heir to what will remain of the inheritance when subsequent succession occurs, the release of all restrictions and obligations set out in section 2136 is deemed to have been ordered.

(2) The same is to be assumed in case of doubt if the testator has provided that the prior heir is to be entitled to dispose freely of the inheritance.

### **Section 2138**

Restricted obligation to surrender

(1) The obligation to surrender of the prior heir is restricted in cases of section 2137 to the objects of the estate that he still has. He may not require reimbursement of outlays on objects that under this restriction he does not have to surrender.

(2) If the prior heir, contrary to the provision of section 2113 (2), has disposed of an object of the estate or if he has reduced the inheritance with the intention of disadvantaging the subsequent heir, he is liable in damages to the subsequent heir.

### **Section 2139**

Effect of occurrence of subsequent succession

When the situation giving rise to subsequent succession occurs, the prior heir ceases to be heir and the inheritance passes to the subsequent heir.

### **Section 2140**

Dispositions of the prior heir after occurrence of subsequent succession

Even after the situation giving rise to subsequent succession occurs, the prior heir is still entitled to dispose of objects of the estate to the same extent as previously, until he obtains knowledge of the occurrence of subsequent succession or ought to have knowledge. A third party cannot rely on this right if, when he undertakes a transaction, he knows of the occurrence or ought to know.

### **Section 2141**

Maintenance for the mother-to-be of a subsequent heir

If, when the circumstances giving rise to subsequent succession occur, the birth of a subsequent heir is expected, then the claim to maintenance of the mother is governed by the provision of section 1963 with the necessary modifications.

### **Section 2142**

Disclaimer of subsequent succession

(1) The subsequent heir may disclaim the inheritance as soon as the devolution of the inheritance has occurred.

(2) If the subsequent heir disclaims the inheritance, it remains with the prior heir, unless otherwise provided by the testator.



### **Section 2143**

Restoration of extinguished legal relationships

If subsequent succession occurs, the legal relationships extinguished on the devolution of the inheritance by merger of right and obligation or of right and encumbrance are deemed not to be extinguished.

### **Section 2144**

Liability of the subsequent heir for the obligations of the estate

- (1) The provisions on the restriction of the liability of the heir for the obligations of the estate also apply to the subsequent heir; the place of the estate is taken by what the subsequent heir receives of the inheritance, including the claims he has against the prior heir as such.
- (2) The inventory filed by the prior heir also benefits the subsequent heir.
- (3) The subsequent heir may rely on the limitation of his liability in relation to the prior heir even if he has unlimited liability in relation to the other creditors of the estate.

### **Section 2145**

Liability of the prior heir for the obligations of the estate

- (1) After the occurrence of subsequent succession, the prior heir is still liable for the obligations of the estate to the extent that the subsequent heir is not liable. The liability also continues in existence for those obligations of the estate that in the relationship between the prior heir and the subsequent heir are borne by the prior heir.
- (2) After the occurrence of the subsequent succession, the prior heir may refuse the discharge of the obligations of the estate, unless he has unlimited liability, to the extent that what he is owed from the inheritance is not sufficient. The provisions of sections 1990 and 1991 apply with the necessary modifications.

### **Section 2146**

Duty of prior heir to notify creditors of the estate

- (1) The prior heir has a duty to the creditors of the estate to notify the occurrence of subsequent succession without undue delay to the probate court. The notice of the subsequent heir takes the place of the notice of the prior heir.
- (2) The probate court must allow any person who can credibly establish a legal interest to inspect the notification.

## Title 4

### Legacies

#### Section 2147

Person charged with a legacy

The heir or a legatee may be charged with a legacy. Unless the testator provides otherwise, the heir is charged.

#### Section 2148

More than one person charged with a legacy

If more than one heir or more than one legatee is charged with the same legacy, then in case of doubt the heirs are charged in proportion to their shares of the inheritance, and the legatees in proportion to the value of their legacies.

#### Section 2149

Legacy for heirs on intestacy

If the testator has provided that an object of the estate is not to pass to the appointed heir, the object is deemed to be left to the heirs on intestacy. The treasury is not one of the heirs on intestacy within the meaning of this provision.

#### Section 2150

Preferential legacy

A legacy given to an heir (preferential legacy) is deemed to be a legacy even if the heir is charged himself.

#### Section 2151

Right to decide of the person charged or of a third person in the event of more than one person provided for

- (1) The testator may give a legacy to more than one person in such a way that the person charged or a third person must decide which of the plurality of persons is to receive the legacy.
- (2) The decision of the person charged is made by declaration to the person who is to receive the legacy; the decision of the third person is made by declaration to the person charged.
- (3) If the person charged or the third person is unable to make a decision, the persons provided for are joint and several creditors. The same applies if, upon application by one of the persons concerned, the probate court specifies a period for the person charged or the third person to make the declaration and the period has passed, unless the declaration is made before then. The person receiving the legacy is, in case of doubt, not obliged to divide the legacy.

#### Section 2152

Choice of persons provided for

If the testator has given a legacy to more than one person in such a way that only one or the other is to receive the legacy, it is to be presumed that the person charged is to decide which of them is to receive the legacy.

### **Section 2153**

#### Determination of shares

(1) The testator may give a legacy to more than one person in such a way that the person charged or a third person has to determine what each person is to receive from the object of the legacy. The determination is made in accordance with section 2151 (2).

(2) If the person charged or the third person is unable to make the decision, then the persons provided for are entitled to equal shares. The provision of section 2151 (3) sentence 2 applies with the necessary modifications.

### **Section 2154**

#### Optional legacy

(1) The testator may direct that a legacy be granted in such a way that the person provided for is only to receive one or the other of more than one object. If in such a case the choice is transferred to a third person, it is made by declaration to the person charged.

(2) If the third person is unable to make the choice, the right to choose passes to the person charged. The provision of section 2151 (3) sentence 2 applies with the necessary modifications.

### **Section 2155**

#### General legacy

(1) If the testator has specified the thing bequeathed only by class, a thing commensurate with the circumstances of the person provided for is to be given.

(2) If the person provided for or a third party is entrusted with the specification of the thing, the provisions set out in section 2154, governing the third party's choice, apply.

(3) If the specification made by the person provided for or the third person is evidently not commensurate with the circumstances of the person provided for, the person charged has to execute the legacy as if the testator had not given any directions concerning the specification of the thing.

### **Section 2156**

#### Legacy for a special purpose

When the testator makes a legacy whose purpose he has specified, the testator may leave the determination of the performance of the legacy to the reasonable discretion of the person charged or of a third party. The provisions of sections 315 to 319 apply with the necessary modifications to such a legacy.

### **Section 2157**

#### Joint legacy

If the same object is left to more than one person, the provisions of sections 2089 to 2093 apply with the necessary modifications.

### **Section 2158**

#### Accrual

(1) Where the same object is left to more than one person, then if one of them ceases to be a person provided for before or after the devolution of the inheritance, his share accrues to the other persons provided for in proportion to their shares. This applies even if the testator has specified the shares of the persons provided for. If some of the persons provided for are entitled to the same share, accrual occurs among these persons first.

(2) The testator may exclude the accrual.

### **Section 2159**

#### Independence of the accrual

A share that devolves on a legatee by accrual is, with regard to the legacies and the testamentary burdens with which such legatee or the legatee ceasing to be a legatee is charged, deemed to be a separate legacy.

### **Section 2160**

#### Prior death of person provided for

A legacy is ineffective if the person provided for is no longer alive at the time of the devolution of the inheritance.

### **Section 2161**

#### Where the person charged does not inherit

A legacy remains effective, unless it is to be assumed that the testator intended otherwise, if the person charged does not become heir or legatee. In this case, the person charged is the person who benefits directly when the person originally charged does not inherit.

### **Section 2162**

#### Thirty-year period for a suspended legacy

(1) A legacy that is created subject to a condition precedent or with the specification of a commencement date becomes ineffective at the end of a thirty-year period after the devolution of the inheritance, if the condition has not been satisfied or the date has not arrived before then.

(2) If the person provided for has not yet been conceived at the time of the devolution of the inheritance, or if his identity is established by an event that does not happen until after the devolution of the inheritance, then the legacy becomes ineffective at the end of a thirty-year period after the devolution of the inheritance, unless before then the person provided for is conceived or the event that determines his identity has occurred.

### **Section 2163**

#### Exceptions to the thirty-year period

(1) In the cases of section 2162, a legacy remains effective even after the expiry of thirty years:

1. if it has been granted in case a particular event occurs in respect of the person charged or the person provided for, and the person or person provided for concerning whom the event is to occur is alive at the time of the devolution of the inheritance;
2. if an heir, a subsequent heir or a legatee is charged with a legacy in favour of his brother or sister in the event that such a brother or sister is born.

(2) If the person charged or the person provided for with regard to whom the event is to occur is a legal person, the period of thirty years applies.

### **Section 2164**

#### Extension to accessories and claims to compensation

(1) The legacy of a thing extends, in case of doubt, to the accessories existing at the time of the devolution of the inheritance.

(2) If the testator has a claim to compensation for the reduction in value, as a result of damage to the thing after the legacy has been created, the legacy extends, in case of doubt, to this claim.

### **Section 2165**

#### Charges

(1) If an object belonging to the inheritance is bequeathed, the legatee may not, in case of doubt, demand the discharge of the rights with which the object is charged. If the testator is entitled to the discharge, then in case of doubt the legacy extends to this claim.

(2) If a plot of land bequeathed is subject to a mortgage, land charge or annuity land charge to which the testator himself is entitled, it is to be inferred from the circumstances whether the mortgage, land charge or annuity land charge is to be deemed a bequeathed with the land.

### **Section 2166**

#### Charge with a mortgage

(1) If a bequeathed plot of land that is part of the inheritance is charged with a mortgage for a debt of the testator, or for a debt which the testator is obliged to the debtor to settle, the legatee is, in case of doubt, obliged in relation to the heir to satisfy the creditor in good time to the extent that the debt is met by the value of the plot of land. The value is determined according to the date on which the ownership passes to the beneficiary; it is calculated by deducting the charges that have priority over the mortgage.

(2) If a third party is obliged in relation to the testator to settle the debt, the obligation of the legatee exists, in case of doubt, only to the extent that the heir cannot require the third party to effect the discharge.

(3) A mortgage of the kind described in section 1190 is not governed by these provisions.

### **Section 2167**

#### Charge with a blanket mortgage

If, in addition to the bequeathed plot of land, other plots of land belonging to the inheritance are encumbered with the mortgage, the obligation of the legatee specified in section 2166 is, in case of doubt, restricted to the part of the debt that corresponds to the value of the bequeathed plot of land in proportion to the value of all the plots of land. The value is calculated under section 2166 (1) sentence 2.

### **Section 2168**

#### Charge with a blanket land charge

(1) If a blanket land charge or a blanket annuity land charge exists over more than one plot of land belonging to an inheritance and if one of these plots of land has been bequeathed, the beneficiary is, in case of doubt, obliged in relation to the heir to satisfy the creditor to the amount of the share of the land charge or the annuity land charge which is proportional to the value that the bequeathed plot of land has compared to the value of all of the plots of land. The value is calculated under section 2166 (1) sentence 2.

(2) Where, in addition to the bequeathed plot of land, a plot of land not belonging to the inheritance is encumbered with a blanket land charge or blanket annuity land charge, the provisions of section 2166 (1) and of section 2167 apply with the necessary modifications, if at the time of the devolution of the inheritance the testator is obliged, in relation to the owner of the other plot of land, or a predecessor in title of the owner, to satisfy the creditor.

### **Section 2168a**

Application to ships, ships under construction and ship mortgages

Section 2165 (2) and sections 2166 and 2167 apply with the necessary modifications to registered ships, ships under construction and to ship mortgages.

### **Section 2169**

Legacy of foreign objects

(1) The legacy of a specific object is ineffective to the extent that the object, at the time of the devolution of the inheritance, does not belong to the inheritance, unless the object is to be bequeathed to the person provided for even in the event that it does not belong to the inheritance.

(2) If the testator only had the bequeathed thing in his possession, its possession is, in case of doubt, deemed to be bequeathed, unless it does not grant any legal advantage to the person provided for.

(3) If the testator is entitled to a claim to the delivery of the bequeathed object or, if the object was destroyed or taken away from the testator after directions were given concerning the legacy, or to the reimbursement of its value, the claim is, in case of doubt, deemed to be bequeathed.

(4) An object does not belong to the inheritance within the meaning of subsection (1), if the testator is obliged to sell it.

### **Section 2170**

Legacy to be procured

(1) If the legacy of an object which does not belong to the inheritance at the time of devolution is effective in accordance with section 2169 (1), the person charged must procure the object for the person provided for.

(2) If the person charged is unable to procure the object, he must pay the value thereof. If the procurement is possible only at disproportionate costs, the person charged can release himself by paying the value.

### **Section 2171**

Impossibility, statutory prohibition

(1) A legacy that is directed at an act of performance that at the time of devolution is impossible for everyone or infringes a statutory prohibition existing at this time is ineffective.

(2) The validity of the legacy is not precluded by the impossibility of performance, if the impossibility can be rectified and the legacy is to be bequeathed in the event that performance becomes possible.

(3) Where a legacy which is impossible of performance is bequeathed subject to another condition precedent or to commence from a given date, the legacy is valid if the impossibility is rectified before the fulfilment of the condition or the arrival of the date.

### **Section 2172**

Combination, intermixture, mingling of the bequeathed thing

(1) The delivery of a bequeathed thing is also deemed to be impossible if the thing is combined, intermixed or mingled with another thing in such a way that pursuant to sections 946 to 948 the ownership of the other thing extends to it, or co-ownership has arisen, or if it has been processed or transformed in such a manner that pursuant to section 950 the person who produced the new thing has become the owner.

(2) Where the combination, intermixture or mingling is carried out by a person other than the testator and where the testator has acquired co-ownership in this way, co-ownership is, in case of doubt, deemed to be bequeathed; if the testator is entitled to a right to take away the combined thing, this right is, in case of doubt, deemed to be bequeathed. In the case of processing or transformation by a person other than the testator, the provision of section 2169 (3) remains applicable.

### **Section 2173**

Claim as a legacy

If the testator has bequeathed a claim due to him, then, if the claim is settled before the devolution of the inheritance, and if the object delivered is still in existence as part of the inheritance, it is to be presumed, in case of doubt, that this object is to be bequeathed to the person provided for. If the claim was for the payment of a sum of money, then in case of doubt the appropriate amount of money is deemed to be bequeathed, even if such a sum of money is not available in the inheritance.

### **Section 2174**

Claim arising under a legacy

A legacy creates a right for the person provided for to demand delivery of the bequeathed object from the person charged.

### **Section 2175**

Restoration of extinguished legal relationships

If the testator has bequeathed a claim that he has against the heir, or if he has bequeathed a right with which a thing or a right of the heir is charged, the legal relationships extinguished by the merger of a right and an obligation or of a right and a charge as a result of the devolution of the inheritance are deemed not to have been extinguished in relation to the legacy.

### **Section 2176**

Devolution of the legacy

The claim of the legatee comes into existence (devolution of the legacy) on the devolution of the inheritance, notwithstanding the right to disclaim the legacy.



### **Section 2177**

Devolution in the event of a condition or a time limit

If a legacy has been created subject to a condition precedent or with the specification of a commencement date, and if the condition is satisfied or the date arrives only after the devolution of the inheritance, the devolution of the legacy occurs on the satisfaction of the condition or on the arrival of the date.

### **Section 2178**

Devolution in the event of a person provided for not yet conceived or determined

If a person provided for has not yet been conceived at the time of the devolution of the inheritance, or if his identity is to be established by an event occurring only after the devolution of the inheritance, the devolution of the legacy occurs on the date of birth in the former case, on the occurrence of the event in the latter case.

### **Section 2179**

Period of suspense

For the time between the devolution of the inheritance and the devolution of the legacy, the cases set out in sections 2177 and 2178 are governed by the provisions applying to a case where an act of performance is owed subject to a condition precedent.

### **Section 2180**

Acceptance and disclaimer

- (1) The legatee can no longer disclaim the legacy after he has accepted it.
- (2) The acceptance and the disclaimer of the legacy are made by declaration to the person charged. The declaration may be made only after the devolution of the inheritance; it is ineffective if it is made subject to a condition or a stipulation as to time.
- (3) The provisions of section 1950, section 1952 (1) and (3) and section 1953 (1) and (2), governing the acceptance or disclaimer of an inheritance, apply with the necessary modifications.

### **Section 2181**

Discretionary due date

If the time to execute the legacy is left to the free discretion of the person charged therewith, then in case of doubt performance becomes due on the death of the person charged.

### **Section 2182**

#### Warranty for legal defects

(1) If a thing specified only by class is bequeathed, the person charged has the same obligations as a seller under the provisions set out in section 433 (1) sentence 1 and sections 436, 452 and 453. He must procure the thing for the legatee free of legal defects within the meaning of section 435. Section 444 applies with the necessary modifications.

(2) In case of doubt, the same applies if a particular object which does not belong to the inheritance is bequeathed, notwithstanding the limitation of liability following from section 2170.

(3) If a plot of land is the object of the legacy, then in case of doubt the person charged therewith is not responsible for the freedom of the plot of land from easements, restricted personal easements and charges on land.

### **Section 2183**

#### Warranty for material defects

Where a thing specified only by class is bequeathed, then if the thing delivered is defective, the legatee may demand that he be given a thing free from defects instead of the defective thing. If the person charged has fraudulently concealed a material defect, the legatee may demand damages for nonperformance in lieu of delivery of a thing free from defects. The provisions governing the warranty for defects in a thing sold apply with the necessary modifications to these claims.

### **Section 2184**

#### Fruits and emoluments

If a particular object belonging to the inheritance is bequeathed, the person charged is also to deliver to the legatee the fruits taken after the devolution of the legacy and whatever else he has acquired by reason of the bequeathed right. The person charged is not obliged to make compensation for emoluments that are not part of the fruits.

### **Section 2185**

#### Reimbursement of outlays and expenses

If a specific thing belonging to the inheritance is bequeathed, the person charged may demand compensation under the provisions that govern the relationship between the possessor and the owner for the outlays made on the thing after the devolution of the inheritance and for expenses he incurred after the devolution of the inheritance to pay the charges on the thing.

### **Section 2186**

#### Due date of sublegacy or testamentary burden

If a legatee is charged with a legacy or a testamentary burden, he is not obliged to perform the legacy or testamentary burden until he is entitled to demand the performance of the legacy bequeathed to him.

### **Section 2187**

#### Liability of the main legatee

(1) A legatee who is charged with a legacy or a testamentary burden may refuse to perform the legacy bequeathed to him even after it has been accepted to the extent that whatever he has received from the legacy is insufficient for performance.

(2) If, under section 2161, another person takes the place of the charged legatee, this person does not have greater liability than the legatee would have.

(3) The provisions of section 1992, governing the liability of the heir, apply with the necessary modifications.

### **Section 2188**

#### Reduction of the charges

If the performance due to a legatee is reduced on the basis of the limitation of the liability of the heir, on the basis of a claim to a compulsory share or under section 2187, the legatee may, unless it is to be assumed that the testator intended otherwise, reduce the charges imposed on him in the same proportion.

### **Section 2189**

#### Directions concerning priority

To provide for the situation where the legacies and testamentary burdens imposed on the heir or a legatee are reduced by reason of the limitation of the liability of the heir, as a result of a claim to a compulsory share, or under sections 2187 and 2188, the testator may direct by disposition mortis causa that a legacy or a testamentary burden is to have priority over the other charges.

### **Section 2190**

#### Substitute legatee

If the testator has bequeathed the object of the legacy to another in the case where the original person provided for does not acquire it, the provisions of section 2097 to 2099, governing appointment of a substitute heir, apply with the necessary modifications.

### **Section 2191**

#### Subsequent legatee

(1) Where a testator bestows a bequeathed object on a third party at a particular time or upon an event occurring after the devolution of the legacy, the first legatee is deemed to be charged.

(2) The provisions of sections 2102, 2106 (1), 2107 and of section 2110 (1), governing the appointment of a subsequent heir, apply to the legacy with the necessary modifications.

## Title 5

### **Testamentary burden**

#### **Section 2192**

##### Applicable provisions

A testamentary burden is governed, with the necessary modifications, by the provisions set out in sections 2065, 2147, 2148, 2154 to 2156, 2161, 2171 and 2181 that apply to testamentary gifts.

#### **Section 2193**

##### Appointment of the beneficiary, period for fulfilment

(1) The testator, upon making a testamentary burden whose purpose of which he has specified, can leave it to the person charged or to a third party to determine the person to whom performance is to be rendered.

(2) Where the person charged has the right of determination, and where he has been ordered by a final judgment to fulfil the testamentary burden, the plaintiff may specify a reasonable period of time for him to fulfil the testamentary burden; after the expiry of the period of time the plaintiff is entitled to make the determination if the fulfilment is not effected in good time.

(3) If a third party has the right of determination, it is exercised by declaration to the person charged. If the third person is unable to make such a determination, the right of determination passes to the person charged. The provision under section 2151 (3) sentence 2 applies with the necessary modifications; those concerned within the meaning of this provision include the person charged and those entitled to demand the fulfilment of the testamentary burden.

#### **Section 2194**

##### Claim for fulfilment

The fulfilment of a testamentary burden may be demanded by an heir, a co-heir and any person who would directly benefit from the end of the involvement of the person initially charged with the testamentary burden. If the fulfilment is in the public interest, the public authority responsible may also demand fulfilment.

#### **Section 2195**

##### Relationship between testamentary burden and gift

The ineffectiveness of a testamentary burden results in the ineffectiveness of the gift made under the testamentary burden only if it is to be presumed that the testator would not have made the gift without the testamentary burden.

## **Section 2196**

Impossibility of fulfilment

(1) Where the fulfilment of a testamentary burden becomes impossible as a result of a circumstance for which the person charged is responsible, the person who would benefit directly if the person initially charged ceases to be involved may, in accordance with the provisions on the return of unjust enrichment, demand the delivery of the gift to the extent that this gift should have been used to fulfil the testamentary burden.

(2) The same applies if the person charged has been ordered by a final and absolute judgment to fulfil a testamentary burden which cannot be executed by a third person and the admissible enforcement measures have been applied to him without success.

Title 6

## **Executor**

### **Section 2197**

Appointment of an executor

(1) A testator may appoint one or more executors by will.

(2) The testator may appoint another executor to provide for the event that the appointed testator ceases to be an executor before or after acceptance of the office.

### **Section 2198**

Determination of the executor by a third person

(1) The testator may leave the determination of the person to act as executor to a third party. The determination is made by declaration to the probate court; the declaration must be submitted in officially certified form.

(2) The right of determination of the third party is extinguished on the expiry of a period specified for him by the probate court upon application by one of the persons concerned.

### **Section 2199**

Appointment of co-executor or successor

(1) The testator may authorise the executor to appoint one or more co-executors.

(2) The testator may authorise the executor to appoint a successor.

(3) The appointment is made in accordance with section 2198 (1) sentence 2.

### **Section 2200**

Appointment by the probate court

(1) If the testator, in the will, has requested the probate court to appoint an executor, the probate court may make the appointment.

(2) The probate court should, before making this appointment, hear the persons concerned if this can be done without any significant delay and without disproportionate costs.

### **Section 2201**

#### Ineffectiveness of the appointment

The appointment of the executor is ineffective if, at the time when he is to enter upon office, he is incapable of contracting or has limited capacity to contract or has been given a custodian to attend to his property affairs under section 1896.

### **Section 2202**

#### Acceptance and refusal of office

(1) The office of the executor begins at the time when the appointed person accepts the office.

(2) The acceptance and the refusal of the office is made by declaration to the probate court. The declaration may be made only after the devolution of the inheritance; it is ineffective if it is made subject to a condition or a stipulation as to time.

(3) The probate court may, on application by one of the persons concerned, specify a period for the person appointed to declare whether or not he will accept the office. On the expiry of the period the office is deemed to have been refused unless the acceptance thereof is declared before then.

### **Section 2203**

#### Task of the executor

The executor must execute the testamentary dispositions of the testator.

### **Section 2204**

#### Partitioning of the estate between co-heirs

(1) The executor must, if there is more than one heir, effect a partitioning of the estate among them in accordance with sections 2042 to 2056.

(2) The executor must hear the heirs on the scheme of partitioning prior to the execution thereof.

### **Section 2205**

#### Administration of the estate, power of disposal

The executor must administer the estate. In particular, he is entitled to take possession of the estate and to dispose of the objects of the estate. He is entitled to make gratuitous dispositions only to the extent that they are made to discharge a moral obligation or from consideration for common decency.

### **Section 2206**

#### Incurring obligations

(1) An executor is entitled to incur obligations on behalf of the estate to the extent that it is necessary to incur them for the proper administration thereof. If the executor is entitled to dispose of an object of the estate, he may also incur an obligation on account of the estate.

(2) The heir is obliged to grant his consent to the incurring of such obligations, notwithstanding his right to assert the limitation of his liability for the obligations of the estate.

### **Section 2207**

#### Extended authority

The testator may direct that the executor is not to be restricted in incurring obligations on account of the estate. Even in such a case, the executor is entitled to make a promise of donation only in compliance with section 2205 sentence 3.

### **Section 2208**

#### Limitation of the rights of the executor, execution by the heir

(1) The executor does not have the rights specified in sections 2203 to 2206 to the extent that it is to be presumed that the testator did not intend that he should have them. If only individual objects of the estate are subject to the administration of the executor, he is entitled to the powers specified in section 2205 sentence 2 only in respect of these objects.

(2) If the executor is not required to execute the dispositions of the testator himself, he may demand execution from the heir, unless it is to be assumed that the testator intended otherwise.

### **Section 2209**

#### Permanent execution

The testator may entrust an executor with the administration of the estate without assigning to him any tasks other than those of the administration; he may also direct that the executor is to continue the administration after the completion of any other tasks assigned to him. In case of doubt, it is to be presumed that such an executor has been granted the authorisation set out in section 2207.

### **Section 2210**

#### Thirty-year period for permanent execution

A direction made under section 2209 becomes ineffective if thirty years have passed since the devolution of the inheritance. The testator may, however, direct that the administration is to continue until the death of the heir or of the executor, or until the occurrence of another event in the person of one or other of them. The provision of section 2163 (2) applies with the necessary modifications.

### **Section 2211**

#### Limitation on dispositions of the heir

(1) The heir may not dispose of an object of the estate subject to the administration of the executor.

(2) The provisions in favour of those who derive rights from an unauthorised person apply with the necessary modifications.

### **Section 2212**

#### Assertion in court of the rights subject to the execution of the will

A right subject to the administration of the executor may be asserted only by the executor in court.

### **Section 2213**

Assertion in court of claims against the estate

(1) A claim that is directed against the estate may be asserted in court both against the heir and against the executor. If the executor is not entitled to administer the estate, the claim may be asserted only against the heir. A claim to a compulsory share may be asserted only against the heir, even if the executor is entitled to administer the estate.

(2) The provision set out in section 1958 does not apply to the executor.

(3) A creditor of the estate who asserts his claim against the heir may also assert his claim against the executor to the extent that the latter is required to permit execution against the objects of the estate subject to his administration.

### **Section 2214**

Creditors of the heir

Creditors of the heir who are not creditors of the estate may not have recourse to the objects of the estate subject to the administration of the executor.

### **Section 2215**

Inventory of the estate

(1) The executor must provide to the heir an inventory of the objects of the estate subject to his administration, and of any known obligations of the estate, without undue delay after the acceptance of the office, and render any other assistance required to take an inventory.

(2) The inventory must show the date on which the inventory was taken and bear the signature of the executor; upon demand, the executor must have his signature officially certified.

(3) The heir may demand that he be asked to take part in taking the inventory.

(4) The executor is entitled and, at the demand of the heir, is obliged to have the inventory taken by the competent public authority or by a competent official or notary.

(5) The costs of taking the inventory and the official certification are charged to the estate.

### **Section 2216**

Proper administration of the estate, compliance with directions

(1) The executor is obliged to administer the estate in a proper manner.

(2) Directions for the administration that the testator has given by testamentary disposition are to be complied with by the executor. Upon application by the executor or by any other party concerned, they may, however, be cancelled by the probate court if compliance with them would substantially endanger the estate. The court should, as far as possible, hear the persons concerned prior to making a decision.



### **Section 2217**

Transfer of objects of the estate

(1) The executor must, upon demand, transfer to the heir for his free disposal any objects of the estate which the executor evidently does not require to perform his duties. Upon this transfer, his right to administer these objects is extinguished.

(2) The executor may not refuse to transfer the objects by reason of any obligations of the estate which are not based on a legacy or a testamentary burden, or by reason of any legacies or testamentary burdens that are subject to a condition or due on a specific date, if the heir provides security for the discharge of the obligations or for the fulfilment of the legacies or testamentary burdens.

### **Section 2218**

Legal relationship to the heir; rendering of accounts

(1) The legal relationship between the executor and the heir is governed, with the necessary modifications, by the provisions of sections 664, 666 to 668, 670, of section 673 sentence 2 and section 674 applying to a mandate.

(2) If the administration lasts for longer, the heir may demand that an account be rendered every year.

### **Section 2219**

Liability of the executor

(1) Where the executor commits a breach of the duties imposed upon him, he is, if he is at fault, responsible to the heir and, to the extent that a legacy is to be fulfilled, also to the legatee for the damage arising therefrom.

(2) If there is more than one executor who is at fault, they are liable as joint and several debtors.

### **Section 2220**

Mandatory law

The testator may not release the executor from the duties imposed upon him by sections 2215, 2216, 2218 and 2219.

### **Section 2221**

Remuneration of the executor

The executor may demand reasonable remuneration to perform the duties of his office, unless the testator has provided otherwise.

### **Section 2222**

Executor for the subsequent heir

The testator may also appoint an executor for the purpose of exercising the rights and performing the duties of a subsequent heir until the occurrence of the directed subsequent succession.

### **Section 2223**

Executor of a legacy

The testator may also appoint an executor for the purpose of this person ensuring the execution of the charges imposed on a legatee.

### **Section 2224**

More than one executor

(1) More than one executor perform the duties of the office jointly; in the case of a difference in opinion, the probate court decides. If one of them ceases to be involved, the other executors are to perform the duties of the office alone. The testator may give different directions.

(2) Each executor is entitled, without the approval of the other executors, to take any measures that are necessary to preserve an object of the estate that is subject to their joint administration.

### **Section 2225**

Expiry of the office of the executor

The office of the executor expires if he dies or if an event occurs which would render his appointment under section 2201 ineffective.

### **Section 2226**

Notice of termination by the executor

The executor may give notice of termination of the office at any time. Notice is given by declaration to the probate court. The provision of section 671 (2) and (3) applies with the necessary modifications.

### **Section 2227**

Dismissal of the executor

The probate court may, upon the application of one of the persons concerned, dismiss the executor if a compelling reason exists; a compelling reason is, in particular, a gross breach of duty, or his incapacity to effect proper management.

### **Section 2228**

Inspection of records

The probate court must permit any person who credibly establishes a legal interest to inspect the declarations made in accordance with section 2198 (1) sentence 2, section 2199 (3), section 2202 (2) and section 2226 sentence 2.

## Title 7

### The making and revocation of a will

#### Section 2229

Testamentary capacity of minors, lack of testamentary capacity

- (1) A minor may make a will only once he has attained his sixteenth year of age.
- (2) The minor does not need the consent of his legal representative to make a will.
- (3) (repealed)
- (4) A person who is incapable of realising the importance of a declaration of intent made by him and of acting in accordance with this realisation on account of pathological mental disturbance, mental deficiency or derangement of the senses may not make a will.

#### Section 2230

(repealed)

#### Section 2231

Regular wills

A will may be made in a regular form

1. by declaration to a notary,
2. by a declaration made by the testator in accordance with section 2247.

#### Section 2232

Public will

A will made by declaration to a notary is made by the testator declaring his last will to the notary or handing the notary a document with the statement that the document contains his last will. The testator may hand over the document either unsealed or sealed; it is not required to be written by him.

#### Section 2233

Special cases

- (1) If the testator is a minor, he may make a will only by oral declaration to a notary or by handing over an unsealed document.
- (2) If the testator is, according to his own statement or in the firm opinion of the notary, incapable of reading text, he may make the will only by making a declaration to the notary.

#### Sections 2234 - 2246

(repealed)

**Section 2247**

Holographic will

- (1) The testator may make a will by a declaration written and signed in his own hand.
- (2) The testator should state in the declaration the time when (day, month and year) and the place where he wrote it down.
- (3) The signature should contain the first name and the last name of the testator. If the testator signs in another manner and this signature suffices to establish the identity of the testator and the seriousness of his declaration, such a signature does not invalidate the will.
- (4) A person who is a minor or is incapable of reading text may not make a will in accordance with the provisions above.
- (5) Where a will made under subsection (1) does not contain any information about the time when it was made and where this causes doubts about its validity, the will is to be deemed to be valid only if the necessary ascertainments about the time when it was made can be established in some other manner. The same applies with the necessary modifications to a will that does not contain any information about the place where it was made.

**Section 2248**

Custody of a holographic will

A will made in accordance with section 2247 is to be taken into special official custody upon demand by the testator .

## **Section 2249**

Emergency will made before the mayor

- (1) If it is feared that the testator will die sooner than it is possible to make a will before a notary, he may make the will by means of a record drawn up by the mayor of the municipality where he resides. The mayor must call in two witnesses for the authentication. A person who is provided for or appointed as an executor in the will to be recorded may not be called as a witness; the provisions of sections 7 and 27 of the Notarial Recording Act [Beurkundungsgesetz] apply with the necessary modifications. The making of the will is governed by the provisions of sections 2232 and 2233 as well as the provisions of sections 2, 4, 5 (1), sections 6 to 10, 11 (1) sentence 2, (2), section 13 (1) and (3), sections 16, 17, 23, 24, 26 (1) no. 3, 4, (2), and sections 27, 28, 30, 32, 34 and 35 of the Notarial Recording Act [Beurkundungsgesetz]; the mayor takes the place of the notary. The record must also be signed by the witnesses. If the testator, according to his own statement or in the firm opinion of the mayor, is incapable of signing his name, the signature of the testator is replaced by this statement or firm opinion being included in the record.
- (2) The fear that it will no longer be possible to make a will before a notary should be stated in the record. The validity of the will is not affected if the fear was unfounded.
- (3) The mayor should draw the attention of the testator to the fact that the will becomes invalid if the testator survives the expiry of the period provided by section 2252 (1) and (2). He should state in the record that this notification has been given.(repealed)
- (4) (repealed)
- (5) The will may also be made before a person who is appointed under the provisions of statute to represent the mayor. The representative should state in the record the basis of his power of agency.
- (6) If formal errors were made when drafting the record concerning the making of the will as provided for in the above subsections, but it can nevertheless be assumed with certainty that the will contains a reliable rendering of the testator's declaration, then the procedural error does not detract from the effectiveness of the recording.

### **Section 2250**

Emergency will before three witnesses

(1) A person who is staying in a place which, as a result of extraordinary circumstances, is blocked off in such a way that making a will before a notary is not possible or extremely difficult, may make the will in the form specified by section 2249 or by oral declaration before three witnesses.

(2) A person who is in such imminent mortal danger that it is probable that even making a will in accordance with section 2249 is no longer possible may make the will by oral declaration before three witnesses.

(3) If the will is made by oral declaration before three witnesses, a record to this effect must be made. The witnesses are governed by the provisions of section 6 (1) nos. 1 to 3, sections 7 and 26 (2) nos. 2 to 5 and section 27 of the Notarial Recording Act [Beurkundungsgesetz] with the necessary modifications, and the record is governed by the provisions of sections 8 to 10, 11 (1) sentence 2, (2), section 13 (1), (3) sentence 1, sections 23 and 28 of the Notarial Recording Act [Beurkundungsgesetz] as well as the provisions of section 2249 (1) sentences 5 and 6, (2) and (6) with the necessary modifications. The record may be made in another language apart from German. The testator and the witnesses must be sufficiently familiar with the language of the record. This should be stated in the record if it is written in a language other than German.

### **Section 2251**

Emergency will made at sea

A person who during a sea voyage is on board a German ship beyond a domestic port may make a will by oral declaration before three witnesses in accordance with section 2250 (3).

### **Section 2252**

Period of validity of emergency wills

(1) A will made in accordance with section 2249, section 2250 or section 2251 is deemed not to have been made if three months have passed since it was made and the testator is still alive.

(2) The beginning and the running of the period are suspended for as long as the testator is incapable of making a will before a notary.

(3) If, in the case provided for by section 2251, the testator sets off on a new sea voyage before the expiry of the period, the period is interrupted with the effect that at the end of the new voyage the entire period starts to run from the beginning.

(4) Where after the expiry of the period the testator is declared dead, or where the time of his death is established in accordance with the provisions of the Missing Persons Act [Verschollenheitsgesetz], the will remains effective if the period had not yet ended at the time when, according to available information, the testator was still alive.

### **Section 2253**

#### Revocation of the will

The testator may revoke a will and also an individual disposition contained in a will at any time.

### **Section 2254**

#### Revocation by will

The revocation is made by will.

### **Section 2255**

#### Revocation by destruction or changes

A will may also be revoked by the testator, with the intention of revocation, destroying the testamentary instrument or making changes to it that customarily express the intention to revoke a written declaration of intent. If the testator has destroyed the testamentary instrument or changed it in the manner described, it is presumed that he intended the revocation of the will.

### **Section 2256**

#### Revocation by the withdrawal of the will from official custody

(1) A will made before a notary, or in accordance with section 2249, is deemed to have been revoked if the document taken into special official custody is returned to the testator. The office returning the document should inform the testator of the consequence of the return stated in sentence 1, note this on the document and place on record that both these things have been done.

(2) The testator may demand the return of the will at any time. The will may only be returned to the testator personally.

(3) The provisions of subsection (2) also govern a will deposited in accordance with section 2248; the return does not affect the effectiveness of the will.

### **Section 2257**

#### Revocation of the revocation

If the revocation by will of a testamentary disposition is revoked, the disposition is, in case of doubt, effective as if it had not been revoked.

### **Section 2258**

#### Revocation by a later will

(1) The making of a will revokes an earlier will to the extent that the later will is at variance with the former.

(2) If the later will is revoked, the earlier will is, in case of doubt, effective in the same way as if it had not been revoked.

### **Section 2258a**

(repealed)

### **Section 2258b**

(repealed)

**Section 2259**

Obligation to deliver

(1) A person who is in possession of a will which has not been placed in special official custody is obliged to deliver it to the probate court without undue delay after he has obtained knowledge of the death of the testator.

(2) If a will is in the official custody of a public authority other than a court, it must be delivered to the probate court after the death of the testator. The probate court must arrange for its delivery once it has obtained knowledge of the will.

**Section 2260**

(repealed)

**Section 2261**

(repealed)

**Section 2262**

(repealed)

**Section 2263**

Voidness of a prohibition on opening the will

A direction given by the testator prohibiting his will against being opened immediately after his death is void.

**Section 2263a**

Opening period for wills

If a will has been in official custody for more than thirty years, the depository must, as far as practicable, make inquiries of its own motion as to whether the testator is still alive. If the inquiries do not lead to the finding that the testator is still alive, the will is to be opened. The provisions of sections 2260 to 2262 apply with the necessary modifications.

**Section 2264**

(repealed)



## Title 8

### **Joint will**

#### **Section 2265**

Joint will made by spouses

A joint will may be made only by spouses.

#### **Section 2266**

Joint emergency will

A joint will may be made in accordance with sections 2249 and 2250, even if the requirements set out there are satisfied by only one of the spouses.

#### **Section 2267**

Joint holographic will

To make a joint will in accordance with section 2247, it suffices if one of the spouses makes a will in the manner provided there, and the other spouse co-signs the joint declaration in his own hand. The co-signing spouse should thereby state the time (day, month and year) and the place at which his signature was affixed.

#### **Section 2268**

Effect of nullity or dissolution of marriage

- (1) A joint will is ineffective in its entirety in the cases set out in section 2077.
- (2) If the marriage is dissolved before the death of one of the spouses, or if the requirements of section 2077 (1) sentence 2 or 3 are fulfilled, the dispositions remain effective to the extent that it is to be assumed that they would also have been made for this case.

#### **Section 2269**

Reciprocal appointment

- (1) If the spouses have specified in a joint will, by which they reciprocally appointed each other heir, that after the death of the survivor the estate of both is to pass to a third party, then it is to be assumed, in case of doubt, that the third party has been appointed the heir, for the whole estate, of the spouse to die later.
- (2) If in such a joint will the spouses have directed that a legacy be given that is to be performed after the death of the survivor, it is to be assumed, in case of doubt, that the legacy is not to pass to the person provided for until the death of the survivor.

### **Section 2270**

#### Reciprocal dispositions

(1) If the spouses have made dispositions in a joint will of which it is to be assumed that the disposition of one spouse would not have been made without the disposition of the other, the voidness or revocation of one of the dispositions results in the ineffectiveness of the other.

(2) Such a relationship of the dispositions to one another is, in case of doubt, to be presumed if the spouses mutually provide for each other in the will, or if one spouse makes a testamentary gift to the other and for the event of the survival of the beneficiary a disposition is made in favour of a person who is related to the other spouse or is close to him in another way.

(3) Dispositions other than appointments of heirs, legacies or testamentary burdens are not governed by the provision set out in subsection (1).

### **Section 2271**

#### Revocation of reciprocal dispositions

(1) The revocation of a disposition which is related to a disposition of the other spouse in the way described in section 2270 is to be effected during the lifetimes of the spouses in accordance with the provision of section 2296 governing withdrawal from a contract of inheritance. A spouse may not, during the lifetime of the other, make a new disposition mortis causa unilaterally revoking his original disposition.

(2) The right of revocation expires on the death of the other spouse; the survivor may, however, revoke his disposition if he disclaims the testamentary gift made to him. Even after the acceptance of the testamentary gift, the survivor is entitled to revoke in accordance with section 2294 and section 2336.

(3) If a testamentary gift has been given to a descendant of both spouses or of one of the spouses who is entitled to compulsory share, the provision of section 2289 (2) applies with the necessary modifications.

### **Section 2272**

#### Withdrawal from official custody

A joint will may be withdrawn under section 2256 only by both spouses.

### **Section 2273**

(repealed)

Division 4

## **Contract of inheritance**

### **Section 2274**

Entering into contract in person

The testator can enter into a contract of inheritance only in person.

### **Section 2275**

Requirements

- (1) A person can only enter into a contract of inheritance as testator if he has unlimited capacity to contract.
- (2) A spouse may enter into a contract of inheritance, as testator, with his spouse, even if he has limited capacity to contract. In such a case, he requires the approval of his legal representative; if the legal representative is a guardian, the ratification of the family court is also required.
- (3) The provisions of subsection (2) apply with the necessary modifications to engaged persons, including engaged persons in the meaning of the Civil Partnership Act [Lebenspartnerschaftsgesetz].

### **Section 2276**

Form

- (1) A contract of inheritance may be made only by being recorded by a notary in the simultaneous presence of both parties. The provisions of section 2231 no. 1 and sections 2232 and 2233 are applicable; what applies for a testator under these provisions also applies to each of the parties to the contract.
- (2) For a contract of inheritance between spouses or between engaged persons that is joined with a marriage contract in the same document, the form prescribed for a contract of marriage suffices.

### **Section 2277**

(repealed)

### **Section 2278**

Permissible contractual dispositions

- (1) In a contract of inheritance, each of the parties to the contract may make contractual dispositions mortis causa.
- (2) Dispositions other than appointments of heirs, legacies and testamentary burdens may not be made contractually.

### **Section 2279**

Contractual gifts and burdens, application of section 2077

(1) Contractual gifts and contractual burdens are governed by the provisions applying to testamentary gifts and testamentary burdens with the necessary modifications.

(2) The provision of section 2077 also applies to a contract of inheritance between spouses, civil partners or engaged persons (including engaged persons in the meaning of the Civil Partnership Act [Lebenspartnerschaftsgesetz]) to the extent that a third party is provided for.

### **Section 2280**

Application of section 2269

If spouses or civil partners have provided in a contract of inheritance by which they mutually appoint each other heirs that the estate of both is to pass to a third party after the death of the survivor, or have made a legacy that is to be performed after the death of the survivor, the provision under section 2269 applies with the necessary modifications.

### **Section 2281**

Avoidance by the testator

(1) A contract of inheritance may also be avoided by the testator on the basis of sections 2078 and 2079; for avoidance on the basis of section 2079 it is necessary that the person entitled to a compulsory share is alive at the time of the avoidance.

(2) If, after the death of the other party to the contract, a disposition made in favour of a third party is to be avoided, the avoidance must be declared to the probate court. The probate court should communicate the declaration to the third party.

### **Section 2282**

Representation, form of the avoidance

(1) The avoidance may not be effected by an agent of the testator. If the testator has limited capacity to contract, he does not require the approval of his legal representative for avoidance.

(2) If a testator is incapable of contracting, his legal representative may avoid a contract of inheritance for him; if the testator is under parental custody or guardianship, the approval of the family court is necessary, if the legal representative is a custodian, that of the custodianship court.

(3) A declaration of avoidance must be recorded by a notary.

### **Section 2283**

Period of avoidance

(1) Avoidance may be effected by a testator only within a period of one year.

(2) In the case of avoidance for duress, the period begins on the date on which the position of constraint ceases, and in the other cases on the date on which the testator obtains knowledge of the ground for avoidance. The provisions of sections 206 and 210, governing limitation, apply with the necessary modifications to the running of the period.

(3) If, in the case set out in section 2282 (2), the legal representative did not avoid the contract of inheritance in good time, the testator himself may, after his incapacity to contract has ceased, avoid his contract of inheritance in the same way as if he had been without a legal representative.

#### **Section 2284**

##### Confirmation

The confirmation of a voidable contract of inheritance may be effected only by the testator personally.

If the testator has limited capacity to contract, confirmation is excluded.

#### **Section 2285**

##### Avoidance by third parties

The persons specified in section 2080 may no longer avoid a contract of inheritance on the basis of sections 2078 and 2079 if the right of avoidance of the testator is extinguished at the time of the devolution of the inheritance.

#### **Section 2286**

##### Dispositions inter vivos

A contract of inheritance does not restrict the right of the testator to dispose of his property by transaction inter vivos.

#### **Section 2287**

##### Gifts adversely affecting the contractual heir

(1) If the testator has made a gift with the intention of adversely affecting his contractual heir, the contractual heir may, after the inheritance has devolved upon him, demand from the receiver the return of the gift in accordance with the provisions relating to the return of unjust enrichment.

(2) The claim becomes statute-barred three years after the devolution of the inheritance.

#### **Section 2288**

##### Prejudice to the legatee

(1) If the testator has destroyed, removed or damaged the object of a contractual legacy with the intention of adversely affecting the person provided for, then, to the extent that the heir is thereby rendered incapable of performing the legacy, the value of the object replaces the object.

(2) If the testator has disposed of or created a charge on the object with the intention of adversely affecting the person provided for, the heir is obliged to procure the object or to remove the charge for the person provided for; the provision set out in section 2170 (2) applies with the necessary modifications to this obligation. If the disposal or charge is made by way of gift, the person provided for has, to the extent that he may not demand compensation from the heir, the claim specified in section 2287 against the receiver of the gift.

#### **Section 2289**

##### Effect of the contract of inheritance on testamentary dispositions; application of section 2338

(1) A prior testamentary disposition by the testator is cancelled by a contract of inheritance to the extent that it would adversely affect the right of a person provided for under the contract. A later disposition mortis causa is, notwithstanding the provision of section 2297, ineffective to the same extent.

(2) If the person provided for is a descendant of the testator who is entitled to a compulsory share, the testator may, by a later testamentary disposition, give the directions permitted by section 2338.

#### **Section 2290**

##### Cancellation by contract

(1) A contract of inheritance or an individual contractual disposition may be cancelled by contract between the persons who entered into the contract of inheritance. Cancellation may no longer be effected after the death of either of these persons.

(2) The testator may enter into the contract only personally. If he has limited capacity to contract, he does not require the approval of his legal representative.

(3) If the other party is under guardianship, the approval of the family court is necessary. The same applies if he is subject to parental custody, unless the contract is entered into between spouses or between engaged persons, including engaged persons within the meaning of the Civil Partnership Act [Lebenspartnerschaftsgesetz]. If the cancellation falls under the area of responsibilities of a custodian, the approval of the custodianship court is necessary.

(4) The contract must be in the form prescribed for the contract of inheritance in section 2276.

#### **Section 2291**

##### Cancellation by will

(1) A contractual disposition by which a legacy or a testamentary burden is directed may be cancelled by the testator by will. For the effectiveness of the cancellation, the approval of the other party to the contract is necessary; the provision of section 2290 (3) applies.

(2) The declaration of approval must be notarially recorded; the approval is irrevocable.

#### **Section 2292**

##### Cancellation by joint will

A contract of inheritance entered into between spouses or civil partners may also be cancelled by a joint will of the spouses or of the civil partners; the provision of section 2290 (3) applies.

#### **Section 2293**

##### Withdrawal in the event of reservation

The testator may withdraw from his contract of inheritance if he has reserved the right to do so in the contract.

### **Section 2294**

Withdrawal in the event of the misconduct of the person provided for

The testator may withdraw from a contractual disposition where the person provided for is at fault for misconduct that entitles the testator to deprive him of his compulsory share, or, where the person provided for is not one of those entitled to a compulsory share, would entitle the testator to deprive the person provided for of his compulsory share if he were a descendant of the testator.

### **Section 2295**

Withdrawal in the event of the extinction of a mutual obligation

The testator may withdraw from a contractual disposition, if the disposition is made in consideration of a contractual obligation of the person provided for to make periodic payments to the testator during the lifetime of the latter, in particular to provide support, and the obligation is cancelled before the death of the testator.

### **Section 2296**

Representation, form of withdrawal

- (1) The withdrawal may not be made by means of an agent. If the testator has limited capacity to contract, he does not require the approval of his legal representative.
- (2) The withdrawal is effected by declaration to the other party to the contract. The declaration requires notarial recording.

### **Section 2297**

Withdrawal by will

To the extent that the testator is entitled to withdraw, he may cancel the contractual disposition by will after the death of the other party to the contract. In the cases set out in section 2294, the provision of section 2336 (2) to (4) applies with the necessary modifications.

### **Section 2298**

Mutual contract of inheritance

- (1) If both parties have made contractual dispositions in a contract of inheritance, the voidness of one of these dispositions results in the ineffectiveness of the whole contract.
- (2) If withdrawal is reserved in such a contract, the whole contract is cancelled by the withdrawal of one of the parties to the contract. The right of withdrawal expires on the death of the other party to the contract. The surviving party may, however, if he disclaims the gift made to him by the contract, revoke his disposition by will.
- (3) The provisions of subsection (1) and subsection (2) sentences 1 and 2 are not applicable if it is to be assumed that the parties intended otherwise.

### **Section 2299**

Unilateral dispositions

(1) Either of the parties to the contract may, in the contract of inheritance, unilaterally make any disposition that may be made by will.

(2) For a disposition of this kind the same applies as if it had been made by will. The disposition may also be cancelled in a contract by which a contractual disposition is cancelled.

(3) If the contract of inheritance is cancelled by the exercise of the right of withdrawal or by contract, the disposition ceases to be effective, unless it is to be assumed that the testator intended otherwise.

### **Section 2300**

Application of sections 2259 and 2263; removal from official or notarial custody

(1) Sections 2259 and 2263 apply with the necessary modifications to a contract of inheritance.

(2) A contract of inheritance which contains only dispositions mortis causa may be withdrawn from official or notarial custody and returned to the parties to the contract. The return may only be made to all of the parties to the contract jointly; the provision of section 2290 (1) sentence 2, (2) and (3) applies. If a contract of inheritance is withdrawn in accordance with sentences 1 and 2, section 2256

(1) applies with the necessary modifications.

### **Section 2300a**

Opening period

If a contract of inheritance has been in official custody for more than fifty years, section 2263a applies with the necessary modifications.

### **Section 2301**

Promise of donation mortis causa

(1) A promise of a donation made subject to the condition that the donee survives the donor is governed by the provisions concerning dispositions mortis causa. The same applies to a promise to fulfil an obligation or an acknowledgement of debt of the kind described in sections 780 and 781, made by way of donation subject to this condition.

(2) If the donor executes the donation by delivery of the object given, the provisions concerning gifts inter vivos apply.

### **Section 2302**

Unlimited testamentary freedom

A contract by which a person agrees to make or not to make, to cancel or not to cancel, a disposition mortis causa is void.

Division 5

### **Compulsory share**

#### **Section 2303**

Person entitled to a compulsory share of the estate; amount of the share



(1) If a descendant of the testator is excluded by disposition mortis causa from succession, he may demand his compulsory share from the heir. The compulsory share is one-half of the value of the share of the inheritance on intestacy.

(2) The parents and spouse of the testator have the same right if they have been excluded from succession by disposition mortis causa. The provision of section 1371 remains unaffected.

#### **Section 2304**

Rules of interpretation

In case of doubt, the giving of a compulsory share is not to be considered as the appointment of an heir.

#### **Section 2305**

Additional compulsory share

If a person entitled to a compulsory share is left a share of the inheritance which is less than one-half of the share of the inheritance on intestacy, the person entitled to a compulsory share may claim from the co-heirs as his compulsory share the amount by which his share is less than one-half.

#### **Section 2306**

Limitations and charges

(1) Where a person entitled to inherit a compulsory share who becomes an heir has been limited by the designation of a subsequent heir, the appointment of an executor, or a direction concerning the partitioning of the estate, or where he has been charged with a legacy or a testamentary burden, the limitation or charge is deemed not to have been directed if the share of the inheritance left to him does not exceed one-half of his share of the inheritance on intestacy. Where the share of the inheritance left to him is greater, he may claim his compulsory share if he disclaims his share of the inheritance; the period for filing a disclaimer does not commence until after the person entitled to a compulsory share has obtained knowledge of the limitation or charge.

(2) If the person entitled to a compulsory share has been appointed a subsequent heir, this is equivalent to a limitation of the appointment of an heir.

#### **Section 2307**

Bequest of a legacy

(1) Where a legacy has been bequeathed to a person entitled to a compulsory share, he may claim his compulsory share if he disclaims the legacy. If he does not disclaim it, he is not entitled to the compulsory share up to the value of the legacy; when the value is calculated, limitations and charges of the kind stated in section 2306 are not taken into consideration.

(2) The heir who is charged with the legacy may specify a reasonable period for the person entitled to a compulsory share to declare whether or not he will accept the legacy. Upon the expiry of the period the legacy is deemed to have been disclaimed unless acceptance is declared before this time.

#### **Section 2308**

#### Avoidance of the disclaimer

(1) Where a person entitled to a compulsory share, who as an heir or a legatee is limited or charged in the manner stated in section 2306, has disclaimed the inheritance or legacy, he may avoid the disclaimer if the limitation or charge had ceased by the time of the disclaimer and this cessation was unknown to him.

(2) The avoidance of the disclaimer of a legacy is governed by the provisions governing the avoidance of an inheritance, with the necessary modifications. Avoidance is effected by declaration to the person charged.

#### **Section 2309**

##### Right of parents and remoter descendants to a compulsory share

Remoter descendants and the parents of the testator are not entitled to compulsory shares to the extent that a descendant who would exclude them in the event of intestate succession is entitled to demand a compulsory share or accepts the property left to him.

#### **Section 2310**

##### Determination of the share of the inheritance for the calculation of the compulsory share

In the determination of the share of the inheritance that is relevant for calculating the value of a compulsory share, the calculation is to include those persons who are excluded from succession by testamentary disposition or have disclaimed the inheritance or have been declared unworthy to inherit. A person who is excluded from intestate succession by renunciation of the inheritance is not included in the calculation.

#### **Section 2311**

##### Value of the estate

(1) The calculation of the compulsory share is based on the condition and value of the estate at the time of the devolution of the inheritance. In the calculation of the compulsory share of a descendant and the parents of the testator, the preferential benefit of the surviving spouse is not taken into account.

(2) The value is to be determined, to the extent necessary, by estimate. A valuation made by the testator is not authoritative.

### **Section 2312**

#### Value of a farm

(1) Where the testator has directed, or where it is to be assumed in accordance with section 2049, that one out of more than one heirs should have the right to take over a farm forming part of the estate at its income value, then if this right is exercised the income value is also authoritative in the calculation of the compulsory share. Where the testator has fixed a different price for taking over the farm, this is authoritative if it is no less than the income value and no more than the estimated value.

(2) If the testator has only one heir, he may direct that the calculation of the compulsory share should be based on the income value or another value determined as specified in subsection (1) sentence 2.

(3) These provisions apply only if the heir who acquires the farm is one of the persons entitled to compulsory shares designated in section 2303.

### **Section 2313**

#### Taking account of conditional, uncertain or unsecured rights; duty of determination of the heir

(1) In the determination of the value of the estate, rights and obligations that are subject to a condition precedent are not taken into account. Rights and obligations that are subject to a condition subsequent are taken into account as unconditional. If the condition is fulfilled, a reasonable adjustment must be made to cater for the change in the legal situation.

(2) For uncertain or unsecured rights and for doubtful obligations, the same applies as for rights and obligations that are subject to a condition precedent. The heir is obliged in relation to the person entitled to a compulsory share to ascertain an uncertain right and to pursue an unsecured right to the extent that this is compatible with orderly administration.

### **Section 2314**

#### Duty of the heir to provide information

(1) If the person entitled to a compulsory share is not an heir, the heir must give him, on demand, information on the condition of the estate. The person entitled to a compulsory share may demand that he be called to participate in the drawing up of the inventory of the objects of the estate, in accordance with section 260, and that the value of the objects of the estate is determined. He may also demand that the inventory is drawn up by the competent public authority, or by a competent official or notary.

(2) The costs are charged to the estate.

### **Section 2315**

#### Counting gifts towards the compulsory share

- (1) The person entitled to a compulsory share must allow to be deducted from his compulsory share anything given to him as a gift by the testator by a legal transaction inter vivos with the provision that it should be deducted from his compulsory share.
- (2) The value of the gift is added to the estate when determining the compulsory share. The value is determined on the basis of the date on which the gift was given.
- (3) If the person entitled to a compulsory share is a descendant of the testator, the provision of section 2051 (1) applies with the necessary modifications.

### **Section 2316**

#### Duty to adjust advancements

- (1) If there is more than one descendant and, in the event of intestate succession, a gift by the testator or payments of the kind specified in section 2057a would be adjusted among them, the compulsory share of each descendant is determined by what would accrue to the share of the inheritance on intestacy, taking into consideration the duties to adjust advancements on the partitioning of the estate. A descendant who has been excluded from intestate succession by renunciation of the inheritance is not included in the calculation.
- (2) If the person entitled to a compulsory share is an heir, and if the compulsory share under subsection (1) has a greater value than the share of the inheritance left to him, he may demand from the co-heirs the additional amount as his compulsory share, even if the share of the inheritance left to him is equal to or exceeds one-half of his share of the inheritance on intestacy.
- (3) The testator may not to the disadvantage of a person entitled to a compulsory share exclude any gift of the kind specified in section 2050 (1) from being taken into account.
- (4) If any gift to be taken into account under subsection (1) is at the same time to be deducted from the compulsory share in accordance with section 2315, it is to be counted at one-half of its value.

### **Section 2317**

#### Creation and transferability of the claim to a compulsory share

- (1) The claim to a compulsory share is created upon the devolution of the inheritance.
- (2) The claim is inheritable and transferable.

### **Section 2318**

Burden of the compulsory share in the case of legacies and testamentary burdens

(1) The heir may refuse the performance of a legacy with which he is charged to the extent that the burden of the compulsory share is borne proportionately by him and the legatee. The same applies to a testamentary burden.

(2) This reduction is permissible in relation to a legatee who is entitled to a compulsory share only to the extent that his compulsory share remains with him.

(3) If the heir is himself a person entitled to a compulsory share, he may, on account of his compulsory share burden, reduce the legacy and the testamentary burden to the extent that he retains his own compulsory share.

### **Section 2319**

Person entitled to a compulsory share as co-heir

If one of more than one heirs is himself a person entitled to a compulsory share, he may, after the partitioning of the estate, refuse to satisfy another person entitled to a compulsory share to the extent that he retains his own compulsory share. The other heirs are liable for the shortfall.

### **Section 2320**

Compulsory share burden on the heir taking the place of the person entitled to a compulsory share

(1) A person who becomes heir on intestacy in the place of a person entitled to a compulsory share must, in relation to co-heirs, bear the burden of the compulsory share, and must, if the person entitled to a compulsory share accepts a legacy given to him, bear the burden of the legacy in the amount of the benefit received.

(2) In case of doubt, the same applies to a person to whom the testator has, by disposition mortis causa, given the share of the inheritance of the person entitled to a compulsory share.

### **Section 2321**

Compulsory share burden in the event of a disclaimer of a legacy

If a person entitled to a compulsory share disclaims a legacy given to him, the person who benefits from the disclaimer must, in the proportion of the heirs and the legatees to each other, bear the burden of the compulsory share in the amount of the benefit received.

### **Section 2322**

Reduction of legacies and testamentary burdens

If an inheritance or a legacy disclaimed by a person entitled to a compulsory share has been charged with a legacy or a testamentary burden, the person who benefits from the disclaimer may reduce the legacy or the testamentary burden to the extent that he retains the amount required for the payment of the burden of the compulsory share.

### **Section 2323**

Heir not charged with a compulsory share

The heir is prohibited from performing a legacy or a testamentary burden under section 2318 (1) to the extent that he is not required to bear the compulsory share burden in accordance with sections 2320 to 2322.

### **Section 2324**

Deviating directions by the testator concerning the compulsory share burden

The testator may, by disposition mortis causa, impose the compulsory share burden, in the proportion of the heirs to each other, on one or more heirs, and may give directions deviating from the provisions of section 2318 (1) and sections 2320 to 2323.

### **Section 2325**

Claim for the augmentation of compulsory shares in the event of gifts

(1) Where the testator made a gift to a third party, a person entitled to a compulsory share may claim, as an augmentation of his compulsory share, the amount by which the compulsory share is increased if the object given is added to the estate.

(2) A consumable thing is assessed at the value that it had at the time of the donation. Any other object is assessed at the value which it had at the time of the devolution of the inheritance; if its value was lower at the time of the donation, then only this value is taken into account.

(3) The gift is not taken into account if, at the time of the devolution of the inheritance, ten years have passed since the donated object was given; where the gift was made to the spouse of the testator, the period does not commence until the dissolution of the marriage.

### **Section 2326**

Augmentation to more than half of the share of the inheritance on intestacy

The person entitled to a compulsory share may claim the augmentation of his compulsory share even if one half of his share of the inheritance on intestacy has been left to him. If more than one-half has been left to him, such claim is excluded to the extent that he has been left more.

### **Section 2327**

Receipt of gift by a person entitled to a compulsory share

(1) If a person entitled to a compulsory share has himself received a gift from the testator, the gift is to be added to the estate in the same way as a gift given to a third party, and at the same time is to be counted towards the augmentation granted to the person entitled to a compulsory share. The value of a gift to be taken into account in accordance with section 2315 is to be counted towards the total value of the compulsory share and the augmentation.

(2) If the person entitled to a compulsory share is a descendant of the testator, the provision of section 2051 (1) applies with the necessary modifications.

### **Section 2328**

Heir himself as person entitled to a compulsory share

If an heir is entitled to a compulsory share himself, he may refuse the augmentation of his compulsory share to the extent that he would retain his own compulsory share, including what would be due to him as an augmentation of his own compulsory share.

### **Section 2329**

Claim against the receiver of a gift

(1) To the extent that an heir is not obliged to augment a compulsory share, the person entitled to a compulsory share may, in accordance with the provisions concerning the return of unjust enrichment, demand from the receiver of a gift that he return it for the purpose of making up the shortfall. If the person entitled to a compulsory share is the sole heir, he has the same right.

(2) The receiver may avoid the return of the gift through the payment of the shortfall.

(3) Among more than one receiver of gifts, a prior receiver is liable only to the extent that a subsequent receiver is not obliged.

### **Section 2330**

Gift arising from a moral duty

The provisions of sections 2325 to 2329 do not apply to gifts made to satisfy a moral duty or to give consideration to common decency.

### **Section 2331**

Gifts made from marital property

(1) Half of a gift made from marital property under the community of property regime is deemed to have been made by each of the spouses. If, however, the gift was made to a descendant of only one of the spouses, or to a person of whom only one of the spouses is a descendant, or if one of the spouses has to make compensation to the marital property for the value of the gift, it is deemed to have been made by this spouse alone.

(2) These provisions apply with the necessary modifications to a gift made from marital property under continued community of property.

### **Section 2331a**

#### Additional time

(1) Where the heir is himself entitled to a compulsory share, he may demand additional time to satisfy the claim to a compulsory share if the immediate satisfaction of the entire claim would strike the heir exceptionally hard on account of the nature of the objects of the estate, in particular if it would force him to give up his family home or to sell business assets that form the economic basis for the everyday life of the heir and his family. Additional time may be requested only to the extent that it could be expected of the person entitled to a compulsory share, taking account of the interests of both sides.

(2) The probate court has jurisdiction over the decision on the claim for additional time, if it is not contested. Section 1382 (2) to (6) applies with the necessary modifications; the probate court takes the place of the family court.

### **Section 2332**

#### Limitation

(1) The claim to a compulsory share becomes statute-barred three years after the time when the person entitled to a compulsory share obtains knowledge of the occurrence of the devolution of the inheritance and of a disposition which adversely affects him, or irrespective of such knowledge, thirty years after the occurrence of the devolution of the inheritance.

(2) Any claim that a person entitled to a compulsory share has against a receiver of a gift under section 2329 becomes statute-barred three years after the occurrence of the devolution of the inheritance.

(3) The limitation is not suspended by the fact that these claims may be asserted only after the disclaimer of the inheritance or legacy.



### **Section 2333**

Deprivation of a descendant's compulsory share

A testator may deprive a descendant of his compulsory share:

1. if the descendant makes an attempt on the life of the testator, his spouse, or another descendant of the testator,
2. if the descendant is guilty of the intentional physical maltreatment of the testator or the spouse of the testator, but in the event of the maltreatment of the spouse only if the descendant is a descendant of this spouse,
3. if the descendant is guilty of a major offence or of a serious intentional minor offence against the testator or his spouse,
4. if the descendant wilfully violates the statutory obligation to the testator incumbent upon him to maintain the testator,
5. if the descendant leads a disreputable or immoral life contrary to the wishes of the testator.

### **Section 2334**

Deprivation of a the compulsory share of a parent

The testator may deprive his father of his compulsory share if the latter is guilty of one of the examples of misconduct set out in section 2333 nos. 1, 3 and 4. The testator has the same right against his mother if she is guilty of any such misconduct.

### **Section 2335**

Deprivation of the compulsory share of a spouse

The testator may deprive his spouse of the compulsory share:

1. if the spouse makes an attempt on the life of the testator or of a descendant of the testator,
2. if the spouse is guilty of the intentional physical maltreatment of the testator,
3. if the spouse is guilty of a major offence or an intentional minor offence against the testator,
4. if the spouse wilfully violates the statutory obligation to the testator incumbent upon him to maintain the testator.

### **Section 2336**

Form, burden of proof and ineffectiveness of deprivation

- (1) The deprivation of the right to a compulsory share is effected by testamentary disposition.
- (2) The reason for the deprivation must exist at the time when the disposition is made and must be stated in the disposition.
- (3) The burden of proving the reason lies on the person who asserts the deprivation.
- (4) In the case set out in section 2333 no. 5, the deprivation is ineffective if the descendant, at the time of the devolution of the inheritance, has permanently ceased to lead a disreputable or immoral life.

### **Section 2337**

#### Forgiveness

The right to deprive a person of his compulsory share expires as a result of forgiveness. A disposition by which the testator has directed the deprivation becomes ineffective as a result of forgiveness.

### **Section 2338**

#### Limitation of the compulsory share

(1) If a descendant gives himself up to extravagance to such a degree or is so heavily indebted that his future livelihood is seriously endangered, the testator may limit the right of the descendant to a compulsory share by directing that after the death of the descendant his heirs on intestacy are to receive, as subsequent heirs or as subsequent legatees, the share which is left to him, or the compulsory share owed to him, in proportion to their shares of the inheritance on intestacy. The testator may also transfer the administration to an executor during the lifetime of the descendant; in such a case the descendant has a claim to the annual net proceeds.

(2) The provisions of section 2336 (1) to (3) apply with the necessary modifications to directions of this kind. The directions are ineffective if, at the time of the devolution of the inheritance, the descendant has permanently given up his extravagant life, or the heavy indebtedness creating the reason for such directions no longer exists.

## Division 6

### Unworthiness to inherit

#### Section 2339

##### Grounds for unworthiness to inherit

(1) A person is unworthy to inherit:

1. if he has intentionally and unlawfully killed or attempted to kill the deceased, or has put him in a state as a result of which the deceased was incapable until his death of making or revoking a disposition mortis causa,
2. if he has intentionally and unlawfully prevented the deceased from making or revoking a disposition mortis causa,
3. if he has, by deceit or unlawfully by duress, induced the deceased to make or revoke a disposition mortis causa,
4. if he is, in respect of a disposition mortis causa made by the deceased, guilty of a criminal offence under the provisions of sections 267, 271 to 274 of the Criminal Code [Strafgesetzbuch].

(2) In the cases set out in subsection (1) nos. 3 and 4, unworthiness to inherit does not occur if, before the occurrence of the devolution of the inheritance, the disposition that the testator was induced to make or in respect of which the criminal offence was committed has become ineffective, or the disposition which he was induced to revoke would have become ineffective.

#### Section 2340

##### Enforcement of the unworthiness to inherit by avoidance

- (1) Unworthiness to inherit is enforced by avoidance of the acquisition of the inheritance.
- (2) Avoidance is admissible only after the devolution of the inheritance. Avoidance may be effected as against a subsequent heir as soon as the inheritance has devolved upon the prior heir.
- (3) Avoidance may be effected only within the periods specified in section 2082.

#### Section 2341

##### Persons entitled to avoid

Any person is entitled to avoid if he benefits from the cessation of entitlement of a person unworthy to inherit, even if this is only on the cessation of another person.

#### Section 2342

##### Action for avoidance

- (1) Avoidance is effected by bringing an action for avoidance. The action must be directed to having the heir declared unworthy to inherit.
- (2) The avoidance does not enter into effect until the judgment is final and absolute.

#### Section 2343

##### Forgiveness

Avoidance is excluded if the testator has forgiven the person unworthy to inherit.

#### **Section 2344**

Effect of a declaration of unworthiness to inherit

- (1) If an heir is declared unworthy to inherit, the inheritance is deemed not to have devolved upon him.
- (2) The inheritance devolves upon the person who would be entitled to inherit if the person unworthy to inherit had not been living at the time of the devolution of the inheritance; the devolution is deemed to have occurred upon the devolution of the inheritance.

#### **Section 2345**

Unworthiness to receive a legacy; unworthiness to receive a compulsory share

- (1) If a legatee is guilty of one of the examples of misconduct set out in section 2339 (1), his claim arising under the legacy is voidable. The provisions of sections 2082, 2083, 2339 (2) and sections 2341 and 2343 apply.
- (2) The same applies to a claim to a compulsory share, if the person entitled to the compulsory share is guilty of such misconduct.

Division 7

#### **Renunciation of inheritance**

##### **Section 2346**

Effect of the renunciation of inheritance, possibility of limitation

- (1) Relatives and the spouse of the testator may renounce their right of intestate succession by contract with the testator. The person renouncing is excluded from intestate succession as though he had no longer been alive at the time of the devolution of the inheritance; he does not have a right to a compulsory share.
- (2) The renunciation may be restricted to the right to a compulsory share.

##### **Section 2347**

Personal requirements, representation

- (1) If the person renouncing is under guardianship, the ratification of the family court is required for the renunciation of the inheritance; if he is under parental custody, the same applies, unless the contract is entered into between spouses or engaged persons. The approval of the custodianship court is required for a renunciation by the custodian.
- (2) The testator may enter into the contract only in person; if he has limited capacity to contract, he does not require the approval of his legal representative. If the testator is incapable of contracting, the contract may be entered into by the legal representative; the ratification of the family court or custodianship court is required to the same extent as specified in subsection (1).

##### **Section 2348**

Form

The contract on the renunciation of the inheritance must be notarially recorded.

### **Section 2349**

Extension to descendants

If a descendant or a collateral relative of the testator renounces his right of intestate succession, the effect of the renunciation extends to his descendants, unless otherwise provided.

### **Section 2350**

Renunciation in favour of another

(1) If a person renounces his right of intestate succession in favour of another, it is to be assumed, in case of doubt, that the renunciation is to take effect only in the event that the other becomes an heir.

(2) If a descendant of the testator renounces his right of intestate succession, then it is to be assumed, in case of doubt, that the renunciation is to take effect only in favour of the other descendants and the spouse of the testator.

### **Section 2351**

Revocation of a renunciation of the inheritance

The provision of section 2348 and, in respect of the testator, also the provision of section 2347 (2) sentence 1, first half-sentence and sentence 2 apply to a contract through which a renunciation of the inheritance is revoked.

### **Section 2352**

Renunciation of gifts

A person who has been appointed heir or left a legacy by will may renounce the testamentary gift by contract with the testator. The same applies to a gift made in a contract of inheritance to a third party.

The provisions of sections 2347 and 2348 apply.

Division 8

## **Certificate of inheritance**

### **Section 2353**

Competence of the probate court, application

The probate court must issue to the heir on application a certificate concerning his right of succession, and, if he is entitled only to a share of the inheritance, concerning the size of his share (certificate of inheritance).

### **Section 2354**

Statements of the heir on intestacy in the application

(1) A person who, as an heir on intestacy, applies for the issue of a certificate of inheritance must state:

1. the time of death of the deceased,
2. the relationship on which his right of succession is based,
3. whether and which persons exist or existed by whom he would be excluded from succession or his share of the inheritance would be reduced,
4. whether and what dispositions mortis causa of the deceased exist,
5. whether any legal dispute concerning his right of succession is pending.

(2) If a person has ceased to be an heir who would exclude the applicant from succession or would diminish his share of the inheritance, the applicant must state the way in which that person has ceased to be an heir.

### **Section 2355**

Statements of the testamentary heir in the application

A person who applies for the issue of a certificate of inheritance on the basis of a disposition mortis causa must specify the disposition upon which his right of succession is based, and must state whether and what other dispositions mortis causa of the testator exist, and must provide the information specified in sections 2354 (1) nos. 1, 5 and (2).

### **Section 2356**

Proof of accuracy of statements

(1) The applicant must prove the correctness of the information given in accordance with section 2354 (1) nos. 1, 2 (2) by public documents, and in the case of section 2355, must present the document on which his right of succession is based. Where the documents cannot be procured or can be procured only with disproportionate difficulty, it suffices if other proof is furnished.

(2) For proof that the testator at the time of his death was living in the matrimonial property regime of community of accrued gains, and in respect of the other information required under sections 2354 and 2355, the applicant must declare in lieu of an oath before a court or notary that he is not aware of anything that negatives his statements. The probate court may dispense with the declaration if it regards it as unnecessary.

(3) These provisions do not apply to the extent that the facts are obvious to the probate court.

### **Section 2357**

Joint certificate of inheritance

(1) If there is more than one heir, a joint certificate of inheritance is to be issued upon application. The application may be made by any of the heirs.

(2) In the application, the heirs and their shares of the inheritance are to be stated.

(3) If the application is not made by all the heirs, it must contain a statement that the other heirs have accepted the inheritance. The provisions of section 2356 apply also to the statements made by the applicant referring to the other heirs.

(4) The declaration in lieu of an oath is to be made by all of the heirs, unless the probate court considers that a declaration by one or more of them is sufficient.

### **Section 2358**

Investigations by the probate court

(1) The probate court must, with the aid of the evidence furnished by the applicant, of its own motion make the investigations necessary to establish the facts, and must hear the evidence that appears suitable.

(2) The probate court may issue a public request to be notified of the rights of succession of other persons; the manner of publication and the length of the notification period are determined by the provisions governing the public notice procedure.

### **Section 2359**

Requirements for the issue of a certificate of inheritance

The certificate of inheritance may be issued only if the probate court is of the opinion that the facts required to substantiate the application have been established.

### **Section 2360**

(repealed)

### **Section 2361**

Withdrawal or declaration of invalidity of an inaccurate certificate of inheritance

(1) If it transpires that a certificate of inheritance that has been issued is incorrect, the probate court must withdraw it. The certificate of inheritance becomes invalid upon its withdrawal.

(2) If the certificate of inheritance cannot be recovered immediately, the probate court must make an order declaring it void. The order must be published in accordance with the provisions of the Code of Civil Procedure [Zivilprozessordnung] governing the public service of a summons. The declaration of invalidity enters into effect upon the expiry of one month after the last publication of the order in the official gazettes.

(3) The probate court may, of its own motion, make investigations as to the correctness of a certificate of inheritance issued.

### **Section 2362**

Claim for return and information by the true heir

(1) The true heir may demand from a person in possession of an incorrect certificate of inheritance that he return it to the probate court.

(2) A person to whom an incorrect certificate of inheritance has been issued must provide the true heir with information concerning the condition of the inheritance and the location of the objects of the inheritance.

### **Section 2363**

Contents of the certificate of inheritance for the prior heir

(1) A certificate of inheritance issued to a prior heir is to state that subsequent succession has been directed, under what conditions it will take effect and who the subsequent heir is. If the testator has appointed the subsequent heir for the residue of the inheritance remaining at the time when subsequent succession takes effect, or if he has directed that the prior heir is to have free disposition of the inheritance, this is also to be stated.

(2) The subsequent heir has the right specified in section 2362 (1).

### **Section 2364**

Indication of the executor in the certificate of inheritance, claim for delivery by the executor

(1) If the testator has appointed an executor, the appointment is to be stated in the certificate of inheritance.

(2) The executor has the right specified in section 2362 (1).

### **Section 2365**

Presumption of legitimacy of the certificate of inheritance

It is presumed that the person who is named as heir in the certificate of inheritance has the right of succession stated in the certificate, and that he is not restricted by any directions other than those stated.

### **Section 2366**

Presumption of the authenticity of the certificate of inheritance

If a person acquires from the person named in the certificate of inheritance as heir, by a legal transaction, an object of the inheritance, a right in such object, or a release from a right belonging to the inheritance, the contents of the certificate of inheritance are deemed in his favour to be correct as far as the presumption under section 2365 extends, unless he knows of the incorrectness or knows that the probate court has demanded the return of the certificate of inheritance for incorrectness.



### **Section 2367**

Performance for the person named as heir in the certificate of inheritance

The provision of section 2366 applies with the necessary modifications if an act of performance has been effected to the person named as heir in the certificate of inheritance, on the basis of a right belonging to the inheritance, or if a legal transaction, containing a disposition of the right and not falling under the provision of section 2366, has been entered into between him and another in respect of such a right.

### **Section 2368**

Executor's certificate

(1) Upon application, the probate court must issue to an executor a certificate of his appointment. If the executor is restricted in his administration of the estate, or if the testator has directed that the executor is not to be restricted in incurring obligations on behalf of the estate, this is to be stated in the certificate.

(2) (repealed)

(3) The provisions on a certificate of inheritance apply with the necessary modifications to this certificate; upon the ending of the office of the testator the certificate becomes invalid.

### **Section 2369**

Certificate of inheritance limited to objects

(1) If an inheritance includes objects located outside the country, the application to issue a certificate of inheritance may be limited to the objects located within the country .

(2) An object for which a German public authority keeps a ledger or register for the registration of any person entitled to the object is deemed to be located within the country. A claim is deemed to be located within the country if a German court is competent for the action.

### **Section 2370**

Presumption of authenticity of declaration of death

(1) If a person who has been declared dead or whose time of death has been determined in accordance with the provisions of the Missing Persons Act [Verschollenheitsgesetz] survives the point of time that is deemed to be his time of death, or if he died before this point of time, the person who would be the heir on the basis of the declaration of death or the determination of the time of death is deemed for the benefit of the third party, even without the issue of a certificate of inheritance, to be the heir with regard to the legal transactions designated in section 2366 and 2367, unless the third party knows of the incorrectness of the declaration of death or of the determination of the time of death or knows that they have been revoked.

(2) Where a certificate of inheritance has been issued, the person who has been declared to be dead, or whose time of death has been determined in accordance with the provisions of the Missing Persons Act [Verschollenheitsgesetz], if he is still alive, has the rights specified in section 2362. A person whose death, or the declaration of whose death or the determination of the time of whose death has been wrongly assumed, has the same rights.

Division 9

### **Purchase of an inheritance**

#### **Section 2371**

Form

A contract by which an heir sells the inheritance which has devolved upon him must be notarially recorded.

#### **Section 2372**

Advantages due to purchaser

The advantages which ensue from the lapse of a legacy or a testamentary burden, or from the duty of a co-heir to adjust advancements, are owed to the purchaser.

#### **Section 2373**

Parts remaining for the seller

A share of the inheritance that devolves upon the seller after the completion of the sale, by subsequent succession or as a result of a person ceasing to be a co-heir, and a preferential legacy given to the seller are, in case of doubt, not to be deemed included in the sale. The same applies to family papers and family pictures.

#### **Section 2374**

Duty to return

The seller is obliged to deliver to the purchaser the objects of the inheritance existing at the time of the sale, including what he acquired before the sale by reason of a right belonging to the inheritance or as compensation for the destruction, damage or deprivation of an object of the inheritance, or by a legal transaction that related to the inheritance.

### **Section 2375**

#### Duty to compensate

(1) If before the sale the seller consumed, gratuitously alienated or gratuitously encumbered an object of the inheritance, he is obliged to compensate the purchaser for the value of the object consumed or alienated, or, in the event of encumbrance, for any decrease in value. The duty to compensate does not arise if, at the time of the purchase, the purchaser knew of the consumption or gratuitous disposition.

(2) Apart from this, the purchaser may not claim compensation for deterioration, destruction or impossibility of delivery of an object of the estate occurring for any other reason.

### **Section 2376**

#### Liability of the seller

(1) The obligation of the seller to grant a warranty for a legal defect is limited to the liability for his having a right of succession, for it not being limited by the right of a subsequent heir or by the appointment of an executor, for there being no legacies, testamentary burdens, compulsory share burdens, duties to adjust advancements or directions concerning the partitioning of the estate and for there being no unlimited liability towards all the creditors of the estate or individual creditors of the estate.

(2) The seller is not responsible for material defects in a thing belonging to the inheritance.

### **Section 2377**

#### Restoration of extinguished legal relationships

The legal relationships extinguished as a result of the devolution of an inheritance by the merger of a right with an obligation or of a right with a charge are, in the relationship between the purchaser and the seller, deemed not to have been extinguished. If necessary, such a legal relationship is to be reinstated.

### **Section 2378**

#### Obligations of the estate

(1) The purchaser is obliged in relation to the seller to perform the obligations of the estate, unless the seller is responsible under section 2376 for their not existing.

(2) If the seller performed an obligation of the estate before the sale, he may demand reimbursement from the purchaser.

### **Section 2379**

#### Emoluments and charges prior to the sale

The emoluments for the period before the sale remain with the seller. He bears the charges for that period, including the interest on the obligations of the estate. However, all charges payable from the inheritance and all extraordinary charges that are to be regarded as imposed on the original value of the objects of the inheritance are borne by the purchaser.

### **Section 2380**

Passing of the risk, emoluments and charges after the sale

From the completion of the purchase on, the purchaser bears the risk of accidental destruction and of an accidental deterioration of the objects of the inheritance. From this date on, the emoluments are due to him and he bears the charges.

### **Section 2381**

Reimbursement of outlays and expenses

(1) The purchaser must reimburse to the seller the necessary outlays that the seller made on the inheritance before the sale.

(2) For other outlays incurred before the sale, the purchaser must effect reimbursement to the extent that the value of the inheritance is increased by them at the time of the sale.

### **Section 2382**

Liability of the purchaser in relation to the creditors of the estate

(1) From the completion of the purchase on, the purchaser is liable to the creditors of the estate, notwithstanding the continuation of the liability of the seller. This also applies to the obligations for whose performance the purchaser is not obliged in relation to the seller under sections 2378 and 2379.

(2) The liability of the purchaser in relation to the creditors may not be excluded or restricted by agreement between the purchaser and the seller.

### **Section 2383**

Scope of liability of the purchaser

(1) The provisions concerning the limitation of the liability of an heir apply to the liability of the purchaser. He has unlimited liability to the extent that the seller, at the time of the sale, has unlimited liability. If the liability of the purchaser is restricted to the inheritance, his claims arising from the purchase are deemed to be part of the inheritance.

(2) The filing of the inventory by the seller or the purchaser also benefits the other party, unless the latter has unlimited liability.

### **Section 2384**

The duty of notification of the seller towards the creditors of the estate, right of inspection

(1) The seller is obliged to the creditors of the estate to notify the probate court of the sale of the inheritance and the name of the purchaser without undue delay. Notification by the purchaser replaces notification by the seller.

(2) The probate court must allow any person who can credibly establish a legal interest to inspect the notification.

## **Section 2385**

### Application to similar contracts

(1) The provisions on the purchase of an inheritance apply with the necessary modifications to the purchase of an inheritance acquired by the seller contractually, and to other contracts whose purpose is the alienation of an inheritance which has devolved on the alienor or which has been acquired by him in another way.

(2) In the case of a donation, the giver is not obliged to compensate for any objects of the estate that were consumed or alienated gratuitously before the donation was made, nor for any charge upon such objects created gratuitously before the donation. The obligation specified in section 2376 concerning the warranty for legal defects does not affect the giver; if the giver has fraudulently concealed a defect, he is obliged to compensate the receiver of the gift for the damage arising from it.