



Übersetzung des Bürgerlichen Gesetzbuches durch ein Übersetzer-Team des Langenscheidt Übersetzungsservice: Dr. Ulrike Aschermann-Henger, Maria Bühler, Dr. Paul Conlon, Alison Mally, Dr. Margaret Marks, Katharina Schmalenbach, Gabriele Schuster, André Wahab.

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**Bürgerliches Gesetzbuch
German Civil Code
BGB**

In the version promulgated on 2 January 2002, Federal Law Gazette [Bundesgesetzblatt] I p. 42,

last amended by Article 123 of the statute of 19 April 2006, Federal Law Gazette I p. 866.

Official notes:

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).

German Civil Code

(in the revised version published in the Federal Law Gazette Part III, no. 400-2)

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 to 6

(repealed)

Section 7

Residence; establishment and termination

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

(2) The residence may exist in several places 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 a residence without the consent of his legal representative.

(2) A minor who is or has been married can independently establish and abandon a residence.

Section 9

Residence of a soldier

(1) A soldier has his residence in the place where he is stationed. The residence of a soldier who is not stationed in Germany is deemed to be the place in Germany where he was last stationed.

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

Section 10

(repealed)

Section 11

Residence of a child

A minor child shares its parents residence; it does not share the residence of a parent who does not have the right to care for the child's person. If neither parent has the right to care for the child's person, 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 a person's right to use a name is disputed by another person, or if the interest of the person entitled to the name is injured by another person's use of the same name without authority, the person entitled may require the other to remove the injury. If further injuries are to be feared, the person entitled may seek a prohibitory injunction.

Section 13

Consumer^{*)}

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



Official note:

These provisions serve to implement the directives set out above under numbers 3, 4, 6, 7, 9 and 11.

Section 14

Entrepreneur^{*)}

(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.

^{*)} Official note:

These provisions serve to implement the directives set out above under numbers 3, 4, 6, 7, 9 and 11.

Sections 15 to 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, in the absence of special provisions under [Reich] law, by state grant. The grant is in the power of the [state] in whose territory the association has its seat.

Section 23

Foreign association

An association whose seat is not in a [state] may, in the absence of special provisions under [Reich] law, be granted legal personality by a resolution of the [Federal Council] [Bundesrat].

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) The 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 scope of its power of representation 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 contractual payment. The revocability may be restricted by the articles of association to the case where an important reason for the revocation exists; such a reason includes in particular 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, the resolutions are passed in accordance with 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 if it is made to a member of the board.

Section 29

Emergency appointment by local court

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

Section 30

Special representatives

The articles of association may provide that, in addition to the board, special representatives are to be appointed for certain transactions. The power of representation of such a representative extends, in cases of doubt, to all legal transactions that the sphere of business allocated to him normally entails.

Section 31

Liability of the 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 his duties, 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 matter to be stated when the meeting is convened. The resolution is passed 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 is the result of a grant, government approval is necessary for every amendment of the articles of association, or, if the grant was made by the [*Bundesrat*], the approval of the [*Bundesrat*].

Section 34

Exclusion from voting

A member has no right to vote if the resolution relates to 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 the approval of that member.

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 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 that keeps the register of associations for the district in which the association has its seat. The notice convening the meeting must refer to the authorisation.

Section 38

Membership

Membership is not assignable 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 provide 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 to the extent that the articles of association provide otherwise.

Section 41

Dissolution of the association

The 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) The 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 the association is unable to pay its debts 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) The 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 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 depends upon a grant by the [*Bundesrat*], the deprivation is by a resolution of the [*Bundesrat*].

Section 45

Devolution of the assets of the association

(1) On the dissolution of the association or the 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, the assets, if the association according to its articles exclusively served the interests of its members, 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*] 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, a liquidation must take place, unless insolvency proceedings have commenced with regard to the assets of the association.

Section 48

Liquidators

(1) The liquidation is carried out 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 must be unanimous 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

(1) The liquidators must make public notice of the dissolution of the association or the deprivation of legal personality. In the notice, the creditors must be requested to register their claims. The public notice is made in the newspaper specified in the articles of association for this purpose, and in the absence of such a newspaper in the newspaper that is specified for public notices of the local court in whose district the association had its seat. 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 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 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 fulfilment of a liability is not possible at the time, or if a liability 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 of the liquidators in damages

Liquidators who commit breaches of their duties under section 42 (2) and sections 50 to 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 several persons act, they are liable as joint and several debtors.

Chapter 2

Registered associations

Section 55

Jurisdiction over entry in the register

(1) 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 for the district in which the association has its seat.

(2) The *Land* governments may allocate association matters by statutory order to one local court for the districts of several local courts. The *Land* governments may delegate the authorisation under sentence 1 by statutory order to the *Land* justice administration authorities.

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 assign 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 replaces 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) If the register of associations is kept in electronic form as a computerised data file, the data processing can be carried out on the instructions of the competent local court on the computer systems of another government agency or on the computer systems of a legal person under public law, if it is guaranteed that the register matters will

be properly dealt with. The *Land* governments are authorised to provide by statutory order that the data of a register of associations kept at a local court in electronic form are to be transmitted to other local courts and there too kept ready for inspection and in order to issue printouts if this serves to facilitate legal business and is compatible with efficient keeping of the register; the *Land* governments may by statutory order transfer the authorisation to the *Land* justice administration authorities.

(7) The Federal Ministry of Justice [Bundesministerium der Justiz] is authorised to enact, by statutory order with the approval of the Federal Council, more specific provisions on the details of setting up and keeping the register of associations, including the parts of it that are maintained electronically.

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 local authority.

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. as to whether the members are to make contributions, and if so, in what amount,
3. on the formation 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 registration of the association.

(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, stating the reasons.

(2) (repealed)

Sections 61 to 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 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 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 of the courts 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 entered 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 certificate confirming the entry.

Section 70

Restriction of power of representation; passing resolutions

The provisions of section 68 above also apply to provisions that restrict the scope of the power of representation of the board or that provide otherwise than the provision in section 28 (1) above for the passing of resolutions by the board.

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 shall make notification of the amendment for entry in the register. The original resolution containing the amendment and a copy shall 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 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 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 as a result of the expiry of the time determined for the duration of the association, the board must notify the dissolution for registration. 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 shall be entered in the register of the courts 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 a general prohibition on disposal is imposed on the debtor or it is ordered that disposals by the debtor are effective only with the approval of the provisional insolvency administrator, 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 representation 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 of the courts 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 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 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 the electronic register of associations by retrieval is admissible to the extent that 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.

(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 is situated. This provision on jurisdiction may be varied by statutory order of the *Land* government. The *Land* government may assign this authorisation to the *Land* justice administration authority by statutory order.

Subtitle 2

Foundations

Section 80

Formation of a foundation having legal personality

(1) The creation of a foundation with legal personality requires the 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) The 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 assignments

If the foundation is recognised as having legal personality, the founder has a duty to assign to the foundation the assets promised in the endowment transaction. Rights that can be assigned by contract of assignment 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 in Germany 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, it is deemed to have come into existence before his death for the purpose of the endowment payments made by the founder.

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 fact that the administration of the foundation is carried out by a public authority, does not indicate otherwise. The provisions of section 28 (2) and of section 29 do not apply to foundations whose administration is dealt with 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 preserved 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 object is 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 determined by number, measure or weight.

Section 92

Consumable things

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

(2) Also regarded as consumable are movable things that 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 products of the plot of land, as long as they are 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 make it an accessory. The temporary separation of an accessory from the main thing does not stop it being 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 operations,

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 afforded by the use of the thing or the right.

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 as follows, 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 payment for permission of use or of enjoyment of fruits and benefits, in interest, in profit shares or other periodic 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 duration of his duty, and bear other charges to the extent that they are payable during the period 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 derangement, 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 derangement.

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, counterperformance, as soon as performance and counterperformance have been effected. 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 the legal representative

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

Section 108

Entering 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 representative.

(2) If the other party requests the representative to declare his ratification, the declaration can be made only 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 can be declared only before the expiry of a two-week period after the request is received; if ratification is not declared, it is regarded as refused.

(3) If the minor has become fully capable of contracting, the ratification of the minor replaces 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. Revocation may also be declared to the minor.

(2) If the other party realised that he was dealing with a minor, he may revoke 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 ratification 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 his 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 the minor enters into without the necessary consent of the legal representative is ineffective. If the minor enters into such a legal transaction with another person with this consent, the legal transaction is ineffective if the minor does not produce the consent in writing and the other person without undue delay rejects the legal transaction for this reason. Rejection is not possible if the representative had given the other person notice of the consent.

Section 112

Independent operation of a business

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

(2) The authorisation may be revoked by the legal representative only with the ratification of the guardianship 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 guardianship 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 guardianship court. The guardianship court must replace the 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 declarant has made a mental reservation of not wanting the declaration made. The declaration is void if it is to be made to another who knows of the reservation.

Section 117

Sham transaction

(1) If a declaration of intent required to be made to another is, with his consent, only made in pretence, it is void.

(2) If a legal transaction is hidden by a sham 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 it will be understood not to be seriously intended is void.

Section 119

Voidability for mistake

(1) A person who, when making a declaration of intent, was mistaken about its content or had no intention whatsoever of making a declaration with such content, may avoid the declaration if it may be assumed that he would not have made the declaration with knowledge of the facts and with a sensible appreciation of the situation.

(2) Any 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 which has been incorrectly transmitted by the person or facilities used for its transmission may be avoided on the same condition as a declaration of intent made by mistake as provided for by section 119.

Section 121

Period for avoidance

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

(2) Avoidance is barred if ten years have passed since the declaration of

intent was made.

Section 122

Avoiding persons duty to pay damages

(1) If a declaration of intent is void under section 118, or avoided under sections 119 and 120, the declarant must, if the declaration was required to be made to another person, pay damages to this person, or failing this any third party, for the damage which the other or the third party suffers as a result of his relying on the validity of the declaration not, however, beyond the value 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 threat 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 of it. If a person other than the one to whom the declaration was required to be made acquired a right directly through 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 the period of one year.

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

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

Section 125

Voidness due to a defect of form

A legal transaction lacking the form prescribed by law is void. Lack of the form required by legal transaction also results, in case of doubt, in voidness.

Section 126

Written form

(1) If the written form is prescribed by law, the document must be signed by the issuer with his name in his own hand, or by his notarially certified mark.

(2) In the case of a contract, the signatures of the parties must be made on the same document. If several counterparts of the contract are drawn up, it suffices if each party signs the document intended for the other

party.

(3) The written form may be replaced by the electronic form, unless otherwise provided by statute.

(4) Notarial recording replaces the written form.

Section 126a

Electronic form

(1) If the 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 any other 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 apply also, in case of doubt, to the form required 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 protocol 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 law, it suffices if first the offer and later 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 drawn up in writing and the signature of the declarant be certified by a notary. If the declaration is signed by the issuer making his mark, the certification of the mark 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 required to be made to another, if made in his absence, becomes effective at the moment when this declaration reaches him. It does not become effective if a revocation reaches him previously or simultaneously.

(2) The effectiveness of a declaration of intent is not affected by the declarant dying or losing capacity to contract after making a declaration.

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

Section 131

Effectiveness as against persons without full capacity to contract

(1) If a declaration of intent is made to a person without 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 the use of a bailiff. The service is effected in accordance with the provisions of the Code of Civil Procedure [Zivilprozessordnung].

(2) If the declarant, not through his negligence, does not know who is the person to whom the declaration must be made, or if the whereabouts of this person are unknown, the 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 competent to grant approval is the one in the district of which the declarant has his residence, or if he has no residence within the country, his abode; in the latter case, the local court competent to grant approval is the one in the district of which the person to whom service is required to be effected had his last residence, or, if he had no residence within the country, his last abode.

Section 133

Interpretation of a declaration of intent

When interpreting a declaration of intent, the true intention is to be sought irrespective of the literal meaning of the declaration.

Section 134

Statutory prohibition

A legal transaction which violates a statutory prohibition is void, unless a different intention may be inferred from the statute.

Section 135

Statutory prohibition of alienation

(1) If the disposition of a thing violates a statutory prohibition against alienation which aims only at the protection of particular persons, the disposition is ineffective only as against these persons. A contractual disposition 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 a person without authorisation apply with the necessary modifications.

Section 136

Official prohibition of alienation

A prohibition against alienation 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 alienation 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 pecuniary advantages to be promised or granted to himself or to a third party in exchange for a performance, whereby these pecuniary advantages are clearly disproportionate to the performance.

Section 139

Partial invalidity

If a part of a legal transaction is void, the entire legal transaction is void, unless it may be assumed that it would have been entered into even if the void part had been omitted.

Section 140

Re-interpretation

If a void legal transaction meets the requirements of another legal transaction, the latter is deemed applicable, if it may be assumed that its validity would have been intended if there had been knowledge of the invalidity.

Section 141

Confirmation of a void legal transaction

(1) If a void legal transaction is confirmed by the person who entered into it, the confirmation is deemed to be a renewed undertaking.

(2) If a void contract is confirmed by the parties, they are obliged, in case of doubt, to grant to each other what they would have had to grant if the contract had been valid from the outset.

Section 142

Effect of avoidance

(1) If a voidable legal transaction is avoided, it is deemed to have 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 entered into with another person, the other person is the opponent. The same applies to a legal transaction required to be entered into with another person or with a public authority, even if the legal transaction has already been entered into with the authority.

(4) In the case of a unilateral legal transaction of another kind, the person who has acquired a legal advantage directly from the legal transaction is the opponent. The avoidance may, however, if the declaration of intent was required to be made to a public authority, be made by declaration to the authority; the authority should inform the person 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 to it.

Section 146

Expiry of an offer

An offer expires if it is refused as against the offeror, or if it is not accepted as against this person in due time in accordance with sections 147 to 149.

Section 147

Period for acceptance

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

(2) An offer made to a person who is not present may be accepted only until the time when the offeror may expect to receive an 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 take place only 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 arrived in time with ordinary forwarding, and if the offeror must have recognized 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 sending the notification, the acceptance is deemed not to have been late.

Section 150

Late and altered acceptance

(1) The late acceptance of an offer is deemed 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 common usage, or if the offeror has waived it. The moment when the offer expires is determined according to 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 simultaneously present, 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

Clear lack of agreement; lack of notarial recording

(1) Until the parties have agreed on all points of a contract on which an agreement was required to be reached according to the declaration of even 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 concluded until the recording has taken place.

Section 155

Hidden lack of agreement

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

Section 156

Conclusion of contracts at auctions

At an auction, a contract is not concluded until the fall of the hammer. A bid expires 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 according to the requirements of good faith, taking common usage into consideration.

Title 4

Condition and stipulation as to time

Section 158

Conditions precedent and subsequent

(1) If a legal transaction is entered into subject to a condition precedent, the legal transaction made dependent on the condition becomes effective on the fulfilment of the condition.

(2) If a legal transaction is entered into subject to a condition subsequent, the effect of the legal transaction ends upon the fulfilment of the condition; at this moment the former legal situation is restored.

Section 159

Retroactive effect

If, according to the terms of a legal transaction, the consequences linked to the fulfilment of the condition are to become effective as from an earlier time, then on the fulfilment of the condition the parties involved are bound to perform reciprocally what they would have been bound to perform, 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 fulfilment of the condition, demand damages from the other party, if the latter, during the period of suspense, is responsible for preventing or impeding the right dependent on the condition.

(2) In the case of a legal transaction entered into subject to a condition subsequent, the person in whose favour 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 subject to a condition precedent, any further disposition which he makes as regards the thing in the period of suspense is invalid on the fulfilment of the condition insofar as it would prevent or impair the effect dependent on the condition. Such a disposition is equivalent to a disposition which is effected during the period of suspense by means of 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 fulfilment of the condition

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

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

Section 163

Stipulation as to time

If, when a legal transaction is entered into, a time has been determined for the beginning or the end of its effect, in the former case the provisions applicable to conditions precedent and in the latter case those applicable to conditions subsequent, set forth in sections 158, 160 and 161, 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 in the name of a principal within the scope of his authority takes effect directly in favour of and against the principal. It makes no difference whether the declaration is made expressly 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 in the name of another is not evident, the agents absence of intent to act in his own name 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 validity of a declaration of intent made by or to an agent is not impaired 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 vitiated by an absence of intent or by knowledge or by imputed knowledge of certain circumstances, the person not of the principal, but of the agent, is taken into account.

(2) When the power of representation (authority) is conferred by legal transaction, if the agent has acted in compliance with specific instructions given by the principal, the latter may not rely on the lack of knowledge of the agent about circumstances known to him. The same rule applies to circumstances which the principal ought to have known, insofar as the imputed knowledge 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 with whom the matter delegated is to be transacted.

(2) The declaration is not required to be in the form prescribed 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 was based. The authority is revocable also if the legal relationship is continued, unless a different intention appears from this relationship. 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

Insofar as a terminated 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, at the time when a legal transaction is entered into, knows or ought to know of the expiry.

Section 170

Period of effectiveness of the authority

If authority is conferred 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 notification to a third party or by public notice that he has granted authority to another, the latter, on the basis of this announcement, is authorised to represent the person to the particular third party in the former case, and 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

Power of attorney

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

(2) The authority remains effective until the power of attorney is returned to the principal or declared 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 which an authorised representative enters into with another is ineffective if the authorised representative does not produce a power of attorney and the other rejects the legal transaction for this reason without undue delay. Rejection is barred if the principal notified the other of the authorisation.

Section 175

Return of the power of attorney

After the expiry of the power of attorney, the authorised representative must return the power of attorney to the principal; he is not entitled to a right of retention.

Section 176

Declaration of invalidity of the power of attorney

(1) The principal may declare the power of attorney invalid by public notice; the declaration of invalidity must be published according to the provisions of the Code of Civil Procedure [Zivilprozessordnung] applicable to the service of a summons by publication. The declaration of invalidity becomes effective on the expiry of one month after the last appearance thereof in the official newspapers.

(2) The local court in whose district the principal is subject to general jurisdiction and the local court which would be competent for the action for the return of the power of attorney 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 power of attorney.

Section 177

Conclusion of contract by an unauthorised agent

(1) If a person enters into a contract in the name of another without authority, the validity of the contract to the benefit or detriment of the principal depends on his ratification.

(2) If the other party demands that the principal declares whether or not he ratifies the contract, the declaration may only be made to such person; a ratification or a refusal to ratify 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 deemed to have been refused.

Section 178

Right of the other party to revoke

Until ratification of the contract, the other party is entitled to revoke it, unless he knew of the lack of authority on conclusion of 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 has not furnished proof of his authority, bound to the other party at his 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 authority, he is bound to make compensation only for the damage which the other party has suffered by his relying on the authority; not, however, beyond the value of the interest which the other party has in the validity of the contract.

(3) The agent is not liable, if the other party knew or ought to have known of the lack of authority. 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 with whom such a legal transaction was to be entered into did not object to the authority claimed by the agent on entering into the legal transaction or if he agreed that the agent may act without authority, the provisions on contracts apply with the necessary modifications. The same applies if a unilateral legal transaction is entered into with an unauthorised agent with his consent.

Section 181

Self-dealing

An agent may not without permission 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 solely consists in the fulfilment of an obligation.

Title 6

Consent and ratification

Section 182

Approval

(1) If the validity of a contract or a unilateral legal transaction to be entered into with another depends on the approval of a third party, the granting and refusal of approval may be declared both to the one and to the other party.

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

(3) If a unilateral legal transaction whose validity depends on the approval of a third party is entered into with the consent of the third party, 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 entered into, unless a different intention may be inferred from the legal relationship on which this consent is based. The revocation may be declared both to the one or to the other party.

Section 184

Retroactive effect of ratification

(1) Subsequent approval (ratification) operates retroactively from the moment when the legal transaction was entered into, unless otherwise provided.

(2) Dispositions made before the ratification of the subject matter of the legal transaction by the ratifying person or by execution or attachment or by the administrator in insolvency proceedings are not made invalid by the retroactive effect.

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 disposer acquires the thing or, if the person entitled has succeeded to the disposers estate and is liable without limitation for the liabilities of the estate. In the last two cases, only the first disposition is valid if several conflicting dispositions have been made in respect of the thing.

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 laws, court orders and legal transactions.

Section 187

Beginning of a period of time

(1) If a period begins to run from an event or a point in time occurring during the course of a day, the day in which the event or point in time occurs is not included in the calculation of the period.

(2) If the beginning of a day is the determining point of time from which a period begins to run, this day is included in the calculation of the period. The same applies to the date of birth when calculating the age of a person.

Section 188

End of a period of time

(1) A period of time determined by days ends on the expiry of the last day of the period.

(2) A period of time determined by weeks, by months or by a period comprising several months - year, half-year, quarter - ends, in the case provided for by section 187 (1), on the expiry of the day of the last week or of the last month which corresponds in name or number to the day in which the event or the point in time occurs, in the case provided for by section 187 (2), on the expiry of the day of the last week or the last month which precedes the day which corresponds in name 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 period of six months is understood by a half-year, a period of three months by a quarter, a period of fifteen days by half a month.

(2) If a period of time is determined at one or several whole months and a half-month, 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 in such a manner 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 first is understood by beginning of a month, the fifteenth by the middle of a month and the last day of a month by the end of the month.

Section 193

Sundays and holidays; Saturdays

If, on a particular day or within a period, a declaration of intent is required to be made or any act of performance done, and if this particular day or the last day of this period falls on a Sunday, a general holiday officially recognised at the place of declaration or performance, or on a Saturday, the next workday applies instead of such a day.

Division 5

Limitation

Title 1

Matters subject to limitation and the limitation period

Section 194

Matters subject to limitation

(1) The right to require another person to do or to refrain from doing an act (a claim) is subject to limitation.

(2) Claims based on a relationship governed by family law are not subject to limitation insofar as they are aimed at establishing, for the future, a situation appropriate to the relationship.

Section 195

Standard limitation period

The standard limitation period is three years.

Section 196

Limitation period in case of rights to land

The limitation period is ten years for claims to the transfer of title to land and for the establishment, transfer or cancellation of rights to land or for the alteration of the subject matter of such a right and also for claims to counter-performance.

Section 197

Thirty-year limitation period

(1) Unless otherwise provided, the limitation period is thirty years for:

1. claims for recovery of possession based on ownership or other rights in rem,
2. claims governed by family law or the law of succession,
3. claims that have been declared final and absolute,
4. claims based on enforceable settlements or enforceable documents,
5. claims that have become enforceable by virtue of having been established in insolvency proceedings, and
6. claims for reimbursement of the costs of execution.

(2) Insofar as claims under subsection (1), no. 2 are concerned with the performance of regularly recurring obligations or maintenance obligations and insofar as claims under subsection (1), nos. 3 to 5 are concerned with regularly recurring obligations that will fall due in the future, the standard limitation period applies instead of the period of thirty years.

Section 198

Limitation in the case of legal succession

If a thing in respect of which a claim in rem exists comes into the possession of a third person by way of legal succession, the part of the

limitation period that has expired during the period of possession of his legal predecessor accrues to the benefit of the legal successor.

Section 199

Beginning of the standard limitation period and maximum periods

(1) The standard limitation period begins to run at the end of the year in which:

1. the claim has arisen, and
2. the obligee becomes aware of the circumstances giving rise to the claim and of the identity of the obligor or ought to have become aware of such matters but for his gross negligence.

(2) Irrespective of how they arose and irrespective of awareness or a grossly negligent lack of awareness, claims for damages based on death, personal injury, an impairment to health or to liberty are time-barred thirty years from the date on which the act, breach of duty or other event causing the loss occurred.

(3) Other claims for damages are time-barred

1. irrespective of knowledge or a grossly negligent lack of knowledge, ten years after they arose and
2. irrespective 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 causing the loss occurred.

The period which ends first is decisive.

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

(5) If the claim is for forbearance, the date of the infringement of such an obligation replaces the date on which the claim arose.

Section 200

Beginning of other limitation periods

Unless another date is provided, the limitation period of claims not subject to the standard limitation period begins to run when the claim arises. Section 199 (5) applies with the necessary modifications.

Section 201

Beginning of the limitation period for established claims

The limitation period for claims of the type referred to in section 197 (1), nos. 3 to 6, begins to run on the date when the decision becomes final and absolute, the enforceable title is created or the claim is established in insolvency proceedings but not, however, before the claim arises. Section 199 (5) applies with the necessary modifications.

Section 202

Inadmissibility of agreements on limitation

(1) In the event of liability for deliberate acts and failures to act, the limitation period may not be shortened in advance by way of legal transaction.

(2) The limitation period may not be extended by way of 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 case of negotiations

If negotiations between the obligor and the obligee are being conducted with regard to the claim or the circumstances on which the claim is based, the limitation period is suspended until the one or the other party refuses to continue the negotiations. The claim is not barred until at least three months have elapsed after the end of the suspension.

Section 204

Suspension of limitation by pursuit of rights

(1) Limitation is suspended by:

1. the bringing of an action for performance or for a declaration of the existence of a claim, for the attachment of an execution certificate or for the issue of an order for execution,
2. the service of an application under the simplified procedure for the maintenance of minors,
3. the service of a demand for payment in summary proceedings for recovery of debt,
4. arranging for notice to be given of an application for conciliation filed with a conciliation body established or recognised by the administration of justice of a *Land* (state) or, if the parties agree to seek conciliation, 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 on the giving of notice,
5. the assertion of a right to set off the claim in the course of a lawsuit,
6. the service of third-party notice,
7. the service of an application for an independent procedure for the taking of evidence,
8. the beginning of an agreed expert appraisal procedure or the appointment of an expert in accordance with section 641a,
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 thereof if the order for attachment, the interim injunction or the interim order is served on the obligor within one month of its being made 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 the arbitration proceedings,
12. the filing of an application with a public authority, if the admissibility of the action depends on a preliminary decision by this authority and the action is brought within three months after the application has been dealt with; this applies with the necessary modifications to applications required to be made to a court or a conciliation body referred to in no. 4 above, the admissibility of which depends on a preliminary decision by an authority,
13. the filing of an application with a higher court, if it is for that higher court to decide upon the court with jurisdiction over the claim and, within three months after the application has been dealt with, the action is brought or the application for which a decision on jurisdiction was necessary is filed, and
14. arranging for notice to be given of the first application for the grant of legal aid; 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 a final decision has been made in respect of the proceedings commenced or after their cessation in some other manner. If the proceedings come to a halt because of inaction by the parties, the date of the last step in the proceedings taken by the parties, the court or other body responsible for the proceedings applies instead of the date of cessation of the proceedings. Suspension begins anew if one of the parties pursues the proceedings further.

(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 case of a right to refuse performance

Limitation is suspended for as long as the obligor is temporarily entitled to refuse to perform on the basis of an agreement with the obligee.

Section 206

Suspension of limitation in case of force majeure

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

Section 207

Suspension of limitation on grounds relating to the family and for similar 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 the civil partnership exists,
2. parents and children and the spouse of one parent and the latter's children while the children are under age,
3. a guardian and his ward for the duration of the guardianship,
4. a person of full age placed under the care of a custodian and his custodian for the duration of the 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 an advisor in litigation proceedings is suspended during the period of the latter's activity as such.

(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 begins to run, 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 the cessation of this common household.

Section 209

Effect of suspension

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

Section 210

Expiry of the limitation period suspended 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 does not end to his benefit or detriment until the expiry of six months after the time when he 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 applies instead of the period of six months.

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

Section 211

Expiry of the limitation period suspended in matters relating to estates

A claim that is part of or directed against an estate does not become time-barred until at least six months have elapsed from the time when the inheritance is accepted by the heirs 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 applies instead of the period of six months.

Section 212

Recommencement of the limitation period

(1) The limitation period begins anew if

1. the obligor acknowledges the claim to the obligee by part payment, the payment of interest, the provision of security or in some other way, or
2. a judicial or official act of execution is performed or applied for.

(2) The recommencement of the limitation period as a result of an act of execution is deemed not to have occurred if the act is annulled upon application by the obligee or due to a failure to comply with the statutory requirements.

(3) The recommencement of the limitation period due to an application for an act of execution is deemed not to have occurred if the application is not granted or is withdrawn before the act or the completed act is annulled in accordance with 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 applies to claims which may be pursued, on the same basis, either as an ancillary 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 to perform his obligation.
- (2) Performance made in satisfaction of a claim that has become time-barred may not be reclaimed, even if made without knowledge of the time-bar. 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 limitation has occurred

The fact that a claim is time-barred does not preclude the set-off and the assertion of a right of retention if the claim was not time-barred at the moment when the set-off could first have been made or performance refused.

Section 216

Effect of limitation in the case of secured claims

- (1) The time-bar of a claim in respect of which a mortgage, ship's mortgage or lien exists does not prevent the obligee from seeking satisfaction of his claim from the object encumbered.
- (2) If a right has been obtained in order to secure a claim, the retransfer of the right may not be demanded on the ground that the claim has become time-barred. If title has been reserved, the contract may be avoided even if the secured claim is time-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 time-barred at the same time as the main claim, even if the specific limitation period applying to the claim for collateral performance has not yet expired.

Section 218

Ineffectiveness of avoidance

- (1) Avoidance for non-performance or for the failure to perform in accordance with the contract is ineffective if the claim for performance or the claim for subsequent performance has become time-barred and the obligor raises this plea. 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 subsequent performance would be time-barred. Section 216 (2), sentence 2, remains unaffected.
- (2) Section 214 (2) applies with the necessary modifications.

Sections 219 to 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 it only has the purpose of causing damage to another.

Section 227

Self-defence against persons

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

Section 228

Self-defence against things

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, seizes, destroys or damages a thing, or a person who, for the purpose of self-help, apprehends a person who is obliged and is suspected of fleeing, or overcomes the resistance of the person obliged to perform an act which he is bound to tolerate, does not act unlawfully, if help cannot be obtained from the authorities in due time and, without immediate intervention, there is a danger that the realisation of the claim will be prevented or seriously impeded.

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 taken away, unless execution is carried out, a writ of attachment is to be sought.
- (3) In 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 in the district of which the arrest took place; the person obliged is to be brought before 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

Mistaken self-help

If a person does any of the acts described in section 229 in the mistaken assumption that the necessary requirements exist to make the act lawful, 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 which have been registered in the Federal Debt Register or the *Land* Debt Register of one of the German *Länder*,

by the pledge of movable property,

by the creation of ships 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 domestic land,

by the pledge of claims for which there is a mortgage on domestic land, or by the pledge of land charges or annuity land charges on domestic land,

(2) If security cannot be provided in this manner, it is permissible to furnish an appropriate surety.

Section 233

Effect of deposit

Upon the deposit, the person entitled acquires a pledge over the money or securities deposited and, if the money or the securities pass into the ownership of the treasury or the institution designated as the place of deposit, a pledge over the claim for reimbursement.

Section 234

Suitable securities

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

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

(3) Securities may serve as security only up to three quarters of their market value.

Section 235

Right to exchange

If a person has provided security by depositing money or securities, he 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 three quarters of the market value of the securities, the surrender of which the creditor may demand in cancellation of his claim.

Section 237

Movable things

A movable thing may be provided as security only up to two thirds of its estimated value. Things may be rejected as security if their deterioration is to be feared or if their storage 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 required to be provided.

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

Section 239

Surety

(1) A surety is qualified if he possesses property proportionate to the amount of security to be provided and is subject to general domestic jurisdiction.

(2) The declaration of suretyship must contain a waiver of the plea to the right to prior action against the principal debtor.

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 some other security provided.

Book 2

Law of Obligations

Division 1

Subject matter of obligations

Title 1

Duty to perform

Section 241

Duties arising out of an obligation

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

(2) The obligation may also, depending on its contents, oblige each party to take account of the rights, legally protected interests and other

interests of the other party.

Section 241a

Unsolicited performance

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

(2) Statutory claims are not excluded if the performance was not intended for the recipient or took place under the mistaken assumption that an order had been placed, and the recipient was aware of this or must have been aware of this if he had observed the relevant accepted standards of care.

(3) Performance is not unsolicited where, instead of the performance ordered, the consumer is offered performance that is equivalent in quality and price, and it is drawn to his attention that he is not obliged to accept it and does not have to pay the costs of return carriage.



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

The obligor must perform in a manner consistent with good faith taking into account common usage.

Section 243

Obligation in kind

(1) A person whose obligation is to provide a thing designated only by description must provide a thing of average kind and quality.

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

Section 244

Foreign currency obligation

(1) If a money debt expressed in a currency other than the Euro is payable in Germany, payment may be made in Euro unless payment in the other currency has been expressly agreed.

(2) Conversion occurs at the market rate applicable at the place of payment at the time of payment.

Section 245

Obligation payable in a specific type of coin

If a debt is payable in a specific type of coin which is no longer in circulation at the time of payment, payment is to be made in the manner which would have been applicable, if the type of coin had not been specified.

Section 246

Statutory interest rate

If interest on a debt is payable by virtue of statute or of a legal transaction, the interest rate is 4 % per year, unless otherwise provided.

Section 247

Basic rate of interest^{*)}

(1) The basic rate of interest is 3.62 %. 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 interest rate for the most recent main refinancing operation of the European Central Bank prior to the first calendar day of the six month period concerned.

(2) The applicable basic rate of interest is announced by the Deutsche Bundesbank in the Bundesanzeiger immediately after the dates referred to in subsection (1) sentence 2 above.

^{*)} 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).

Section 248

Compound interest

(1) An agreement reached in advance that interest due should in turn bear interest is void.

(2) Savings banks, loan corporations and owners of bank businesses may agree in advance that interest not collected on deposits should be held to be fresh interest-bearing deposits. Loan corporations entitled to issue interest-bearing bonds for the amount of loans granted by them may for such loans have commitments made to them in advance to pay interest on back interest.

Section 249

Nature and extent of damages

(1) Anyone liable in damages must restore the condition that would exist, if the circumstance obliging him to pay damages had not occurred.

(2) Where there is liability 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 setting of a period of time

The obligee may set an appropriate 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 due time; the claim to restoration is excluded.

Section 251

Damages in money without the setting 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 at disproportionate expense. Expenses incurred by medical treatment of an injured animal are not disproportionate merely because they exceed the animal's value significantly.

Section 252

Lost profits

The damage to be compensated 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 taken measures and precautions, could in all probability be expected.

Section 253

Intangible damage

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

(2) If damages must be paid for an injury to the body or health, violation of freedom or sexual self-determination, a reasonable compensation in money may be demanded for any damage that is not financial damage.

Section 254

Contributory culpability

(1) Where culpability on the part of the aggrieved party contributed to the liability in damages as well as the extent of compensation to be paid depend on the circumstances, in particular to what extent the damage was caused mainly by the one party or the other one.

(2) This also applies, if the aggrieved party's culpability is limited to having failed to draw the obligor's attention to the danger of unusually extensive damage that the obligor neither was aware of nor must have been aware of, or to having failed to avert or reduce the damage. The provision of section 278 applies with the necessary modifications.

Section 255

Assignment of claims to compensation

Anyone 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 to which the person entitled to damages is entitled on the basis of ownership of the thing or on the basis of the right as against third parties.

Section 256

Payment of interest for expenses

Anyone obliged to compensate expenses must pay interest from the date of the expense onwards on the amount spent or, if other objects than money have been spent, 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 emoluments or fruits of the object remain due to the person entitled to damages at no charge.

Section 257

Claim to discharge

Anyone entitled to demand compensation for expenses he incurs for a specific purpose may demand discharge from any obligation, if he enters into it for that purpose. If the obligation is not yet due, the person liable in damages may provide security to him instead of discharging him from the obligation.

Section 258

Right of removal

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

Section 259

Scope of duty to render accounts

(1) Anyone obliged to render account for management with revenue or expenditures must provide the person entitled with an account containing the orderly compilation of revenue or expenditures and, where receipts are customarily given, must submit receipts.

(2) Where there is reason to assume that the information on revenues 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 revenue as completely as he is able to do.

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

Section 260

Duties when returning or providing information on the aggregate of things

(1) Anyone obliged to return an aggregate of things or to provide information on the extent of such an aggregate must submit to the person entitled an inventory list of the aggregate.

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

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

Section 261

Providing a declaration in lieu of an oath

(1) The declaration in lieu of an oath, except where it must be provided before the court of execution, must be provided before the local court [Amtsgericht] of that place where the duty to render account or submit the list must be performed. If the person obliged has his residence or abode in Germany, he may provide the declaration before the local court of his place of residence or abode.

(2) The court may resolve to modify the declaration in lieu of an oath accordingly.

(3) The costs of recording the declaration in lieu of an oath must be borne by the party demanding the provision of the declaration.

Section 262

Alternative obligation; right of choice

Where more than one performance is owed in such a manner that only the one or the other may be effected, 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 owed solely from the beginning.

Section 264

Delay by the party 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 discretion, may direct execution to one performance or the other one; however, as long as the obligee has not received the performance chosen, completely or in part, the obligor may discharge himself of his obligation through another performance.
- (2) If the obligee entitled to the right of choice is in delay, the obligor may demand from him to exercise that right by setting an appropriate 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 due time.

Section 265

Impossibility in case of alternative obligations

If performance is impossible from the very beginning or if it later becomes impossible, the obligation is limited to the other performance. Limitation does not occur if performance becomes impossible due to a circumstance for which the party entitled to the right of choice bears no responsibility.

Section 266

Performance in part

The obligor is not entitled to render performance in part.

Section 267

Performance by third parties

- (1) If the obligor need not perform in person, a third party may also render performance. The consent of the obligor is not required.
- (2) The obligee may reject performance if the obligor objects.

Section 268

The third party's right of redemption

- (1) If the obligee effects execution against an object belonging to the obligor, anyone who risks losing a right to 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 may not be asserted to the disadvantage of the obligee.

Section 269

Place of performance

(1) Where no place of performance has been determined or evident from the circumstances, in particular from the nature of the obligation, the performance must take place at the place where the obligor had his residence at the time when the obligation came about.

(2) If the obligation came about in the obligors commercial undertaking, the place of the commercial undertaking replaces that of the residence if the obligor maintained that commercial undertaking at another place.

(3) From the circumstance that the obligor has assumed the costs of shipping it need not be concluded that the place to which shipment must occur is supposed 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 expense to the obligee at the latters residence.

(2) If the obligation came about in the obligees commercial undertaking, the place of the commercial undertaking replaces that of the residence if the obligee maintained that commercial undertaking at another place.

(3) If the costs or risk of transfer increase as the result of a change in the obligees place of residence or commercial undertaking occurring after the obligation came about, 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 remain unaffected.

Section 271

Time of performance

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

(2) Where a time has been determined, 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 it falling due, he is not entitled to any deduction due to interim interest.

Section 273

Right of retention

(1) If the obligor has a due claim against the obligee under the same legal relationship on which the obligation is based, he may, unless otherwise emerges from the obligation, refuse the performance owed by him, until the performance owed to him is rendered (right of retention).

(2) Anyone obliged to return an object has the same right, if he is entitled

to a due claim on account of outlays incurred for the object or on account of any damage caused to him by the object, unless he has obtained the object by means of an intentionally committed tort.

(3) The obligee may avoid exercising 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 relation to the obligee's 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 fulfilment).

(2) On the basis of such an order the obligee may pursue his claim without effecting the performance he owes by way of execution, if the obligor is in default through non-acceptance.

Section 275

Exclusion of the duty of performance^{*)}

(1) A claim for performance cannot be made in so far as it is impossible for the obligor or for anyone else to perform.

(2) The obligor may refuse to perform in so far as performance requires expenditure which, having regard to the subject matter of the obligation and the principle of good faith, is manifestly disproportionate to the obligee's interest in performance. When determining what may reasonably be required of the obligor, regard must also be had to whether he is responsible for the impediment to performance.

(3) Moreover, the obligor may refuse to perform, if he is to effect the performance in person and, after weighing up the obligee's interest in performance and the impediment to performance, performance cannot be reasonably required of the obligor.

(4) The obligee's rights are determined by sections 280, 283 to 285, 311a and 326.

^{*)}

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 liable for deliberate and negligent acts or omissions, unless the existence of a stricter or more lenient degree of liability is specified or to be inferred from the other subject matter of the obligation, in particular the assumption of a guarantee or the acquisition risk. The provisions of sections 827 and 828 apply with necessary modifications.

(2) A person acts negligently if he fails to observe the relevant accepted standards of care.

(3) The obligor cannot be relieved in advance of liability for deliberate acts or omissions.

Section 277

Standard of care in one's own affairs

A person who is liable only for failure to display the standard of care that he displays in his own affairs is not relieved of liability for gross negligence.

Section 278

Obligors responsibility for third parties

The obligor is liable for the fault of his legal representative, and of persons whom he employs to perform his obligation, to the same extent as for his own fault. 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 under the obligation, the obligee may demand compensation for damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.
- (2) The obligee may demand damages for delay in performance only, if the additional requirement in section 286 is satisfied.
- (3) The obligee may demand damages in lieu of performance only, if the additional requirements of sections 281, 282 or 283 are satisfied.

Section 281

Damages in lieu of performance because of failure to perform or failure to perform properly

- (1) In so far as the obligor fails to perform when performance is due or fails to perform properly, the obligee may, subject to the requirements of section 280 (1), demand damages in lieu of performance, if he has fixed to no avail a reasonable period within which the obligor is to perform or to effect cure. If the obligor has performed only in part, the obligee may demand damages in lieu of full performance only, if he has no interest in the performance in part. If the obligor has failed to perform properly, the obligee may not demand damages in lieu of performance if the breach of duty is immaterial.
- (2) A period for performance does not have to be fixed, if the obligor seriously and definitely refuses to perform or if there are special circumstances which, after each party's interests are balanced, justify the immediate assertion of a claim for damages.
- (3) If the type of breach of duty is such that it is not feasible to set a period of time for performance, a warning notice replaces it.
- (4) The claim for performance is excluded once the obligee has demanded damages in lieu of performance.
- (5) If the obligee demands damages in lieu of full performance, the obligor may claim, in accordance with sections 346 to 348, the return of whatever he has performed.

Section 282

Damages in lieu of performance due to breach of a duty under section 241 (2)

If the obligor breaches a duty under section 241 (2), the obligee may, if

the requirements for section 280 (1) are satisfied, demand damages in lieu of performance, if he can no longer be reasonably expected to accept performance by the obligor.

Section 283

Damages in lieu of performance where there is no duty to perform

If, by virtue of section 275 (1) to (3), the obligor does not have to perform, the obligee may, subject to the requirements of section 280 (1), demand damages in lieu of performance. Section 281 (1) sentences 2 and 3 and (5) apply with the necessary modifications.

Section 284

Compensation for wasted expenses

Instead of demanding damages in lieu of performance, the obligee may demand reimbursement of the expenses which he has incurred in reasonable reliance on the receipt of performance, save where the purpose of the expenses would not have been achieved, even if the obligor had not breached his duty.

Section 285

Return of compensation

(1) If, as a result of a circumstance under which section 275 (1) to (3) relieves the obligor of the obligation to perform, the obligor obtains compensation or a claim to compensation for the object owed, the obligee may demand return of what has been received as compensation or an assignment of the claim to compensation.

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

Section 286

Delay by the obligor²⁾

(1) If the obligor fails to perform in response to a warning notice from the obligee occurring after performance has fallen due, he defaults due to the warning notice. Equivalent to the warning notice are the bringing of an action as well as the service of a demand for payment in summary debt proceedings for recovery of debt.

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

1. a period of time according to the calendar has been determined,
2. performance must be preceded by an event and an appropriate period of time for performance has been determined in such a way that it can be calculated according to the calendar from the event onwards,
3. the obligor seriously and definitely refuses performance,
4. for special reasons, balancing the interests of both parties, the immediate occurrence of default is justified.

(3) The obligor of a claim for remuneration is put in default at the latest, if he fails to perform within 30 days after the due date and receipt of an invoice or equivalent payment statement; this applies to an obligor who is a consumer only, if a specific reference to those consequences has been made in the invoice or payment statement. If the time at which the invoice or payment statement reached the obligor is uncertain, an obligor who is not a consumer is put in default at the latest 30 days after the due date and receipt of the counterperformance.

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

*) 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. 19).

Section 287

Liability during a period of default

In a period of default the obligor is liable for all negligence. He is liable for performance in case of accident as well, unless the damage would have occurred even if performance had been made on time.

Section 288

Default interest *)

(1) Any money debt must bear interest during the period of default. The default interest rate amounts to five percentage points per year above the basic rate.

(2) In the case of legal transactions to which a consumer is not a party the interest rate for claims for remuneration is 8 % above the basic rate.

(3) The obligee may claim higher interest on a different legal basis.

(4) The assertion of another 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

No interest need be paid on default interest. The obligees right to compensation for damage caused by the default remains unaffected.

Section 290

Interest on compensation for value

If the obligor is obliged to compensate 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 compensated from the time onwards on which the determination of the value is based. The same applies if the obligor is obliged to compensate the reduction in value of an object that deteriorates during the period of default.

Section 291

Interest on legal proceedings

The obligor must pay interest on a money debt from the date when litigation is pending on, even if he is not in default; if the debt only falls due later, it 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 with a duty to return

(1) If the obligor must return a specific object, from the date when litigation is pending, the obligee's claim to damages for deterioration, destruction or for impossibility of return for another reason is determined under the provisions that apply to the relationship between the owner and the possessor from the date when litigation is pending, except where the obligation or the obligor's default leads to another result in favour of the obligee.

(2) The same applies to the obligee's claim to return or remuneration of emoluments and to the obligor's claim to compensation for outlays incurred.

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 effecting the performance requires an action by the obligee, in particular if the obligee must pick up the thing. Equated with an offer of performance is the demand to the obligee to undertake the action required.

Section 296

Dispensability of the offer

If a period of time has been set according to the calendar for the obligee to undertake an action, the offer is only required if the obligee undertakes the action in due time. The same applies if the action must be preceded by an event and an appropriate period of time is determined for the action in such a way that it can be calculated from the event onwards according to the calendar.

Section 297

Impossibility of the obligor

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

Section 298

Concurrent performance

If the obligor is only obliged to perform in return for a performance by the

obligee, the obligee is put in default if he is admittedly willing to accept the performance offered, but does not offer the counterperformance demanded.

Section 299

Temporary prevention of acceptance

If the time of performance is not determined or if the obligor is entitled to provide performance before a specific time, the obligee is not put in default merely because he is temporarily prevented from accepting the performance offered, unless the obligor has notified him of the performance an appropriate period of time in advance.

Section 300

Effects of default by the obligee

(1) The obligor is during the period of the obligees default 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 put in default for 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 monetary 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 derives.

Section 303

Right to abandon possession

If the obligor is obliged to return a plot of land or a registered ship or ship under construction, he may abandon possession after the obligee is put 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 compensation for extra expenses he was forced to incur for the futile offer as well as for storage and preservation of the object owed.

Division 2

Shaping contractual obligations by means of standard business terms^{*)}

^{*)} 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 contractual terms pre-established for a multitude of 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 appear as a separate part of a contract or are included in the contractual document itself, how extensive they are, what script is used for them, or what form the contract takes. Contractual terms do not constitute standard business terms where they have been individually negotiated 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 contracting party to them explicitly or, where explicit reference due to the nature of the conclusion of the contract is only possible with considerable difficulties, by posting a clearly visible notice at the place of the conclusion of the contract, and
2. provides the other contracting party with the opportunity, in an acceptable manner, that also appropriately takes into account a physical handicap of the other contracting party discernible by the user, of taking notice of their contents.

and if the other contracting party is in agreement with their application.

(3) Subject to observance of the requirements set out in subsection (2) above, the parties may agree in advance that particular standard business terms will apply to a particular 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 contracting party is in agreement with their application,

1. tariffs and regulations adopted with the approval of the competent transport authority or on the basis of international conventions and terms of transport, authorised in accordance with the Passenger Transport Act, of trams, buses and motor vehicles in scheduled services are incorporated into the transport contract,
2. standard business terms published in the official journal of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway and kept available in the user's business premises are incorporated,
 - a) into contracts of carriage concluded away from business premises by the posting of items in post boxes,
 - b) into contracts for telecommunications, information and other services that are provided directly and in one go by means of remote communication and during the provision of a telecommunications service, if it is unreasonably difficult to make the standard business terms available to the other party before conclusion of the contract.

Section 305b

Precedence of individually negotiated terms

Individually negotiated terms take precedence over standard business

Section 305b

Surprising and ambiguous clauses

(1) Provisions in standard business terms which in the circumstances, in particular in view of the outward appearance of the contract, are so unusual that the contractual partner of the user could not be expected to have reckoned with them, do not form part of the contract.

(2) In case of doubt, standard business terms are interpreted against the user.

Section 306

Legal consequences of non-incorporation and ineffectiveness

(1) If all or some standard business terms have not become part of the contract or are ineffective, the remainder of the contract continues to be effective.

(2) Where provisions have not become part of the contract or are ineffective, the content of the contract is determined by the statutory regulations.

(3) The contract is ineffective if one party would suffer unreasonable hardship, if he were bound by the contract even after the amendment provided for in subsection (2) above.

Section 306a

Prohibition of circumvention

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

Section 307

Review of subject matter

(1) Provisions in standard business terms are invalid if, contrary to the requirement of good faith, they place the contractual partner of the user at an unreasonable disadvantage. An unreasonable disadvantage may also result from the fact that the provision is not clear and comprehensible.

(2) In case of doubt an unreasonable disadvantage must be assumed if a provision

1. is not compatible with the essential principles of statutory regulation 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 contractual objective is jeopardised.

(3) Subsections (1) and (2) above, and sections 308 and 309 apply only to provisions in standard business terms whereby provisions derogating from legal rules or provisions supplementing those rules are agreed. Other provisions may be invalid under subsection (1) sentence 2 above, in conjunction with subsection (1) sentence 1 above.

Section 308

Prohibited clauses with the option of appraisal

In standard business terms the following are in particular without any effect

1. (Period of time for acceptance and performance)
a provision whereby the user makes reservation for unreasonably protracted or inadequately determined periods of time for acceptance or rejection of an offer or for the rendering of a performance; an

- exception is the reservation to perform only 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 whereby the user makes reservation for an unreasonably protracted or inadequately determined additional period of time contrary to legal provisions for the performance he is to render;
 3. (Reservation for withdrawal)
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 recurring obligations;
 4. (Reservation for modification)
the agreement of a right by 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 contracting party taking the users interests into account;
 5. (Fictitious declarations)
a provision according to which a declaration by the users contracting party is deemed to have been made or not made by the user when undertaking or omitting a specific action, unless
 - a) the contracting party is granted a reasonable period of time for making an explicit declaration, and
 - b) the user obliges himself to draw the contracting partys attention to the intended significance of his behaviour at the beginning of the period of time;this does not apply to contracts in which the whole of Part B of the award rules for building and construction work is incorporated;
 6. (Fictitious receipt)
a provision providing that a declaration by the user of special importance to the other contracting party is deemed to have been received;
 7. (Winding up of contracts)
a provision according to which the user, in the event that a contracting party 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 performances rendered, or
 - b) unreasonably high compensation for expenses;
 8. (Unavailability of performance)
the agreement, admissible under no. 3, of a reservation by the user to free himself from the duty to fulfil the contract in the absence of availability of performance, if the user does not oblige himself to
 - a) inform the contracting party of the unavailability without undue delay, and
 - b) reimburse the contracting party for counterperformances without undue delay.

Section 309

Prohibited clauses without the option of appraisal

Even where derogation from the statutory provisions is permissible, the following are invalid in standard business terms:

1. (Price increases on short notice)
a provision providing for an increase in remuneration for goods or services that are to be delivered or rendered within four months of conclusion of the contract; this does not apply to goods or services delivered or rendered in the framework of recurring obligations;
2. (Rights to refuse service)
a provision whereby
 - a) the right to refuse performance to which the users contracting

- party is entitled under section 320, is excluded or restricted, or
- b) a right of retention to which the users contracting party 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 whereby the users contracting party 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 whereby the user is exempted from the statutory requirement of giving the other contracting party a warning notice or setting a period of time for the latter's performance or cure;
5. (Consolidation of claims for compensation)
the agreement of a consolidated claim by the user for damages or for compensation of a reduction in value if
- a) the lump-sum exceeds the damage expected in the cases included under normal circumstances or the customarily occurring reduction in value, or
- b) the other contracting party is not explicitly permitted to show that no damage or reduction in value has occurred at all or is considerably less than the lump-sum
6. (Contractual penalty)
a provision whereby 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 contracting party frees himself from the contract;
7. (Exclusion of liability for death, personal injury, impairment to health and in case of gross culpability)
- a) (Death, personal injury, impairment to health)
any exclusion or limitation of liability for damage from death, personal injury, or an impairment to health due to negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or a person employed to perform an obligation of the user;
- b) (Gross culpability)
any exclusion or limitation of liability for other reasons due to negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or person employed to perform an obligation of the user;
- the letters (a) and (b) do not apply to limitations on liability in terms of transport and tariff rules, authorised in accordance with the Passenger Transport Act, of trams, buses and motor vehicles in scheduled services, to the extent that they do not deviate to the disadvantage of the passenger from the Ordinance on Standard Transport Terms for Tram and Bus Traffic as well as Scheduled Traffic with Motor Vehicles of 27 February 1970; letter (b) does not apply to limitations on liability for government approved lotteries and draws;
8. (Other exclusions of liability for breaches of duty)
- a) (Exclusion of the right to free oneself from the contract)
a provision which, upon a breach of duty for which the user is responsible and which does not consist of a defect in the thing sold or the work, excludes or restricts the other party's right to free himself from the contract; this does not apply to the terms of contract and tariff rules referred to in No. 7 on the conditions set out therein;
- b) (Defects)
a provision whereby in contracts relating to the provision 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 their entirety or in regard to individual parts to the right to cure to the extent that the right is not explicitly reserved for the other contracting party to reduce the purchase price, if the cure should fail or, except where a construction performance is the object of warranty for defects, at the its option, to withdraw from the contract;

cc) (Expenses for cure)

the users duty to bear expenses for the purpose of cure, in particular to bear transport, road, 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) (Exclusion period for notice of defects)

the user sets an exclusion period of time for the other contracting party for the notice of non-obvious defects which is shorter than the admissible period of time under double letter (ff);

ff) (Facilitation of limitation)

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 facilitated, or in other cases a limitation period of less than one year reckoned from the beginning of the statutory limitation period is attained; this does not apply to contracts to which the whole of Part B of the award rules for building and construction work is incorporated;

9. (Duration of recurring obligations)

in a contractual relationship the subject matter of which is the regular delivery of goods or the regular performance of services or work by the user,

a) a duration of the contract binding the other contracting party for two years or more,

b) a tacit extension of the contractual relationship by more than one year at a time binding on the other contracting party, or

c) an advance notice period longer than three months prior to expiry of the next planned or tacitly extended duration of the contract at the expense of the other contracting party;

this does not apply to contracts relating to delivery of things sold together, to insurance contracts as well as to contracts between the holders of intellectual property rights and claims and copyright collecting societies within the meaning of the Act on the Administration of Copyright and related Rights;

10. (Change of contracting parties)

a provision according to which in case of purchase, service or work contracts a third party accedes, or may accede, to the rights and duties under the contract in lieu of the user unless in that provision

a) the third party is identified by name, or

b) the other contracting party is granted the right to free himself from the contract;

11. (Liability of the contract agent)

a provision whereby the user imposes on the agent entering into a contract for the other contracting party

a) the latters own liability or duty of responsibility without any explicit and separate declaration addressing the same, or

b) liability going beyond that under section 179 in the case of agency without authority;

12. (Burden of proof)

a provision whereby the user modifies the burden of proof to the disadvantage of the other contracting party, in particular by

a) imposing on the latter the burden of proof for circumstances lying in the sphere of the users responsibility, or

b) has the other contracting party 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 whereby notices or declarations that are to be made to the user or a third party are tied to a more stringent form than the 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 proffered to an entrepreneur, a legal person governed by public law or a special fund governed by public law. In those cases section 307 (1) and (2) nevertheless applies to the extent that this results in the invalidity of the contractual provisions referred to in sections 308 and 309; due regard must be had to the customs and practices applying in business transactions.

(2) Sections 308 and 309 do not apply to contracts of electricity, gas, district heating or water supply undertakings for the supply to special customers of electricity, gas, district heating or water from the supply grid unless the conditions of supply derogate, to the detriment of the customer, from regulations on general conditions for the supply of tariff customers with electricity, gas, district heating or water. The first sentence 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 subject to the following provisions:

1. Standard business terms are deemed to have been proffered by the entrepreneur, unless the consumer introduced them into the contract;
2. Section 305c (2) and sections 306 and 307 to 309 of this Act as well as article 29a of the Introductory Act to the Civil Code also apply to pre-phrased contract terms, if the latter are only intended for use a single time, and to the extent that the consumer due to the pre-phrasing had no influence on their content;
3. in judging the unreasonable discrimination under section 307 (1) and (2) the other circumstances surrounding the conclusion of the contract must be taken into account.

(4) This section 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 or public-sector works agreements. When it is applied to labour contracts, appropriate regard must be had to the special features of labour law; section 305 (2) and (3) is not to be applied. Collective agreements and public and private sector works agreements are equivalent to legal rules within the meaning of section 307 (3).

Division 3

Contractual obligations

Title 1

Creation, subject matter and cessation

Subtitle 1

Creation

Section 311

Obligations created by legal transaction and similar obligations

(1) Unless otherwise provided by statute, a contract between the parties is necessary in order to create an obligation by legal transaction or to alter the content of an obligation.

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

1. the commencement of contract negotiations
2. the initiation of a contract where the one party, with regard to any possible contractual relationship, grants or entrusts to the other party the possibility of affecting his rights, legally protected interests and other interests, or
3. similar business contacts.

(3) An obligation with duties in accordance with section 241 (2) may also arise towards persons who are not intended to be parties to the contract. Such an obligation arises in particular, if the third party by enlisting a particularly high degree of reliance materially influences the contractual negotiations or the conclusion of the contract.

Section 311a

Impediment to performance upon conclusion of the contract

(1) The fact that by virtue of section 275 (1) to (3) the obligor does not need to perform and the impediment to performance already exists upon conclusion of the contract, does not prevent the contract from being effective.

(2) The obligee may, at his option, demand damages in lieu of performance or compensation of his expenses to the extent determined in section 284. This does not apply if the obligor upon conclusion of the contract was not aware of the impediment to performance and is not responsible for his lack of awareness thereof either. Section 281 (1) sentences 2 and 3 and (5) apply with the necessary modifications.

Section 311b

Contracts relating to plots of land, assets and estates

(1) A contract whereby the one party obliges himself to transfer or acquire ownership of a plot of land must be authenticated by a notary. A contract not concluded in that form becomes valid in its entirety, if declaration of conveyance and registration in the land register are made.

(2) A contract whereby one party binds himself to transfer his entire future assets or a fractional part of his future assets or to charge them with a usufruct is void.

(3) A contract whereby one party binds himself to transfer his entire present assets or a fractional part of his present assets or to charge them with a usufruct must be authenticated by a notary.

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

(5) Subsection (4) above does not apply to a contract concluded between future statutory heirs relating to the statutory portion or the compulsory portion of one of them. Such a contract must be authenticated by a notary.

Section 311c

Extension to accessories

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

Subtitle 2

Particular types of sales¹⁾

¹⁾ Official note:

This subtitle serves to implement

1. Directive 85/577/EEC of the Council of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 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. 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 to the conclusion of which the consumer has been induced by oral negotiations at his place of work or in the area of a private residence,

2. on the occasion of a leisure event carried out by the entrepreneur or a third party at least in part in the entrepreneur's interests, or
3. subsequent to an impromptu approach on means of transport or within publicly accessible traffic 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 between the consumer and the entrepreneur in connection with this or a subsequent transaction a permanent connection is also to be maintained.

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

(3) The right of revocation and return does not exist, notwithstanding other provisions, with regard to insurance contracts or if

1. in the case of subsection (1) no. 1 the oral negotiations on which the conclusion of the contract is based have been conducted upon a previous order placed by the consumer, or
2. the performance is immediately rendered and paid for at the conclusion of the negotiations and if remuneration does not exceed Euro 40, or
3. the consumer's declaration of intention has been authenticated by a notary.

Section 312a

Relationship to other provisions

If the consumer is also entitled under other provisions to a right to revocation or return under section 355 or section 356 of this Act, under section 126 of the Investment Act, the right of revocation or return under section 312 is excluded.

Section 312b

Distance contracts

- (1) Distance contracts are contracts for the delivery of goods or the supply of services, including financial services which are concluded between an entrepreneur and a consumer exclusively by means of distance communication, unless the conclusion of the contract takes place otherwise than in the framework of an organised distance sales or service-provision scheme. Financial services within the meaning of sentence 1 are banking services, as well as services in connection with the extension of credit, insurance, pension benefits for individuals, investments, or payments.
- (2) Means of distance communication are means of communication which can be used with a view to or in order to conclude a contract between a consumer and an entrepreneur without the simultaneous physical presence of the contracting parties, in particular, letters, catalogues, telephone calls, fax, emails, and radio, television and media services.
- (3) The provisions relating to distance contracts do not apply to contracts
1. relating to correspondence courses (section 1 of the Correspondence Course Act),
 2. relating to timesharing of residential buildings (section 481),
 3. relating to insurance and the brokering thereof,
 4. relating to the disposal of plots of land and equivalent rights, creation, disposal and cancellation of real rights to plots of land and equivalent rights as well as the erection of buildings,
 5. relating to the delivery of foodstuffs, beverages or other goods intended for current consumption to the residence, place of abode or workplace of a consumer by entrepreneurs in the framework 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 obliges himself upon conclusion of the contract to render the services at a specific time or within a precisely indicated period of time,
 7. that are concluded
 - a) with the use of automatic vending machines or automated business premises, or
 - b) with operators of telecommunications means on the basis of the use of public telephones to the extent that they have their use as their subject matter.
- (4) As to contractual relationships that are comprised of an initial agreement with subsequently following transactions or a subsequently following series of transactions of the same type that have a temporal connection, the provisions regarding distance contracts only apply to the first agreement. If such transactions follow one another without such an agreement, the provisions regarding the duties of entrepreneurs 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 applies as the first transaction of a new series within the meaning of the second sentence.
- (5) More extensive provisions regarding consumer protection shall remain unaffected.

Section 312c

Information to be given to consumers in the case of distance contracts

(1) The entrepreneur must make information available to the consumer that is clear and comprehensible and that includes the commercial purpose as determined by statutory order pursuant to Article 240 of the Introductory Act to the Civil Code in due time prior to his provision of the contract declaration in a manner appropriate to the telecommunications means used. As to telephone communications initiated by him, the entrepreneur shall expressly disclose his identity and commercial purpose of the contact at the beginning of each conversation.

(2) The entrepreneur shall also inform the consumer of the contract provisions including the General Terms and Conditions as well as the information set forth in the statutory order pursuant to Article 240 of the Introductory Act to the Civil Code to the extent set forth therein and in the form and manner of writing set forth therein, as follows:

1. as to financial services, in due time prior to provision of his contract declaration or, if upon the request of the consumer the contract is concluded by telephone or by means of another form of telecommunications that does not allow for notification in writing, promptly upon conclusion of the distance contract;
2. as to other services and as to the supply of goods, immediately, at the latest by the complete fulfilment of the contract, as to goods, at the latest by the delivery to the consumer.

Notification pursuant to sentence 1 number 2 is unnecessary as to services that are provided directly by use of telecommunications means to the extent these services take place at once and are invoiced through the operator of the means of telecommunications. In such a case the consumer must be able to inform himself of the address of the entrepreneurs place of business where complaints can be brought.

(3) As to financial services, for the duration of the contract the consumer can at any time request that the entrepreneur make the contract provisions including the General Terms and Conditions available in a document.

(4) More extensive restrictions on the use of means of telecommunication and more extensive duties to provide information on the basis of other provisions are unaffected.

Section 312d

Right of revocation and of return in distance contracts

(1) In the case of a distance contract the consumer is entitled to a right to revocation under section 355. In lieu of revocation the consumer may in the case of contracts on the delivery of goods be granted a right to return under section 356.

(2) In derogation from section 355 (2) sentence 1 the revocation period does not commence before the duties to provide information in accordance with section 312c (2) have been fulfilled; in the case of the delivery of goods not before the day on which they reach the recipient; in the case of recurring deliveries of goods of the same kind, not before the day on which the first instalment reaches the recipient; and in the case of services, not before the day on which the contract is concluded.

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

1. as to a financial service, when the contract, at the wish of the consumer, is completely fulfilled by both parties before the consumer has exercised its right of revocation,
2. as to other services, when the entrepreneur has begun implementation of the service upon the express agreement of the consumer prior to the expiry of the revocation period or when the consumer himself has initiated it.

(4) Unless otherwise determined, the right to revocation does not exist for distance contracts

1. for the delivery of goods produced according to customers specifications or clearly tailored to personal needs or which, due to their nature, are not suitable for return or spoil quickly or whose use-by date would be exceeded.
2. for the delivery of audio or video recordings or software where the seal on the data media has been broken by the consumer,
3. for the delivery of newspapers, magazines and illustrated magazines,
4. for the rendering gaming and lottery services,
5. which are concluded by way of auctions (section 156), or
6. the object of which is the supply of goods or the provision of financial services, the price of which is subject to fluctuation on financial markets over which the entrepreneur has no influence and which could occur within the revocation period, particularly services in regard to stocks, share certificates that are issued by a corporation or a foreign investment company, and other negotiable securities, foreign currency, derivatives, or money market instruments.

(5) The right to revocation moreover does not exist with distance contracts for which the consumer is already entitled pursuant to sections 495, 499 to 507 to a right to revocation or return under section 355 or section 356. With such contracts subsection (2) applies with the necessary modifications.

(6) As to distance contracts for financial services, in derogation from section 357 (1), the consumer is only obligated to provide compensation for the value of services provided in accordance with the provisions regarding statutory withdrawal if he is informed of this legal consequence prior to provision of his contract declaration and if he has expressly agreed that the entrepreneur will begin to provide the service prior to the end of the revocation period.

Section 312e

Duties in electronic business transactions

(1) If an entrepreneur uses a telecommunication or media service for the purpose of concluding a contract for the delivery of goods or the rendering of services (e-commerce contract), he must

1. provide the customer with appropriate, effective and accessible technical means with the aid of which the customer may identify and correct input errors prior to sending 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 in due time prior to sending his order,
3. confirm receipt of the customer's order immediately by electronic means for the customer, and
4. make it possible for the customer to retrieve the contract terms including the standard business terms upon conclusion of the contract and save them in a form that allows for its reproduction.

The order and the acknowledgement of receipt within the meaning of sentence 1 no. 3 are deemed to be received, when the parties to whom

they are addressed are able to access them in normal circumstances.

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

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

Section 312f

Diverging 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 arrangements.

Subtitle 3

Adaptation and cessation of contracts

Section 313

Interference with the basis of the transaction

(1) If circumstances upon which a contract was based have materially changed after the conclusion of the contract and if the parties would not have concluded the contract or would have done so upon different terms if they had foreseen that change, adaptation of the contract may be claimed in so far as, having regard to all the circumstances of the specific case, in particular the contractual or statutory allocation of risk, it cannot reasonably be expected that a party should continue to be bound by the contract in its unaltered form.

(2) If material assumptions that have become the basis of the contract subsequently turn out to be incorrect, they are treated in the same way as a change in circumstances.

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

Section 314

Termination, for cause, of contracts for the performance of a recurring obligation

(1) Each party may give notice to terminate a contract for the performance of a recurring obligation for cause without complying with a notice period. There is cause if, having regard to all the circumstances of the specific case and weighing the interests of both parties, the terminating party cannot reasonably be expected to continue the contractual relationship until the agreed termination date or until the end of a notice period.

(2) If the cause consists of the breach of a duty under the contract, the contract may be terminated on notice only after the expiry without results of a specified period for remedial action or after an unheeded warning notice. Section 323 (2) applies with the necessary modifications.

(3) The person entitled may give notice only within a reasonable period

after becoming aware of the cause for termination.

(4) The right to claim damages is not precluded 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 contracting parties, in case of doubt it is to be assumed that the specification must be made at the reasonably exercised discretion of the party making it.

(2) The specification is exercised 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 judgment; the same applies if the specification is delayed.

Section 316

Specification of counterperformance

If the extent of counterperformance promised for a performance is not specified, in case of doubt, that party is entitled to the specification that may demand the counterperformance.

Section 317

Specification of performance by a third party

(1) Where specification of performance is left to a third party, in case of doubt, it must be assumed that the specification must be agreed with equitable discretion.

(2) If the specification is made by several third parties, in case of doubt, unanimity of all is required; where an amount is to be specified and several amounts are specified, in case of doubt, the average amount is relevant.

Section 318

Avoidance of specification

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

(2) Only the contracting parties are entitled to avoidance of the specification reached on the grounds of mistake, duress or deceit; the opponent is the other party. Avoidance must occur without undue delay after the opponent has learned of the grounds for avoidance. Avoidance is excluded, if 30 years have passed since the specification was reached.

Section 319

Ineffectiveness of the specification; replacement

(1) If the third party is to specify performance according to equitable discretion, the specification reached is not binding on the contracting parties, if it is manifestly inequitable. The specification is made in that case by judgment; the same applies if the third party cannot reach the specification or does not want to or if it delays it.

(2) If the third party is to reach the specification according to its free

discretion, the contract is ineffective if the third party cannot reach the specification or does not want to or if it delays it.

Title 2

Synallagmatic contracts

Section 320

Defence of failure to perform the contract

(1) Unless the contract requires him to perform first, a person bound by a synallagmatic contract may refuse to perform his part until the other party effects counterperformance. If performance is to be made to several persons, the part due to one of them can be refused until the entire counterperformance has been effected. The provision of section 273 (3) does not apply.

(2) If one party has partially performed, counterperformance may not be refused to the extent that, under the circumstances, in particular on account of the relative insignificance of the part not performed, the refusal would constitute bad faith.

Section 321

Defence of uncertainty

(1) A person bound by a synallagmatic contract to perform first may refuse to perform his part, if after conclusion of the contract it becomes apparent that his claim for counterperformance is endangered by the other party's lack of ability to perform. The right to refuse to perform ceases, if counterperformance is effected or security provided for it.

(2) The person required to perform first may specify a reasonable period within which the other party must, at his option, effect counterperformance or provide security concurrently with performance. If the period expires to no avail the person required to perform first may withdraw from the contract. Section 323 applies with the necessary modifications.

Section 322

Order to perform concurrently

(1) If a party under a synallagmatic contract brings an action for performance and the other party asserts his right to refuse to perform until he receives counterperformance, the only effect of that assertion is that the other party must be ordered to perform concurrently.

(2) If the party bringing the action must perform his part first, he may, if the other party is in default through non-acceptance, bring an action for performance after receipt of counterperformance.

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

Section 323

Withdrawal for non-performance or for performance not in accordance with the contract¹⁾

(1) If under a synallagmatic contract the obligor fails to effect performance when due or to perform in accordance with the contract, the obligee may withdraw from the contract, if he has fixed, to no avail, an additional period of time for performance.

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

1. the obligor seriously and definitely refuses performance,
2. the obligor does not effect performance by the date specified in the contract or within a specific period of time and the obligee has bound the continuation of his interest in performance to timely performance, or
3. there are special circumstances justifying, in balancing the interests of both parties, immediate withdrawal.

(3) If the type of breach of duty is such that it is not feasible to set a period of time for performance, a warning notice replaces it.

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

(5) If the obligor has performed in part, the obligee may withdraw from the entire contract only, if he has no interest in partial performance. If the obligor has failed to perform in accordance with the contract, the obligee may not withdraw from the contract, if there has been no more than an immaterial breach of duty.

(6) Withdrawal is excluded, if the obligee is solely or overwhelmingly responsible for the circumstance which would entitle him to withdraw from the contract or if a circumstance for which the obligor is not responsible materialises at a time when the obligee is in default through non-acceptance.



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 breaches some duty under section 241 (2) under a synallagmatic contract, the obligee may terminate the contract if he can no longer reasonably be expected to abide by the contract.

Section 325

Damages and withdrawal

The right to claim damages in the case of a synallagmatic contract is not precluded by withdrawal.

Section 326

Release from counterperformance and withdrawal where there is no duty to perform^{*)}

(1) If, by virtue of section 275 (1) to (3), the obligor is released from his obligation to perform, the claim for counterperformance lapses; in the case of part performance section 441 (3) applies with the necessary modifications. Sentence 1 does not apply, if the obligor under section 275 (1) to (3) does not have to effect the cure in the event of a failure to perform in accordance with the contract.

(2) If the obligee is solely or overwhelmingly responsible for the circumstance due to which the obligor need not perform under section 275 (1) to (3), or if that circumstance for which the obligor is not responsible occurs at a time when the obligee is in default through non-acceptance, the obligor retains the claim to counterperformance. However he must give credit for whatever he saves due to release from

performance or acquires or maliciously fails to acquire from other use of his labour.

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

(4) To the extent that counterperformance is effected, although not due under this provision, whatever is effected may be reclaimed under sections 346 to 348.

(5) If, by virtue of 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 except that it is not necessary to fix a period of time.

 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 immediately acquires the right to demand the performance.

(2) In the absence of a specific provision it is to be assumed from the circumstances, in particular from the purpose of the contract, whether the third party is to acquire the right, whether the third party's right comes about immediately or only under certain conditions, and whether the contracting parties have reserved the right to cancel or modify the third party's right without his approval.

Section 329

Interpretation rule where performance is assumed

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

Section 330

Interpretation rule with life insurance and life annuity contracts

Where in a life insurance or life annuity contract the payment of an insurance benefit or a life annuity to a third party is agreed, in case of doubt, it must be assumed that the third party is to directly acquire the right to demand the performance. The same applies, if in an unremunerated bequest performance for a third party is imposed on the beneficiary, or in the case of assumption of assets or a landed estate

performance for a third party is promised by the party taking over for the purpose of providing a settlement.

Section 331

Performance after death

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

(2) If the party to whom it was promised 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 right to do so was reserved.

Section 332

Modification by testamentary disposition in case of reservation

If the party to whom the promise is given reserves the right, without the approval of the party giving the promise, to appoint another party to the position of the party designated in the contract, in case of doubt, this may also be accomplished by testamentary disposition.

Section 333

Rejection of the right by the third party

If the third party rejects the right under the contract as against the party making the promise, the right is deemed to not have been acquired.

Section 334

Objections of the obligor as against the third party

The party giving the promise is entitled to objections under the contract, including in relation to the third party.

Section 335

Right of the party to whom the promise is made to demand

The party to whom the promise has been made may, where no other intention of the contracting parties may be assumed, demand the 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 concluded.

(2) 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 thereof, or, where this cannot occur, is to be returned when the contract is fulfilled.

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

Section 338

Earnest in case of culpable impossibility of performance

If the performance owed by the giver becomes impossible due to a circumstance for which he is responsible, or if the giver is responsible for the cancellation of the concluded contract, the recipient of the earnest may retain it. If the recipient 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

Forfeiture of the contractual penalty

Where the obligor promises the obligee, in the event that he fails to fulfil his obligations or fails to do so properly, payment of an amount of money as penalty, the penalty is forfeited if he is put in default. If the performance owed consists of an omission forfeiture occurs upon contravention.

Section 340

Promise of penalty for non-fulfilment

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

(2) If the obligee is entitled to a claim to damages for non-fulfilment, he may demand the forfeited penalty as the minimum amount of the damage. The assertion of another damage is not excluded.

Section 341

Promise of a penalty for improper fulfilment

(1) If the obligor has promised the penalty in the event that he fails to fulfil his obligation properly, in particular to do so at the specified time, the obligee may demand the forfeited penalty in addition to fulfilment.

(2) The provisions of section 340 (2) apply, if the obligee is entitled to a claim to damages for improper fulfilment.

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

Section 342

Alternatives to monetary penalty

The provisions of sections 339 to 341 apply where, as penalty, another performance is promised than payment of a monetary amount; the claim to damages is excluded, if the obligee demands the penalty.

Section 343

Reduction of the penalty

(1) If a forfeited penalty is disproportionately high, it may on the motion of the obligor be reduced to an appropriate amount by judgment. In judging the appropriateness each legitimate interest of the obligee and not merely his financial interests must be taken into account. Reduction is excluded once the penalty is paid.

(2) The same applies as well, except in the cases set out in 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

Where the law declares the promise of a performance for ineffective, the agreement of a penalty reached in the event of failure to fulfil the promise is likewise ineffective even if the parties were aware of the ineffectiveness of the promise.

Section 345

Burden of proof

If the obligor contests the forfeiture of the penalty because he has fulfilled his obligation, he must prove fulfilment, unless the performance owed consisted of an omission.

Title 5

Withdrawal: right of revocation and return in consumer contracts

Subtitle 1

Withdrawal^{*)}



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 reserved the right to withdraw in the contract or if he has a statutory right of withdrawal, then, if withdrawal occurs, any performance received is to be returned, as are benefits derived from such performance.

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

1. restitution or return is excluded because of the very 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 except that deterioration caused by being used as intended is not taken into account.

If counterperformance has been determined in the contract, it is to be used as a basis for calculating the compensation for value; 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 the value does not apply

1. if the defect justifying withdrawal, only becomes apparent during processing or redesign of the object,
2. to the extent that the obligee is responsible for the deterioration or destruction or that the damage would likewise have occurred with him,

3. if in case of statutory withdrawal the deterioration or destruction occurred with the entitled party, although the latter showed such care as he would customarily have applied 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 derives emoluments contrary to the rules of proper management although this would have been possible, he is obliged to compensate the obligee for the value. In case of a statutory right to withdrawal the entitled party must in regard to emoluments only be responsible for such care as he customarily applies in his own affairs.

(2) If the obligor returns the object, gives compensation for the value or if his duty to compensate the value under section 346 (3) no. 1 or 2 is excluded, he must be reimbursed for his required outlays. Other expenses are to be reimbursed to the extent that the obligee is enriched by them.

Section 348

Concurrent fulfilment

The obligations of the parties arising out of withdrawal are to be fulfilled concurrently. 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 to withdrawal after a period of time has been set

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

Section 351

Indivisibility of the right to withdraw

If one or the other party to the contract consists of more than one person, the right to withdraw can be exercised only by all and against all persons. If the right to withdraw is extinguished for one of the persons entitled, it also is extinguished for the others.

Section 352

Set-off after failure to fulfil

Withdrawal for failure to fulfil an obligation is ineffective, if the obligor could free himself from the obligation by means of a set-off and declares a set-off without undue delay after the withdrawal.

Section 353

Withdrawal in return for forfeit money

Withdrawal is ineffective, if it is contingent upon payment of forfeit money, if the forfeit money is not paid prior to or simultaneously with the declaration, and the other party rejects the declaration without undue delay for that reason. 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 with the reservation that the obligor will forfeit his rights under the contract, if he does not fulfil his obligation, the obligee is entitled to withdraw from the contract, if that case arises.

Subtitle 2

Right to revocation and return in consumer contracts^{*)}



Official note:

This subtitle serves to implement

1. Directive 85/577/EEC of the Council of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 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, p. 19).

Section 355

Right of revocation in consumer contracts

(1) If a consumer is granted a statutory right of revocation under this provision, he is no longer bound by his declaration of intention to enter into the contract, if he has revoked it in due time. The revocation does not have to state any grounds and must be declared to the entrepreneur in textual form or by return of the thing within two weeks; punctual dispatch suffices to comply with the time limit.

(2) The period begins when the consumer has been informed in textual form by a clearly formulated notice of his right of revocation which makes clear to him the nature of his rights in accordance with the requirements of the means of communication used, which also states the name and address of the person to whom revocation is to be declared, and refers to the beginning of the period and the rule in subsection (1) sentence 2 above. If the notice is given after conclusion of the contract, the period of time, contrary to subsection (1) sentence 2, amounts to one month. If the contract must be concluded in written form, the period of time does not begin to run before a contract document, the consumers written application or a copy of the contract document or of the application has been made available 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 conclusion of the contract. Where goods are supplied, the period of time does not begin to run prior to the date of receipt by the recipient. In derogation from sentence 1 the right of revocation is not extinguished if the consumer has not been duly notified of his right of revocation, moreover, as to distance contracts regarding financial services, not if the entrepreneur has not duly fulfilled his duty of notification pursuant to section 312c (2) no. 1.

Section 356

Right to return in consumer contracts

(1) The right of revocation under section 355 may, to the extent explicitly admissible under law, be replaced, at conclusion of the contract, on the basis of a sales prospectus in the contract by an unlimited right to return. The precondition is that

1. in the sales prospectus a clearly formulated notice of the right to return is included,
2. the consumer was able to take thorough note of the sales prospectus in the absence of the entrepreneur, and
3. the consumer is granted the right to return in textual form.

(2) The right of return may be exercised within the revocation period, which does not, however, begin before receipt of the thing, and only be exercised by dispatch of the thing or, if it cannot be dispatched as a parcel, by a demand for collection. Section 355 (1) sentence 2 applies with the necessary modifications.

Section 357

Legal consequences of revocation and return

(1) Unless otherwise determined, the provisions on statutory withdrawal apply to the right of revocation and return with the necessary modifications. Section 286 (3) applies *mutatis mutandis* to the obligation to refund payments in accordance with this provision; the period of time determined therein begins with the consumer's declaration of revocation or return. As regards the consumer's obligation to refund, this period commences when he makes such declaration; as regards the entrepreneur's obligation to refund, this period commences when he receives such declaration.

(2) When exercising the right of revocation, the consumer is obliged to dispatch the thing, if it can be dispatched by parcel. Costs and risk of dispatch are borne by the entrepreneur in cases of revocation and return. If there is a right of revocation pursuant to section 312d (1) sentence 1, the regular costs of dispatch may be imposed by contract on the consumer, if the price of the item to be sent back is not higher than Euro 40 or if, in the case of an item of higher price, the consumer has not provided consideration or partial payment at the time of the revocation, unless the goods supplied do not correspond to those ordered.

(3) The consumer, in derogation from section 346 (2) sentence 1 no. 3, must pay compensation for the value for any deterioration caused by putting the thing to its intended use, if he, at the latest when the contract is concluded, in textual form has been made aware of this legal consequence, and if a possibility to avoid it has been pointed out. This does not apply, if the deterioration is exclusively due to testing of the thing. Section 346 (3) sentence 1 no. 3 does not apply, if the consumer has been properly informed of his right of revocation or he has become aware of it in another way.

(4) More extensive claims do not exist.

Section 358

Linked 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 some other performance by an entrepreneur, he also ceases to be bound by his declaration of intention to enter into a consumer loan contract linked with that contract.

(2) If the consumer has effectively revoked his declaration of intention to enter into a consumer loan contract, he also ceases to be bound by his declaration of intention to enter into a contract linked with that consumer loan contract for the supply of goods or for the provision of some other performance. If the consumer may revoke the declaration of intention to enter into the linked contract in accordance with 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 nonetheless does declare revocation of the consumer loan contract, this applies in relation to the entrepreneur as revocation of the linked 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 counterperformance of the consumer or, in the event of financing by a third party, if the lender uses the services of the entrepreneur in preparation for or for the conclusion of the consumer loan contract. With 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 disposing party, by making the disposing party's interest in its disposal his own, in full or in part, 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 linked contract with the necessary modifications. In the case of subsection (1), however, claims on the consumer for payment of interest and costs arising out of the winding up of the consumer loan contract are excluded. The lender assumes the rights and obligations of the entrepreneur under the linked contract in relation to the consumer with regard to the legal consequences of revocation or return, if the loan has already passed to the entrepreneur when the revocation or return becomes effective.

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

Section 359

Objections with linked contracts

The consumer may refuse repayment of the loan to the extent that objections under the linked contract would entitle him in relation to the entrepreneur, with whom he has entered into the linked contract, to refuse his performance. This does not apply, if the financed remuneration does not exceed Euro 200, as well as with objections based on a contract amendment agreed between that entrepreneur and the consumer after entering into the consumer loan contract. If the consumer may demand a cure, he can only refuse payment of the loan, if the cure has failed.

Sections 360, 361

(repealed)

Division 4

Extinction of the obligations

Title 1

Fulfilment

Section 362

Extinction by performance

- (1) The obligation is extinguished if the performance owed is effected to the obligee.
- (2) The provisions of section 185 apply if performance is rendered to a third party for the purpose of fulfilment.

Section 363

Burden of proof in the case of acceptance as fulfilment

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

Section 364

Acceptance in lieu of fulfilment

- (1) The obligation expires, if the obligee accepts performance other than that owed in lieu of fulfilment.
- (2) If the obligor assumes a new obligation as against 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 fulfilment.

Section 365

Warranty when providing in lieu of fulfilment

If a thing, a claim on a third party, or any other right is given in lieu of fulfilment, the obligor must provide warranty for defects in title or in the thing in the same manner as a seller would.

Section 366

Crediting of performance to several claims

- (1) If the obligor is bound to the obligee under several obligations for performance of the same kind, and if what he pays does not suffice to redeem all debts, that debt is redeemed that he determines in performance.
- (2) If the obligor does not make a decision, initially the debt due for redemption amongst several due debts is the one offering the obligee the least security, amongst several equally secure debts the heavier one, and under several heavy debts the oldest debt and where all are equally old each debt is redeemed proportionally.

Section 367

Crediting to interest and costs

- (1) If the obligor must pay interests and costs in addition to the principal, each performance not sufficient to redeem the entire debt is first credited to the costs, then to the interest and finally to the principal.
- (2) If the obligor determines another method of crediting, the obligee may reject acceptance of the performance.

Section 368

Receipt

Upon receiving performance and 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 issuance in that form.

Section 369

Costs of receipt

(1) The costs of the receipt must be advanced and borne by the obligor, unless otherwise emerges from the existing legal relation between him and the obligee.

(2) If several obligees accede to the position 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 bearer of the receipt

The bearer of a receipt is deemed to be authorised to receive the performance to the extent that no circumstances of which the performing party is aware stand in the way of accepting 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 a publicly certified acknowledgement that the debt is extinguished.

Title 2

Deposit

Section 372

Preconditions

Money, securities and other documents as well as valuables may be deposited by the obligor for the obligee with an official place intended for this purpose, if the obligee is in default through non-acceptance. The same applies if the obligor cannot fulfil his obligation or cannot do so with certainty for other reasons that are personally attached to the obligee or as the result of uncertainty, not due to negligence, as to the identity of the obligee.

Section 373

Concurrent performance

If the obligor is only bound to perform in return for performance by the obligee, he may make the obligee's right to receive the deposited thing dependent upon effecting counterperformance.

Section 374

Place of deposit; duty to notify

(1) Deposit must be made at the deposit place of the place of performance; if the obligor deposits at any other place the obligee must compensate the damage incurred from that.

(2) The Obligor must immediately 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 impractical.

Section 375

Retroactive effect with dispatch by mail

If the deposited thing has been dispatched to the deposit place by mail, deposit has retroactive effect to the date of the things submission to the mails.

Section 376

Right to repossess

- (1) The obligor has the right to repossess the deposited thing.
- (2) Repossession is excluded
 1. if the obligor declares to the deposit place that he is waiving the right to repossession,
 2. if the obligee declares his acceptance to the deposit place,
 3. if the deposit place is presented with a final judgment handed down in a dispute between the obligee and the obligor and which declares the deposit to be lawful.

Section 377

Unpledgeability of the right to repossess

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

Section 378

Effect of deposit where repossession is excluded

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

Section 379

Effect of deposit where repossession is not excluded

- (1) If repossession of 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 derived.
- (3) If the obligor repossesses 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 deposit place for proof of the obligees entitlement to receive a declaration by the obligor acknowledging such entitlement is required or sufficient, the obligee may demand from the obligor the issuance of the declaration under the same conditions 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 repossess the deposited thing.

Section 382

Extinction of the obligees claim

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 place of deposit before then; the obligor is entitled to repossess, even if he has waived the right of repossession.

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 adequate 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 or other official authorised to conduct auctions or by 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 impractical.

Section 385

Sale by private agreement

If the thing has a stock exchange or a market price, the obligee 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 at the charge of the obligee if the obligor does not reclaim the deposited proceeds.

Title 3

Set-off

Section 387

Preconditions

If two persons owe each other performance that is substantially of the same nature, each party may set his claim against the other party's claim 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 the set-off

The set-off has the effect that the claims, to the extent that they overlap, are deemed to expire at the time when they confront each other as being appropriate for set-off.

Section 390

No set-off with a claim obstructed by a defence

A claim obstructed by 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 the damage incurred by the other party due to the fact that he does not receive performance at the specified place or cannot effect performance there.

(2) If it is agreed that the performance is to take place at a specified time and place, 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 confiscated claim

By confiscation 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 has acquired his claim after confiscation, or if his claim has only become due after confiscation and later than the confiscated claim.

Section 393

No set-off against a claim in tort

Set-off is not admissible for a claim due to 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 owed amounts may be set off against collections to be derived from health insurance, assistance or burial funds, in particular from miners providential funds and funds of miners providential societies.

Section 395

Set-off against claims of public-law corporations

Set-off is only admissible against a claim of the Federal Government or of a *Land* or against a claim of a local authority or another association of local authorities, if the performance is to be effected to the same fund from which the claim of the set-off party is to be paid.

Section 396

Majority of claims

(1) If one or another party has several claims suitable for set-off the party setting-off may determine the claims that are to be set off against each other. If the set-off is declared without such a provision 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 interests and costs besides the principal, the provision of section 367 applies with the necessary modifications.

Title 4

Forgiveness

Section 397

Forgiveness by contract, negative debt acknowledgement

(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). Upon conclusion of the contract the new obligee accedes to the position 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 may not 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

Transition of accessory and preferential rights

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

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

Section 402

Duty to inform; provision of documents

The previous obligee is obliged to provide the new obligee with the information required to assert the claim and to provide to him 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 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 were entitled to raise against the previous obligee at the time of assignment.

Section 405

Assignment with provision of documents

If the obligor has issued a document relating to the debt he may, if the claim is assigned with the provision of the document, not invoke in relation to the new obligee that entering into or acknowledging the obligation is only occurring for appearance or that the assignment is excluded by agreement with the original obligee, unless the new obligee was aware of or must have been aware of the circumstances at assignment.

Section 406

Set-off as against the new obligee

The obligor may set off a claim to which he is entitled in relation to the previous obligee against the new obligee as well, unless he, when acquiring the claim, was aware of the assignment or the claim only became due after he became aware 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 effected after assignment by the obligor to the previous obligee 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 initiated after assignment between the obligor and the previous obligee 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 were instituted.

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 makes performance to the third party or if, between the obligee and the third party, a legal transaction is undertaken or a legal dispute is initiated, 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 already assigned claim is remitted to a third party by court decision or if the previous obligee acknowledges for the third party that the claim already assigned has passed to the third party by law.

Section 409

Notice of assignment

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

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

Section 410

Delivery of the assignment document

(1) The obligor is only bound to the new obligee for performance in return for the delivery of the document issued by the previous obligee relating to the assignment. Notice of termination or a warning by the new obligee is only ineffective if it occurs without provision 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 has 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 income from service, 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 noticee the fund is deemed to be unaware of the assignment.

Section 412

Statutory transfer of a claim

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

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 such that the third party takes the place 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 if the obligor or the third party has informed the obligee of the assumption of the debt. Up until ratification the parties may modify or cancel the contract.

(2) If the ratification is refused assumption of the debt is deemed not to have occurred. If the obligor or the third party challenges the obligee with the setting of a period of time for declaration relating to the ratification, the ratification may only be declared up to 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 the ratification, in case of doubt, the transferee is bound to the obligor to satisfy the obligee in due time. The same applies if the obligee refuses the ratification.

Section 416

Assumption of a mortgage debt

(1) If the acquirer of a plot of land for which there is a mortgage assumes a debt of the alienor 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 be granted unless the obligee has previously refused it to the alienor; the provision of section 415 (2) sentence 2 does not apply.

(2) Noticee by the alienor may only be made if the acquirer has been entered in the Land Register as owner. It must be made in writing and must include the notation that the transferee accedes to the position 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 challenge the obligee with the objections that

emerge 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 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 guarantees and liens created for the claim are extinguished. If there is a mortgage or a ships mortgage for the claim the same thing occurs as if the obligee waives the mortgage or the ships mortgage. These provisions do not apply if the payment guarantor or the party that owns the sequestered 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 transferees assets.

Section 419

(repealed)

Division 7

Plurality of obligors and obligees

Section 420

Divisible performance

If several persons owe a divisible performance or if several persons may demand a divisible performance, in case of doubt, each obligor is only bound to an equal portion and each obligee is only entitled to an equal portion.

Section 421

Joint and several debtors

If several persons owe a performance such that each is bound to effect the entire performance and the obligee is only entitled to demand the performance once (joint and several debtors), the obligee may at his discretion demand full or partial performance from each of the obligors. Until the entire performance has been effected all obligors remain bound.

Section 422

Effect of fulfilment

(1) The fulfilment by a joint and several debtor is also effective for the other obligors. The same applies to performance in lieu of fulfilment, deposit and 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 wished to cancel the whole obligation.

Section 424

Effects 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 something else emerges from the obligation, for and against the joint and several debtor personally affected by them.

(2) This applies including without limitation to notice of termination, default, fault, impossibility of performance in the person of a joint and several debtor, to limitation, its resumption, suspension and suspension of expiry, to the combination of the claim with the debt and to the final and absolute judgment.

Section 426

Duty to adjust advancements, passing of claim

(1) The joint and several debtors are bound to equal portions 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 bound to adjustment of 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 obligee's claim against the other obligors passes to him. The passing may not be asserted to the obligee's disadvantage.

Section 427

Joint contractual duty

If several persons jointly bind themselves by contract to a divisible performance they, in case of doubt, are liable as joint and several debtors.

Section 428

Joint and several creditor

If several persons are entitled to demand performance such that each may demand the entire performance but the obligor is only bound to effect the performance once (joint and several creditor), 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. If a joint and several creditor transfers his claim to another party, the rights of the other obligees remain

unaffected without limitation.

Section 430

Duty of the joint and several creditors to adjust advancements

The joint and several creditors are entitled to equal portions in relation to each other unless otherwise determined.

Section 431

Several obligors of an indivisible performance

If several persons owe an indivisible performance they are liable as joint and several debtors.

Section 432

Several obligees of an indivisible performance

(1) If several persons are to demand an indivisible performance, 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 to 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 depository.

(2) Otherwise 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^{*)}

^{*)} 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 1

General provisions

Section 433

Contractually typical obligations in a purchase agreement

(1) By means of the purchase agreement the seller of a thing is bound to deliver the thing to the buyer and to convey title to the thing to the buyer. The seller must convey the thing to the buyer free from defects of quality and title.

(2) The buyer is bound to pay the seller the agreed purchase price and to accept delivery of the thing purchased.

Section 434

Defects of quality

(1) The thing is free from defects of quality if, upon the passing of the risk, the thing is in the agreed quality. To the extent that the quality has not been agreed the thing is free of defects of quality

1. if it is suitable for the use specified in the contract,
2. if it is suitable for the normal use and has a quality customary with things of the same kind and which the buyer may expect in the nature of the thing.

For the purposes of sentence 2 no. 2 quality includes features which the buyer may expect by virtue of public statements concerning specific features of the thing that are made by the seller, the producer (section 4 (1) and (2) of the Product Liability Act) or persons assisting him, including without limitation, in advertisements or in connection with labelling, unless the seller was not aware of the statement nor ought to have been aware of it, or at the time when the contract was entered into it had been corrected by equivalent means, or it could not influence the decision to purchase the thing.

(2) It is also a defect of quality if the agreed assembly by the seller or persons employed by him for that purpose is carried out improperly. There is moreover a defect of quality in a thing intended for assembly if the assembly instructions are defective unless the thing has been assembled without any fault.

(3) Supply by the seller of a different thing or of a lesser amount of the thing is equivalent to a defect of quality.

Section 435

Defects of title

The thing is free of defects of title if third parties cannot assert rights against the buyer in relation to the thing or can assert only such rights as are assumed in the purchase agreement. It is equivalent to a defect of title if a right is registered in the Land Register that does not exist.

Section 436

Public charges on plots of land

(1) Save where otherwise agreed, the seller of a plot of land is bound to bear development costs and other adjoining property charges in respect of measures which have been begun in construction engineering prior to the conclusion of the contract, irrespective of when those charges are incurred.

(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 of such a nature as to be registered in the Land Register.

Section 437

Buyer's rights in the event of defects

If the thing is defective the buyer may, provided the requirements of the following provisions are met and unless otherwise determined,

1. demand cure under section 439,
2. withdraw from the agreement under sections 440, 323 and 326 (5) or reduce the purchase price under section 441, and
3. demand compensation for damage under sections 440, 280, 281, 283 and 311a or compensation for wasted expenses under section 284.

Section 438

Limitation of claims in respect to defects

(1) The claims cited in section 437 nos. 1 and 3 are time-barred

1. 30 years, if the defect consists of

- a) a real right of a third party on the basis of which return of the purchase thing may be demanded, or
 - b) some other right registered in the Land Register,
2. five years
- a) for a building, and
 - b) for a thing that has been used for a building in accordance with the normal way it is used and has resulted in its defectiveness, and
3. otherwise two years.

(2) In the case of a plot of land the limitation period begins to run upon its delivery, in other cases upon taking delivery of the thing.

(3) In derogation from subsection (1) nos. 3 and 2 and subsection (2) claims are time-barred pursuant to the standard limitation period if the seller fraudulently concealed the defect. However, in the case of subsection (1) no. 2, claims are not time-barred before the expiry of the period there specified.

(4) Section 218 applies to the right of withdrawal referred to in section 437. Notwithstanding the ineffectiveness of withdrawal under section 218 (1), the buyer may refuse to pay the purchase price to the extent he would be entitled to do so by virtue of withdrawal. If he makes use of that 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 specified in section 437.

Section 439

Cure

(1) As cure the buyer may, at his option, demand the remedy of the defect or the supply of a thing free from defects.

(2) The seller must bear all expenses required for the purposes of cure, in particular carriage, transport, labour and material costs.

(3) Without prejudice to section 275 (2) and (3), the seller may refuse the kind of cure chosen by the buyer, if such cure is possible only with unreasonable expense. In that connection, including without limitation, the value of the thing when free of defects, the importance of the defect and the question must be taken into account whether recourse could be had to another kind of cure without substantial detriment to the buyer. The buyer's claim is restricted in this case to the other kind of cure; the seller's right to refuse cure, including under the provisions laid out in sentence 1 above, is unaffected.

(4) If the seller supplies a thing free from 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 concerning withdrawal and damages

Except in the cases set out in section 281 (2) and section 323 (2), it is not necessary to set a period of time if the seller has refused to perform both kinds of cure under section 439 (3) or if the kind of cure to which the buyer is entitled has failed or could not reasonably be expected from him. A cure is deemed to have failed after two unsuccessful attempts, unless otherwise emerges, in particular, from the nature of the thing or of the defect or the other circumstances.

Section 441

Price reduction

- (1) Instead of withdrawal from the agreement, the buyer may, by declaration to the seller, reduce the purchase price. The exclusion under section 323 (5) sentence 2 does not apply.
- (2) If the buyer or the seller consists of more than one person, price reduction may be declared only by or to all such persons.
- (3) In the case of a price reduction, the purchase price is reduced in the ratio which the value of the thing free of defects would, at the time of the conclusion of the contract, have had to the actual value. Where necessary, the price reduction is to be estimated.
- (4) If the buyer has paid more than the reduced purchase price, the excess amount is to be refunded by the seller. Sections 346 (1) and 347 (1) apply with the necessary modifications.

Section 442

Awareness of the buyer

- (1) The buyers rights due to a defect are excluded if he is aware of the defect at the time of the conclusion of the contract. If the buyer remains unaware of a defect due to gross negligence, the buyer may for that defect only assert such rights if the seller has fraudulently concealed the defect or has assumed a guarantee of 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 guarantees the quality of the thing or that the thing will retain a particular quality for a specified period (guarantee of durability), then, in the event of a claim under the guarantee, the buyer is entitled to the rights under the guarantee upon the terms set out in the declaration of guarantee and in the relevant advertising in relation to the person who provided the guarantee, without prejudice to his statutory claims.
- (2) To the extent that a guarantee of durability has been assumed, the presumption is that a defect of quality which arises during the guarantee period establishes the rights under the guarantee.

Section 444

Exclusion of liability

The seller may not rely on an agreement excluding or restricting the buyer's rights in respect of defects to the extent the seller fraudulently concealed the defect or has assumed a guarantee of quality for the thing.

Section 445

Limitation of liability in the case of public auctions

If a thing is sold pursuant to a lien at a public auction in which it is described as a pledge, the buyer is entitled to rights in respect of a defect only if the seller has fraudulently concealed the defect or has assumed a guarantee of quality for the thing.

Section 446

Passing of risk and 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 benefits related to the thing accrue to the buyer and he bears the charges on it. Equated with delivery is if the buyer is in default through non-accepting.

Section 447

Passing of risk with sale by dispatch

(1) If, at the buyer's request, the seller dispatches the thing sold to a place other than the place of performance, the risk passes to the buyer when the seller has handed the thing over to the forwarder, carrier or other person or body designated to dispatch the thing.

(2) If the buyer has given specific instructions as to the method of dispatching the thing and, without urgent reason, the seller fails to comply with these instructions, the seller is liable to the buyer for damage arising from that failure.

Section 448

Costs of delivery and similar costs

(1) The seller bears the costs of delivery of the thing, the buyer the costs of acceptance and dispatch of 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 contract 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 has retained title to a movable thing until payment of the purchase price, it is to be assumed, in case of doubt, that title will be transferred only upon payment of the purchase price in full, which constitutes a condition precedent (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 title is made conditional on the satisfaction by the buyer of third-party claims, including without limitation, those of a business associated with the seller.

Section 450

Excluded buyers with certain sales

(1) If an object is sold by way of execution of judgment, the person entrusted with the performance or management of the sale and any person used by him for that purpose, including the minutes keeper, may not purchase the object to be sold, whether on his own behalf or through or on behalf of another person.

(2) Subsection (1) above applies also to a sale otherwise than in the course of execution of judgment, if the order to sell the object has been given pursuant to a statutory provision authorising the ordering party to have the object sold for the account of another person, including without limitation, in the case of the sale of a pledge, the sale authorised by sections 383 and 385, and the sale of assets from an insolvency estate.

Section 451

Purchase by excluded buyer

(1) The effectiveness of a purchase made contrary to section 450 and of transfer of the object purchased depends on the approval of the person participating in the sale as obligor, owner or obligee. If the buyer requests a person so participating to make a declaration of ratification, section 177 (2) applies with the necessary modifications.

(2) If, as a result of a refusal of ratification, a new sale is undertaken, the earlier buyer is liable for the costs of the new sale and any lesser amount of the proceeds of sale.

Section 452

Purchase of a ship

The provisions of 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 creating and transferring a right.

(3) If a right giving entitlement to possession of a thing is sold, the seller is bound to deliver the thing to the buyer free of defects of quality and of title.

Subtitle 2

Special types of purchase

Chapter 1

Purchase on trial

Section 454

Conclusion of the purchase agreement

(1) In a trial purchase or inspection purchase approval of the object purchased is at the buyer's discretion. In case of doubt, the purchase agreement is concluded subject to the condition precedent of approval.

(2) The seller is bound to permit the buyer to examine the object.

Section 455

Approval period

An object purchased on trial or inspection may be approved only during the period agreed or, if no such period has been agreed, only before the expiry of a reasonable period set by the seller for the buyer. If the thing was delivered to the buyer for approval or inspection, silence on his part is deemed to be approval.

Chapter 2

Repurchase

Section 456

Conclusion of the repurchase agreement

(1) If the seller has, in the purchase agreement, reserved a right of repurchase, the repurchase agreement is concluded when the seller declares to the buyer that he is exercising that right. The declaration need not be in the form laid down for the purchase agreement.

(2) In case of doubt, the price at which the sale was made is also the price for repurchase.

Section 457

Resellers liability

(1) The reseller is bound to return to the repurchaser the purchased object with its accessories.

(2) If, before the exercise of the right of repurchase, the reseller has caused through his fault the deterioration or destruction of the purchased thing or the impossibility of returning it for another reason or if he has materially altered the object, he is liable for the damage resulting therefrom. If the object has deteriorated without fault of the reseller or if it has only been immaterially altered, the reseller may not demand reduction of the purchase price.

Section 458

Removal of third-party rights

If the original purchaser has disposed of the purchased object before the exercise of the right of repurchase, he is bound to remove third-party rights created thereby. Equivalent to a disposition of the reseller is any disposition which is effected by means of execution or attachment or by the insolvency administrator.

Section 459

Compensation for outlays

The reseller may demand compensation for outlays incurred prior to resale to the extent that the value of the object is enhanced by the outlays. He may remove an installation with which he has provided the thing to be returned.

Section 460

Repurchase at estimated value

If the estimated value the object purchased has at the time of repurchase is agreed as the repurchase price, the reseller is not responsible for any deterioration or destruction of the object or any impossibility of return for other reasons and the repurchaser is not bound to compensate for the outlays incurred.

Section 461

Several persons entitled to repurchase

If several persons are entitled to the right to repurchase jointly it may only be exercised as a whole. If it has expired for one of the entitled persons or if one of them does not exercise his right the other ones are entitled to exercise the right of repurchase as a whole.

Section 462

Exclusion period

The right of repurchase may be exercised, in the case of plots of land, only by the expiry of thirty years from the agreement reserving the right

and, in the case of other objects, only by the expiry of three years from that date. If a period is specified for exercise of the right, that period replaces the statutory period.

Chapter 3

Pre-emption

Section 463

Preconditions for exercise

A person entitled to the right of pre-emption in respect of an object may exercise that right as soon as the person obliged by it has entered into a purchase agreement with a third party relating to that object.

Section 464

Exercise of the right of pre-emption

(1) Exercise of the right of pre-emption occurs by declaration made to the person obliged. The declaration need not be in the form laid down for the purchase agreement.

(2) Upon the exercise of the right of pre-emption a purchase comes about between the person entitled and the person obliged, on the terms agreed with the third party by the person obliged.

Section 465

Ineffective agreements

An agreement between the person obliged and the third party whereby the purchase is made conditional on the non-exercise of the right of pre-emption or whereby the person obliged reserves the right to withdraw from the agreement in the event the right of pre-emption is exercised is ineffective as against the person entitled to pre-emption.

Section 466

Collateral performance

If the third party has bound himself in the contract to effect a collateral performance which the person entitled to pre-emption is unable to perform, the person entitled to pre-emption must pay the value of the collateral performance instead of effecting it. If the collateral performance cannot be estimated in money, the right of pre-emption cannot be exercised; the agreement to effect a collateral performance is, however, of no account if the contract with the third party would also have been entered into without it.

Section 467

Total price

If the third party has purchased the object to which the right of pre-emption relates together with other objects for a total price, the person entitled to pre-emption must pay a proportionate part of the total price. The person obliged may demand that the pre-emption extend to all things that cannot be separated without detriment to him.

Section 468

Deferment of the purchase price

(1) If the contract allows the third party time to pay the purchase price, the person entitled to pre-emption may claim the benefit of the deferment only if he provides security for the deferred amount.

(2) If a plot of land is the subject matter of the pre-emption, no security need be provided in so far as the creation of a mortgage to cover the deferred amount has been agreed or a debt secured by a mortgage on the land exists and has been accepted as payment of the purchase price. These provisions apply with the necessary modifications where the object of the pre-emption is a registered ship or ship under construction.

Section 469

Duty to notify, exercise period

(1) The person obliged must notify the person entitled to pre-emption without undue delay of the terms of the contract entered into with a third party. Notice by the third party takes the place of notice by the person obliged.

(2) In the case of plots of land, the right of pre-emption may be exercised only within a period of two months after receipt of notice and in other cases only within a period of one week after receipt of notice. If a period of time is specified for exercise of the right, that period replaces the statutory period.

Section 470

Sale to heirs on intestacy

In case of doubt the right of pre-emption does not extend to a sale made to an heir on intestacy in view of a future right of inheritance.

Section 471

Sale in case of execution or insolvency

The right of pre-emption is excluded if the sale occurs by way of execution or from out of an insolvency estate.

Section 472

Several persons entitled to pre-emption

If several persons are entitled to the right to pre-emption jointly it may only be exercised as a whole. If it has expired with regard to one of entitled persons or if one of them does not exercise his right, the others are entitled to exercise the right of pre-emption as a whole.

Section 473

Non-transferability

The right of pre-emption is not assignable and does not pass to the heirs of the person entitled to that right unless otherwise provided. If the right is limited to a fixed period, then, in case of doubt, it passes by inheritance.

Subtitle 3

Purchase of consumer goods

Section 474

The concept of purchase of consumer goods

(1) Where a consumer buys a moveable thing from an entrepreneur (sale of consumer goods), the following supplementary rules also apply. This does not apply to second-hand goods which are sold at a public auction in which the consumer may take part in person.

(2) Sections 445 and 447 do not apply to the contracts of purchase regulated by this subtitle.

Section 475

Diverging agreements

(1) An entrepreneur may not rely on an agreement which derogates, to the detriment of the consumer, from the terms of sections 433 to 435, 437, 439 to 443 or from the provisions of this subtitle, if it is reached before the entrepreneur is notified of a defect. The provisions referred to in sentence 1 apply even if circumvented by other arrangements.

(2) The limitation period for the claims cited in section 437 may not be shortened by an agreement reached before a defect is notified to an entrepreneur, if the agreement results in a limitation period of less than two years from the beginning of the statutory period or, in the case of second-hand goods, of less than one year.

(3) Notwithstanding sections 307 to 309, subsections (1) and (2) above do not apply to the exclusion or limitation of the claim to damages.

Section 476

Inversion of the burden of proof

If a defect of quality appears within six months of the date on which risk passed, it is presumed that the thing was already defective when risk passed unless that 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 set forth in plain intelligible language. It must contain

1. the reference to the consumers statutory rights as well as to the fact that they may not be limited 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 territorial applicability of the guarantee protection as well as the guarantors name and address.

(2) The consumer may demand that the declaration of guarantee be given to him in textual form.

(3) The effectiveness of the guarantee obligation is not affected by a failure to fulfil any of the above requirements.

Section 478

Entrepreneurs recourse

(1) If the entrepreneur has had to take back a newly manufactured thing because it is defective or if the consumer has for this reason 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, against the entrepreneur who had sold him the thing (supplier), his rights under section 437 on account of the defect asserted by the consumer.

(2) In the case of the sale of a newly manufactured thing the entrepreneur may demand that his supplier reimburse 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, except that the period begins upon the passing of the risk to the consumer.

(4) The supplier may not rely on an agreement made before notice of the defect to the supplier which derogates, to the detriment of the entrepreneur, 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 granted another equivalent adjustment. Without prejudice to section 307, sentence 1 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 arrangements.

(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 the respective sellers if the obligors are entrepreneurs.

(6) Section 377 of the Commercial Code is not affected.

Section 479

Limitation of recourse claims

(1) The claims to liability for expenses determined in section 478 (2) are time-barred two years from taking delivery of the thing.

(2) Claims under sections 437 and 478 (2) by the entrepreneur against his supplier on account of defects in a newly manufactured thing sold to a consumer are time-barred at the earliest two months after the date on which the entrepreneur has satisfied the consumer's claims. That suspension of expiration of the limitation period ends at the latest five years after the time when the supplier delivered 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 the respective seller 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^{*)}

^{*)} 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 timeshare 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, in return for a total price, the right, for a period of at least three years, to use a residential

building for recreational or residential purposes for a specified or specifiable period of the year. The right may be a real right or another right and may also, including without limitation, be granted by virtue of membership in an association or a share in a company.

(2) The right may also consist of the right to choose to use one of a collection of residential buildings.

(3) Equated with a residential building is a part of a residential building.

Section 482

Duty to provide a prospectus with time-share agreements

(1) Anyone offering as an entrepreneur to enter into time-share agreements must provide a prospectus to each consumer who expresses interest.

(2) The prospectus referred to in subsection (1) must contain a general description of the residential building or the collection of residential buildings as well as the information specified in the statutory order under Article 242 of the Introductory Act to the Civil Code.

(3) The entrepreneur may alter the information contained in the prospectus before entering into the agreement to the extent that this becomes necessary due to circumstances outside his control.

(4) Any advertising for entering into time-share agreements must indicate that a prospectus is available and where it may be obtained.

Section 483

Language of the contract and prospectus with time-share agreements

(1) The agreement must be drawn up in the official language, or where there is more than one official language, in the official language chosen by the consumer, of the Member State of the European Union or of the contracting state of the Agreement on the European Economic Area in which the consumer is resident. If the consumer is a national of another Member State, he may also choose, instead of the language of the state in which he is resident, 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 apply with the proviso that the consumer must be provided with a certified translation of the agreement in the language chosen by him in accordance with subsection (1).

(3) Time-share agreements not in accordance with subsections (1) sentences 1 and 2, or (2) above are void.

Section 484

Written form with time-share agreements

(1) The time-share agreement must be in writing, except where other provisions specify a stricter requirement. Entering into the agreement in electronic form is excluded. The information in the prospectus cited in section 482 provided to the consumer becomes a part of the agreement save in so far as the parties, expressly and with reference made to variance from the prospectus, agree otherwise. Such amendments must be notified to the consumer before the agreement is entered into. Notwithstanding the applicability of the information in the prospectus pursuant to sentence 3, the agreement document must contain the

information referred to in the statutory order cited in section 482 (2).

(2) The entrepreneur must provide the consumer with an agreement document or copy thereof. Moreover, if the language of the agreement differs from the language of the state in which the residential building is situated, 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. There is no duty to provide a certified translation if the right relates to a collection of residential buildings which are situated in different states.

Section 485

Right of revocation with time-share agreements

(1) In the case of a time-share agreement the consumer is entitled to a right to revocation under section 355.

(2) The required notice of the right to revocation must also indicate the costs which the consumer must pay in the event of revocation under subsection (5) sentence 2.

(3) If the consumer has not been given, before the agreement is entered into, the prospectus cited in section 482 or not been given it in the language provided for in section 483 (1), the period for exercising the right to revocation is, in derogation from section 355 (1) sentence 2, one month.

(4) If any of the information specified by the statutory order referred to in section 482 (2) is not included in the contract, the period for exercising the right of revocation does not begin to run until the consumer is notified in writing of that information.

(5) In derogation from section 357 (1) and (3), remuneration is excluded for services provided and for permitting use of residential buildings. If the contract required notarial recording by a notary, the consumer must pay to the entrepreneur the costs of the notarial recording if this is expressly provided for in the agreement. In the cases set out in subsections (3) and (4), there is no obligation to refund costs; the consumer may demand that the entrepreneur compensate him for the costs of the agreement.

Section 486

Prohibition of down payment with time-share agreements

The entrepreneur may not demand or accept payments from the consumer prior to the expiry of the revocation period. Provisions more favourable to the consumer remain unaffected.

Section 487

Divergent agreements

There may be no derogation from the provisions of this title to the detriment of the consumer. Unless otherwise provided, the provisions of this title apply even if they are circumvented by other arrangements

Title 3

Loan contract; financing assistance and instalment supply contracts between an entrepreneur and a consumer²⁾

²⁾ 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

Subtitle 1

Loan contracts

Section 488

Contractually typical duties in a loan contract

(1) By a loan contract the lender is bound to place at the disposal of the borrower a sum of money in the agreed amount. The borrower is bound to pay the interest owed and, at the due date, to repay the loan placed at his disposal.

(2) Save where otherwise provided, the agreed interest is to be paid at the end of each year and, if the loan is to be repaid before the end of a year, upon repayment.

(3) If a period of time is not specified for repayment of the loan, the due date thereof depends on 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

Borrowers right to give notice of termination

(1) The borrower may give notice to terminate a loan contract, fully or partially, where for a specific period of time a fixed interest rate has been agreed,

1. if the interest rate linkage ends prior to the time determined for repayment and if no new agreement is reached on the interest rate, with observance of an notice period of one month at the earliest as of the end of the day on which the interest rate linkage ends; if an adjustment of the interest rate is agreed at certain intervals up to one year the borrower may only give notice as of the end of the day on which the interest rate linkage ends;
2. if the loan is granted to a consumer and not secured by a land or ships lien, at the end of six months after complete receipt with the observance of a notice period of three months;
3. in any case at the end of ten years after complete receipt with the observance of a notice period of six months; if after receipt of the loan a new agreement is reached on the repayment period or the interest rate, the date of this agreement takes the place of the date of disbursement.

(2) The borrower may terminate a loan contract with a variable rate of interest at any time by giving three months' notice of termination.

(3) Termination by the borrower under subsections (1) or (2) is of no effect if the sum owed is not repaid within two weeks after the notice of termination becomes effective.

(4) The borrower's right of termination under subsections (1) and (2) above cannot be excluded or rendered more difficult by contract. This does not apply to loans to the Federal Government, a special fund of the Federal State, a *Land*, a municipality, an association of municipalities, the European Communities or foreign regional or local authorities.

Section 490

Right to give notice of termination for cause

(1) If there is a substantial deterioration in the financial circumstances of the borrower or in the value of a security provided for the loan or a risk of such deterioration as a result of which the repayment of the loan is endangered even if the security is realised, the lender may give notice of termination of the loan agreement with immediate effect, in case of doubt, under all circumstances before the loan is paid out to the borrower, and only as a rule once the loan has been paid out to the borrower.

(2) The borrower may give early notice of termination of a loan contract where for a specified period of time a specified interest rate is agreed and the loan is secured by a land or ships lien with observance of the advance notice periods in section 489 (1) no. 2 if his justified interests so require. There is such an interest in particular if the borrower has the need to otherwise realise the thing pledged to secure the loan. The borrower must compensate the lender for such damage incurred by him as a result of this early termination (compensation for early termination).

(3) The provisions of sections 313 and 314 remain unaffected.

Section 491

Consumer loan contracts

(1) Subject to subsections (2) and (3) below, the following supplementary provisions also apply to remunerated 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. with which the disbursable loan (net loan amount) does not exceed Euro 200,
2. entered into between an employer and an employee at interest rates lying below going market rates,
3. that in the framework of subsidisation of housing and urban development are entered into on the basis of public law grant decisions or on the basis of grants from public funds directly between the public law institution awarding the subsidies and the borrower at interest rates lying below going market rates.

(3) Also not applicable are

1. section 358 (2), (4) and (5) and sections 492 to 495 to consumer loan contracts included and notarially recorded in court minutes set forth according to the provisions of the Code of Civil Procedure, if such minutes or the notarial recording contains the annual interest rate, the costs invoiced when the contract is entered into, and the conditions under which the annual interest rate 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 for the contract to be in writing is satisfied if application and acceptance by the contracting parties are each declared separately in writing. The lender's declaration does not have to be signed if it is prepared with the aid of automatic equipment. The contract declaration signed by the borrower must indicate:

1. the net loan amount, where applicable the maximum limit of the loan,

2. the total amount of all partial payments to be paid by the borrower for amortisation as well as for payment of interest and other costs, if the total amount is certain for the entire duration when the consumer loan contract is entered into, for loans with flexible conditions amortised in partial payments a total amount on the basis of the applicable loan terms at the time the contract is entered into,
3. the kind of loan repayment or, if no agreement is provided for on this, provisions for the termination of the contract,
4. the interest rate and all other loan costs which, where their amount is known, are to be identified in detail and otherwise whose basis is to be indicated, including any brokerage fees to be borne by the borrower,
5. the effective annual interest rate or, if the right is reserved to modify the interest rate or other factors that determine the price, the initial effective annual interest rate; together with the initial effective annual interest rate it must also be indicated under which conditions factors determining the price can be modified and to which periods of time charges resulting from an incomplete disbursement or from a loan surcharge are to be allocated when calculating the effective annual interest rate,
6. the costs of any residual debt insurance or other insurance taken out in connection with the consumer loan contract,
7. securities to be given.

(1a) In derogation from subsection (1) sentence 5 no. 2 no total amount need be indicated with loans with which utilisation is left open up to a maximum limit as well as with real estate loan contracts. Real estate loan contracts are consumer loan contracts with which the provision of the loan is made dependent upon security by means of a land lien and on terms customary with loan contracts secured by land lien and their interim financing; equated with security by means of a land lien is the waiver of a security pursuant to section 7 (3) to (5) of the Act on Building Societies.

(2) The effective annual interest rate is the total charge per annum expressed as a percentage of the net loan amount. The effective and the initial effective annual interest rate are calculated according to section 6 of the Price Indication Regulation.

(3) The lender must provide the borrower with a copy of the contract declarations.

(4) Subsections (1) and (2) also apply to a power of attorney granted by a borrower to enter into a consumer loan contract. Sentence 1 does not apply to a power of attorney to litigate and a power of attorney notarially recorded.

Section 493

Overdraft credit

(1) The provisions of section 492 do not apply to consumer loan contracts in which the banking institution grants the borrower the right to overdraw his current account by a particular amount, if, apart from interest for the loan taken out, no other charges are made and the interest is not charged in periods of less than three months. The banking institution must advise the borrower prior to such a loan being taken out of

1. the maximum limit of the loan,
2. the annual interest rate applicable at the time of such advice,
3. the terms under which the interest rate can be changed,
4. the provisions for the 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

availed himself of the loan for the first time. During the period in which he has availed himself of the loan the borrower must also be informed of any change in the annual rate of interest. The confirmation under sentence 3 and the notice under sentence 4 must in occur textual form; it suffices if they are indicated on a bank statement.

(2) If the banking institution permits a current account to be overdrawn and the account is overdrawn for more than three months, the banking institution must inform the borrower of the annual rate of interest, the charges and any alterations in that regard; this may be in the form of a notice on a bank statement.

Section 494

Legal consequences of defects of form

(1) The consumer loan contract and the power of attorney granted by the consumer to enter into such a contract are void if the written form is not complied with as such or if any of the information specified in section 492 (1) sentence 5 nos. 1 to 6 is lacking.

(2) Irrespective of any defects under subsection (1), the consumer loan contract becomes valid to the extent that the borrower receives the loan or avails himself of it. However the interest rate on which the consumer loan contract is based (section 492 (1) sentence 5 no. 4) is reduced to the statutory interest rate if its indication, indication of the effective or initial effective annual interest rate (section 492 (1) sentence 5 no. 5) or indication of the total amount (section 492 (1) sentence 5 no. 2, (1a) is lacking. The borrower does not owe any charges not indicated. Agreed instalments must be recalculated by reference to the reduced interest rate or charges. If there is no indication of conditions under which the factors determining the price may be changed, they may not be changed to the detriment of the borrower. If there is no indication regarding securities, they may not be demanded; this does not apply if the net loan amount exceeds Euro 50,000.

(3) If the effective or initial effective interest rate is indicated at a lower rate, the interest rate on which the consumer loan contract is based is reduced by the percentage by which the effective or initial effective interest rate is lower.

Section 495

Right to revocation

(1) In the case of a consumer loan contract the consumer is entitled to a right to revocation under section 355.

(2) Subsections (1) and (2) do 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 observing a notice period and without additional charges.

Section 496

Waiver of objections, prohibition of bills of exchange or cheques

(1) An agreement by which the borrower waives his right pursuant to section 404 to raise against an assignee of an obligation objections which he has against the lender, or his right pursuant to section 406 to set off also against the assignee of an obligation a claim which he has against the lender, is invalid.

(2) The borrower may not be bound to incur an obligation under a bill of exchange for claims of the lender under the consumer loan contract. The lender may not accept a cheque from the borrower in order to secure his claims under the consumer loan contract. The borrower may at any time

demand that the lender return a bill of exchange or cheque that has been issued in breach of sentence 1 or 2 above. The lender is liable for any 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, credit for partial 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 such contracts the default interest rate per annum amounts to two and a half percentage points above the base interest rate. In individual cases the lender may prove that damage were greater or the borrower may prove that the damage were less.

(2) Interest incurred after default has occurred must be booked to a separate account and may not be included to the current account with the amount owed or other claims by 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 interest rate (section 246).

(3) Payments by the borrower which are insufficient to repay the entire debt due are to be set, in derogation from section 367 (1), first, against legal costs, then against the remainder of the amount owed (subsection 1) and lastly against interest (subsection 2). The lender may not reject instalment payments. Limitation of the claims for repayment of the loan and interest is suspended from the date of default pursuant to subsection (1) until they are determined in the manner referred to in section 197 (1) nos. 3 to 5, but not for more than ten years from the date when they were incurred. 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 an execution deed 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) Due to the borrowers default in payment the lender, with a loan that is to be repaid in instalments, may only give notice to terminate, if

1. the borrower is in default in paying at least two successive instalments in whole or in part and at least 10 percent, in case of a consumer loan contract running for more than three years with five percent of the nominal amount of the loan or the instalment price, and
2. the lender has in vain set the borrower a period of two weeks for payment of the amount in arrears and declare that he in case of failure to pay within the period will demand the entire outstanding debt.

At the latest when he sets that period, the lender is to offer the borrower an opportunity to discuss the possibility of an agreed solution.

(2) If the lender terminates the consumer loan contract, the outstanding amount is reduced by the interest and other charges dependent on the duration of the loan which, with a graduated calculation, are attributable to the period after the termination becomes effective.

(3) Subsections (1) and (2) do not apply to real estate loan contracts.

Subtitle 2

Financial assistance between an entrepreneur and a consumer

Section 499

Extension of time for payment, other financial assistance

(1) With reservation made for 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, for remuneration, an extension of time for repayment exceeding three months or grants him other remunerated financial assistance.

(2) With reservation made for subsection (3), the special provisions laid down in sections 500 to 504 apply to finance leasing contracts and contracts for the supply of a specific thing or the provision of another specified performance in return for instalment payments (instalment payment transactions).

(3) The provisions of this subtitle do not apply to the extent laid down in section 491 (2) and (3). In the case of an instalment payment transaction, the cash payment price replaces the net loan amount referred to in section 491 (2) no. 1.

Section 500

Finance leasing contracts

Only 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 apply with the necessary modifications to finance leasing contracts between an entrepreneur and a consumer.

Section 501

Instalment transactions

Only 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 apply with the necessary modifications to instalment transactions between an entrepreneur and a consumer. Otherwise the following provisions apply.

Section 502

Required information, legal consequences and defects of form in instalment payment transactions

(1) The contract declaration to be signed by the consumer in case of instalment payment transactions must indicate

1. the cash price,
2. the instalment 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 interest,
5. the costs of insurance taken out in connection with the instalment payment transaction,
6. the agreement of retention of title or another security to be given.

The indication of the cash price and the effective annual interest rate is not required if the entrepreneur only supplies things or performs services in return for instalments.

(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 contracts, if the information cited in subsection (1) sentence 1 nos. 1 to 5, other than the amount of each instalment, are provided to the

consumer in textual form by such a time that he is able to obtain thorough knowledge of the information before the contract is entered into.

(3) The instalment payment transaction is void if the requirement for written form in section 492 (1) sentences 1 to 4 is not complied with or if one of the indications required by subsection (1) sentence 1 nos. 1 to 5 is lacking. Notwithstanding a defect under sentence 1, the instalment payment transaction becomes valid if the thing is delivered to the consumer or the performance provided for to him. However, if the instalment payment price or the effective annual interest rate is not indicated, the maximum rate of interest on the cash price is the statutory rate of interest. If a cash price is not indicated, the market price, in case of doubt, is deemed to be the cash price. The provision of security may not be required if no indication has been given in that regard. If the effective or initial effective annual interest rate is indicated at a lower rate, the instalment payment price is reduced by the percentage by which the effective or initial effective annual interest rate is lower.

Section 503

Right to return, withdrawal in instalment payment transactions

(1) The consumer may be given a right to return under section 356 instead of the right to revocation to which he is entitled under section 495 (1).

(2) The entrepreneur may only withdraw from an instalment payment transaction due to default in payment by the consumer in accordance with the conditions cited in section 498 (1). The consumer must compensate the entrepreneur for expenses incurred under the contract as well. When calculating compensation for the emoluments of a thing to be returned, account must be taken of the reduction in value that has since occurred. If the entrepreneur takes back the thing supplied under the instalment payment transaction, he is deemed to be exercising the right to withdraw, unless the entrepreneur agrees with the consumer to compensate the latter for the usual sale 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 linked with a consumer loan contract (section 358 (2)) and if the lender takes over the thing; in the event of withdrawal, the legal relationship between the lender and the consumer is determined in accordance with sentences 2 and 3.

Section 504

Early payment in instalment payment transactions

If the consumer performs his obligations under an instalment payment transaction before the due date, the instalment price is reduced by the interest and other duration-related costs which, applying a graduated calculation, are attributable to the period after the date of early performance. If, by virtue of section 502 (1) sentence 2 a cash price does not have to be indicated, the statutory interest rate (section 246) is to be applied. However, the entrepreneur may demand interest and other duration-related costs in respect of the first nine months of the duration originally provided for, even if the consumer fulfils his obligations before the end of that period.

Subtitle 3

Instalment supply contracts between a businessperson and a consumer

Section 505

Instalment supply contracts

(1) Subject to sentence 2, in contracts with an entrepreneur in which the

consumers declaration of intent is directed at the conclusion of a contract that

1. deals with the supply of several things sold in connection with each other in partial performance and for which remuneration is to be paid for the entirety of the things in instalments, or
2. deals with the regular supply of things of the same kind, or
3. deals with the duty to recurrent acquisition or purchase of things,

the consumer has a right to 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 corresponds to the sum of all instalments to be paid by the consumer up to the earliest possible date for giving notice to terminate.

(2) The instalment supply contract under subsection (1) must be in writing. Sentence 1 does not apply if the consumer is given an opportunity to retrieve and save in reproducible form the terms of the contract including standard business terms upon conclusion of the contract. The entrepreneur must provide the consumer with the content of the contract in textual form.

Subtitle 4

Indispensability, application to start-ups

Section 506

Divergent agreements

(1) No agreement derogating from the provisions of sections 491 to 505 may be made to the detriment of the consumer. These provisions apply even if they are circumvented by other arrangements.

(2) It may be stipulated by special written agreement that revocation is deemed not to have occurred if the consumer does not repay the loan received within two weeks after the declaration of revocation or disbursement of the loan. This does not apply in the case of section 358 (2) or to doorstep transactions.

(3) The right to revocation under section 495 may be excluded by special written agreement in case of real estate loan contracts that are not doorstep transactions.

(4) The agreements under subsections (2) and (3) may be included in the contractual declaration under section 492 (1) sentence 5 if they are clearly emphasised.

Section 507

Application to start-ups

Sections 491 to 506 also apply to natural persons to whom a loan, payment deferment or other financial assistance is granted for taking up a trade or self-employed professional activity or who enter into an instalment supply contract for that purpose, unless the net loan amount or the cash price exceeds Euro 50,000.

Sections 508 - 515

(repealed)

Title 4

Donation

Section 516

Concept of donation

(1) A bestowal by means of which someone enriches another person from his own assets, is a donation if both parties are in agreement that the bestowal occurs without remuneration.

(2) If the bestowal has occurred without the intention of the other party, the bestowing party may, with the setting of an appropriate period of time, challenge him to make a declaration of 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 case of rejection return of what has been bestowed may be demanded according to the provisions on return of unjust enrichment.

Section 517

Failure to acquire assets

It is not a donation if someone fails to acquire an asset to the advantage of another person or renounces a right that has become available but not yet been definitely acquired or declines an inheritance or legacy.

Section 518

Form for promise of a donation

(1) For the validity of a contract by which performance is promised as a donation notarial recording of the promise is required. The same applies to the promise or the declaration of acknowledgement if the promise or acknowledgement of a debt is granted as a donation in the manner cited in sections 780 and 781.

(2) Want of form is cured by effecting the performance promised.

Section 519

Defence of destitution

(1) The giver is entitled to refuse fulfilment of his promise given as a donation to the extent that he, considering his other obligations, is not in a position to fulfil the promise without jeopardising his appropriate maintenance or the fulfilment of duties of maintenance incumbent upon him by law.

(2) If the claims of several donees coincide the earlier claim takes precedence.

Section 520

Expiry of an annuity promise

If the giver promises maintenance consisting of recurrent performance the obligation expires with his death unless something else emerges from the promise.

Section 521

Liability of the donor

The donor is liable only for intent and gross negligence.

Section 522

No default interest

The donor is not bound to pay default interest.

Section 523

Liability for defects of title

(1) If the donor maliciously conceals a defect of title he is bound to compensate the resulting damage to the donee.

(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 defect of title 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 pertaining to liability of the seller for defects of title apply with the necessary modifications.

Section 524

Liability for defects of quality

(1) If the donor maliciously conceals a defect in the donated thing he is bound to compensate the resulting damage to the donee.

(2) If the donor only 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 lieu of the defective thing a thing free of defects be supplied. If the donor has maliciously concealed the defect the donee may demand damages for non-performance in lieu of supply of a thing free of defects. The provisions applicable to warranty for defects in a thing sold apply to these claims with the necessary modifications.

Section 525

Donation with conditions

(1) Anyone who makes a donation with a condition may demand execution of the condition if he has in turn provided performance.

(2) If execution of the condition is in the public interest the competent public authority may also demand execution after the donors death.

Section 526

Refusal to execute the condition

Where due to a defect of title or a defect in the donated thing the value of the bestowal does not reach the amount of expenses required to execute the condition, the donee is entitled to refuse execution of the condition until the deficit caused by the defect is reconciled. If the donee executes the condition without knowledge of the defect he may demand compensation for the expenses caused by execution from the donor to the extent that they as a result of the defect exceed the value of the bestowal.

Section 527

Non-execution of the condition

(1) If execution of the condition fails to occur the donor may demand the return of the gift under the conditions determined for the right to withdraw from mutual contracts under the provisions on return of unjust enrichment to the extent that the gift would have had to be used to execute the condition.

(2) The claim is excluded if a third party is entitled to demand execution of the condition.

Section 528

Claim for recovery due to impoverishment of the donor

(1) To the extent that the donor, after execution of the condition, is not in a position to maintain himself in an appropriate manner and to meet duties of maintenance incumbent upon him under 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 return on unjust enrichment. The donee may avoid return by paying the amount required for maintenance. The provisions of section 760 as well as the provisions applicable to the duty to maintain relatives pursuant to section 1613 and in the case of the donor's death the provisions of section 1615 apply to the donee's duty with the necessary modifications.

(2) Amongst several donees the earlier donee is liable only to the extent that the later donee is not bound.

Section 529

Exclusion of the claim to recovery

(1) The claim to return of the gift is excluded if the donor has brought about his indigence by intent or through 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, considering his other duties, is not in a position to return the gift without his customary maintenance or meeting the duties of maintenance incumbent upon him under law being jeopardized.

Section 530

Revocation of donation

(1) A donation may be revoked if the donee is guilty of gross ingratitude by committing a serious wrong done to the donor or a close relative of the donor.

(2) The donor's heir is only entitled to the right to 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 regulations on 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 party entitled to revoke became aware of the prerequisites of his right. Revocation is no longer admissible after the death of the donor.

Section 533

Waiver of the right to revocation

The right to revocation may only be waived if the party entitled to revoke has become aware of the ingratitude.

Section 534

Donations of duty and decency

Donations to meet a moral duty or made out of considerations of decency are not subject to recovery and revocation.

Title 5

Lease, usufructuary lease contract

Subtitle 1

General provisions for leases

Section 535

Contents and main obligations of the lease agreement

(1) With the lease agreement the lessor is put under an obligation to grant the lessee use of the leased property for the duration of the lease. The lessor must surrender the leased property to the lessee in a condition suitable for its contractually agreed use and to maintain it in such condition for the duration of the lease. He must bear all costs occasioned by the leased property.

(2) The lessee is obliged to pay the lessor the agreed rent.

Section 536

Rent abatement for material and legal defects

(1) If the leased property at the time of surrender to the lessee has a defect eliminating its adequacy for contractually agreed use or if such a defect should come about during the lease period then the lessee is exempted for the period when adequacy is eliminated from paying the rent. For the period of time when adequacy is reduced he need only pay appropriately abated rent. Insignificant reduction in adequacy is not taken into account.

(2) Subsection (1) sentences 1 and 2 also apply if an assured property is lacking or is later eliminated.

(3) If the lessee is fully or partially deprived of use of the leased property due to third-party rights, then subsections (1) and (2) apply with the necessary modifications.

(4) With a lease for residential space any divergent agreement to the disadvantage of the lessee is ineffective.

Section 536a

Lessee's claim to damages and reimbursement of expenses due to a defect

(1) Where a defect within the meaning of section 536 exists upon signing of the agreement, or if such a defect should come about subsequently due to any circumstance that the lessor is liable for or if the lessor is in delay in remedying a defect then the lessee may without prejudice to the rights under section 536 demand damages.

(2) The lessee may remedy the defect himself and demand compensation for required expenses if

1. the lessor is in delay in remedying the defect, or

2. immediate remedy of the defect is necessary for preserving or restoring the state of the leased property.

Section 536b

Lessee's knowledge of the defect upon signing of the agreement or acceptance

If the lessee when signing the agreement knows of the defect then he is not entitled to the rights under sections 536 and 536a. If he remains unaware of the defect due to gross negligence then he is only entitled to such rights if the lessor has maliciously concealed the defect. If the lessee accepts a defective thing although aware of the defect then he may only assert the rights under sections 536 and 536a if he has reserved his rights at acceptance.

Section 536c

Defects occurring during the lease period; notice of defect by the lessee

(1) Should a defect in the leased property come to light during the lease period or should action to protect the leased property from an unforeseen hazard become necessary then the lessee must without undue delay report this to the lessor. The same applies if a third party usurps a right to the thing.

(2) Should the lessee fail 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 lessee's failure to report it then the lessee is not entitled

1. to assert the rights stipulated in section 536;
2. to demand damages under section 536a (1), or
3. to give notice without setting an appropriate period for relief under section 543 (3) sentence 1.

Section 536d

Contractual exclusion of lessee's rights due to defects

The lessor may not invoke an agreement by which the lessee's rights are excluded or restricted due to a defect in the leased property if he has maliciously concealed the defect.

Section 537

Payment of rent when the lessee is personally not present

(1) The lessee is not released from his obligation to pay rent due to the fact that, for personal reasons, he is unable to exercise his right of use. However, the lessor must grant credit for the value of expenses forgone and for such advantages as he enjoys by profiting from its alternate use.

(2) The lessee is not obliged to pay the rent as long as the lessor is unable to grant the lessee use because use has been assigned to a third party.

Section 538

Wear and tear on the leased property from contractually proper use

The lessee is not liable for modification or deterioration of the leased property brought about by contractually proper use.

Section 539

Compensation of other expenses and the lessees right of removal

(1) The lessee may under provisions on management without authority demand compensation from the lessor for expenses incurred by 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

Assignment of use to third parties

(1) The lessee is not entitled without the lessors permission to assign use of the leased property to third parties and may in particular not sublease them to third parties. Should the lessor refuse permission then the lessee may give notice to the lease for cause with the statutory period of advance notice unless justified cause attaches personally to the third party.

(2) Where the lessee assigns use to a third party then he will be liable for culpability attributable to that third party even if the lessor has given permission for such assignment.

Section 541

Application for injunction for use in violation of contract

Should the lessee persist with use of the leased property in violation of the contract despite warning notice 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 contracting parties may give notice in accordance with 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 given notice for cause in legally admissible cases, or
2. is extended.

Section 543

Immediate notice for just cause

(1) Each contracting party may give notice to the lease for just cause with immediate effect. Just cause is deemed to obtain if the party giving notice with all circumstances of the individual case taken into account, including without limitation culpability of the contracting parties, and after weighing the parties interests, cannot be reasonably expected to continue the lease up to the end of the notice period or up to other termination of the lease.

(2) Just cause is deemed to obtain in cases including without limitation where

1. the lessee is fully or partially not provided on time or deprived of contractually proper use of the leased property,
2. the lessee to a considerable extent violates the lessors rights by substantially jeopardising the leased property by neglecting the diligence incumbent upon him or unauthorisedly assigning it to a third party, or

3. the lessee

- a) is in arrears for two successive dates with payment of the rent, or a substantial portion of the rent, or
- b) in a period of time spanning more than two dates is in arrears with payment of the rent in an amount attaining the rental amount for two months.

In the case of sentence 1 no. 3 notice is excluded if the lessor has by then obtained satisfaction. It becomes ineffective if the lessee was able to discharge his debt by set-off and without undue delay declares set-off after giving notice.

(3) If the just cause consists of the violation of an obligation under the lease agreement then the notice of termination is only permitted after the expiry without results of an appropriate period set for the purpose of obtaining relief or after an unheeded warning notice. This does not apply if,

1. a period or a warning notice obviously shows little chance of succeeding,
2. immediate notice of termination for particular cause is justified, weighing the parties mutual interests, or
3. the lessee is in arrears with 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. Where it is in dispute whether the lessor has granted timely use of the leased property or has provided relief prior to expiry of the period set for this purpose then he bears the burden of proof.

Section 544

Agreement for more than 30 years

Where a lease agreement is signed for a period of more than 30 years then each of the contracting parties may after surrender of the leased property give notice to the lease for cause with statutory period of notice. Notice of termination is not admissible if the agreement has been signed for the duration of the natural life of the lessor or lessee.

Section 545

Tacit extension of the lease

Where the lessor continues to use the leased property after expiry of the lease period then the lease is extended for an indefinite period of time unless one of the contracting parties 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 moment when he is advised of such continuation.

Section 546

Lessee's obligation to return

(1) The lessee is obliged to return the leased property after termination of the lease.

(2) Where the lessee has permitted a third party to use the leased property, the lessor may likewise demand return of the leased property from that third party after termination of the lease.

Section 546a

Compensation of the lessor for delayed return

(1) Where the lessee fails to return the leased property after termination of the lease the lessor may for the duration of retention demand the agreed rent as compensation or such rent as is conventionally 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 liable for termination of the lease then he must reimburse his gains under provisions regulating surrender of unjustified enrichment.

(2) With a lease for residential space any divergent agreement to the disadvantage of the lessee is ineffective.

Section 548

Limitation of compensation claims and right of removal

(1) The lessors compensation claims for modification or deterioration of the leased property are time-barred in six months. The limitation commences at the time when the leased property is returned to him. With limitation of the lessors claim to return of the leased property the latters compensation claims are likewise time-barred.

(2) The lessees claims to reimbursement of expenses or removal permission of an installation are time-barred in six months after termination of the lease.

(3) (repealed)

Subtitle 2

Leases for residential space

Chapter 1

General provisions

Section 549

Provisions applicable to residential space leases

(1) Sections 535 to 548 apply to leases relating to residential space to the extent not otherwise stipulated by sections 549 to 577a.

(2) 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 established (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 for,

1. residential space only leased for temporary use,
2. residential space that is part of the dwelling inhabited by the lessor himself and has largely to be furnished with furnishings 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 other 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 sponsor of charitable care has leased to permit use by persons in urgent need of a residence if he has drawn the lessee's intention to the intended purpose of the residential space and to exemption from the regulations cited when concluding the contract.

(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 the lease agreement for a longer period of time than one year is not concluded in written form then it applies for an indefinite period of time. However notice of termination is only allowed at the earliest at the end of one year after the residential space has been surrendered.

Section 551

Restriction and deposit of rent securities

(1) Where the lessee must post security to the lessor for the fulfilment of his obligations then the latter may only amount, with reservation made for subsection (3) sentence 4, at most to three times the rent for one month, exclusive of the flat rate or advance payment made on operating costs.

(2) Where security is to be posted in the form of a sum of money then the lessee is entitled to three equal monthly instalments. The first instalment is due upon commencement of the lease.

(3) The lessor must place the sum of money surrendered to him as security with a banking institution at the usual interest rate for savings deposits with three months withdrawal notice. The contracting parties may agree another form of placement. In either case the placement must be made separately from the lessor's own assets and the lessee is entitled to the yield. It accrues to the security deposit. For residential space in a student hostel or a hostel for young people there is no obligation for the lessor to pay interest on the security deposit.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 552

Warding off the lessee's right of removal

(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 appropriate compensation is provided for.

Section 553

Permitting use by third parties

(1) Where the lessee after conclusion of the lease agreement is faced with 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 the third party personally constitutes just grounds for rejection, 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 reasonably expected to permit third-party use

with appropriate increase in the rent then he may make permission dependent upon the lessee agreeing to such increase in rent.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 554

Acquiescence in conservation and modernisation measures

(1) The lessee must acquiesce in measures required for conservation of the leased property.

(2) The lessee must acquiesce in 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 implies hardship for him, his family or another member of his household not justifiable 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 construction ramifications, prior expenditures by the lessee and the expected increase in the rent are to be taken into account. The expected increase in the rent is not to be deemed a hardship if the leased property is merely restored to a generally common condition.

(3) With measures as per subsection (2) sentence 1 the lessor must at the latest three months prior to commencement of the measures inform the lessee in writing of their nature, their tentative scope and commencement, tentative duration and the increase in rent to be expected. The lessee is entitled up to the end of the month subsequent to the month of notification to give notice for cause with effect as of the end of the next month. These provisions do not apply in case of measures having only insignificant effects on the premises leased and entailing only an insignificant increase in rent.

(4) Expenditures required of the lessee as a result of a measure under subsections (1) or (2) sentence 1 must be reimbursed to an appropriate extent by the lessor. Upon demand he must advance a sum.

(5) An agreement diverging from subsections (2) to (4) to the disadvantage of the lessee is ineffective.

Section 554a

Freedom from obstacles

(1) The lessee may demand the lessors approval for construction modifications or other installations required for handicap-friendly use of the leased property or access to it, if he has a justified interest in doing so. The lessor may deny approval if his interest in maintaining the leased property or building unchanged outweighs the lessees interests in handicap-friendly use of the leased property. In doing so, the justified interests of the buildings other lessees are to be taken into account.

(2) The lessor may make his approval dependent upon payment of appropriate additional security for restoration of the original condition. Section 551 (3) and (4) applies with the necessary modifications.

(3) An agreement diverging from subsection (1) to the disadvantage of the lessee is ineffective.

Section 555

Contractual penalty ineffective

An agreement whereby the lessor is led to expect a contractual penalty from the lessee is ineffective.

Chapter 2

Rent

Subchapter 1

Agreements on rent

Section 556

Agreements on operating costs

(1) The contracting parties may agree that the lessee is to bear operating costs within the meaning of section 19 (2) of the Housing Promotion Act [Wohnraumförderungsgesetz]. Pending issuance of the ordinance pursuant to section 19 (2) sentence 2 of the Housing Promotion Act, in regard to operating costs under sentence 1, section 27 of the Second Computation Ordinance [Zweite Berechnungsverordnung] is to be applied.

(2) The contracting parties may agree, subject to other provisions, that operating costs may be posted as flat rate or advance payment. Advance payments for operating costs may only be agreed in an appropriate amount.

(3) Advance payments for operating costs are to be invoiced once per year and, when doing so, the profit principle is to be observed. The lessee is to be notified of invoicing at the latest by the end of the twelfth month subsequent to the invoicing period. After this period assertion of any subsequent claim by the lessor is excluded unless the lessor is not liable for such late assertion. The lessor is not obliged to provide interim invoicing. The lessor must be informed by the lessee of any objections to invoicing by the end of the twelfth month after receipt of invoice. After expiry of that period objections may no longer be asserted unless the lessee is not liable for such late assertion.

(4) An agreement divergent from subsections (1) and (2) sentence 2 or subsection (3) to the disadvantage of the lessee is ineffective.

Section 556a

Invoicing criteria for operating costs

(1) Where the contracting parties have not agreed otherwise and pending issue of other provisions, operating costs are to be split in proportion to the living space involved. Operating costs depending on recorded consumption or recorded as incurred by the lessee are to be split according to criteria that do justice to the extent used or caused.

(2) Where the contracting parties have agreed otherwise the lessor may by declaration in written form declare that operating costs may in future and contrary to the agreement reached be allowed to be split in full or in part according to a criterion that does justice to the extent to which they are used or caused. The declaration may only be made prior to commencement of an invoicing period. Where the costs have heretofore been included in the rent the latter is to be reduced accordingly.

(3) An agreement diverging from subsection (2) to the disadvantage of the lessee is ineffective.

Section 556b

Due date of rent, right to set-off and 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 set-off a claim based on sections 536a and 539 or a claim for unjustified enrichment for too much rent paid against a claim for rent, notwithstanding a contractual provision to the contrary, or may exercise a right of retention for such a claim if he has already notified the lessor in written form of his intention to do so at least one month prior to the rents due date. A divergent agreement to the disadvantage of the lessee is ineffective.

Subchapter 2

Regulation of the rent amount

Section 557

Increases in rent by agreement or legislation

- (1) The parties may agree an increase in rent during the lease.
- (2) Future changes in the amount of rent may be agreed by the contracting parties as staggered rent under section 557a or as indexed rent under section 557b.
- (3) In other respects 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 such exclusion emerges from the circumstances.
- (4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 557a

Staggered rent

- (1) The rent may be agreed in writing for a specific period of time in varying amounts; in the agreement each rent or each increase must be indicated in a monetary amount (staggered rent).
- (2) The rent must remain unchanged on each occasion for at least one year. During the period of staggered rent an increase under sections 558 to 559b is excluded.
- (3) The lessee's right to give notice may be excluded for a maximum of four years as from conclusion of the staggered rent agreement. Notice of termination is only allowed as of the end of this period at the earliest.
- (4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 557b

Indexed rent

- (1) The contracting parties may agree in writing that the rent is to be determined by means of the price index for living costs 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. Increase under section 559 may only be demanded to the extent that the lessor has carried out construction measures due to circumstances for which he is not liable. An increase under section 558 is excluded.
- (3) Any change in rent under subsection (1) must be advanced by declaration in written form. In this context, the change in the price index

that has occurred as well as the rent at the time or the increase must be indicated in a monetary amount. The revised rent must be paid at the commencement of the second subsequent month beginning after receipt of the declaration.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 558

Increase in rent up to the locally customary reference rent

(1) The lessor may demand approval of an increase in rent up to the locally customary reference rent if the rent has remained unchanged for 15 months at the time when the increase is to occur. The demand for a rent increase may be advanced at the earliest one year after the most recent rent increase. Increases pursuant to sections 559 to 560 are not taken into account.

(2) The locally customary reference rent is formed from the usual remuneration agreed or (with the exception of increases under section 560) in the local community or comparable local community for residential space of comparable type, size, furnishings, quality and location during the most recent four years. Exempted from this is residential space where the amount of rent has been stipulated by legislation or in connection with a promotional commitment.

(3) In case of an increase under subsection (1) the rent may not be raised within three years except for increases under sections 559 to 560 by more than twenty percent (capping limit).

(4) The capping limit does not apply,

1. if the lessee's obligation to make compensation payments under the provisions on dismantling of improper subsidisation in housing has expired due to the lack of public sector involvement, 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 lapse of public sector involvement demand that he be informed within one month of the obligation to pay compensation and of its amount. Sentence 1 applies with the necessary modifications if the lessee's obligation to make compensation payment under sections 34 to 37 of the Housing Subsidisation Act [Wohnraumförderungsgesetz] and Land regulations issued thereon has lapsed due to the repeal of rent linkage.

(5) From the annual amount that would emerge in case of an increase up to the locally customary reference rent, external funds in the terms of section 559a are to be subtracted and in the case of section 559a (1) with eleven percent of the allowance.

(6) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 558a

Form and justification for the rent increase

(1) Rent increase demands pursuant to section 558 must be declared and justified to the lessee in written form.

(2) In justification reference may in particular be made to

1. a rent table (sections 558c and 558d),
2. information from a rent database (section 558e),

3. an opinion by an officially appointed and sworn expert provided with supporting particulars,
4. equivalent compensation for specific comparable residential dwellings in which case citation of three such dwellings will suffice.

(3) If a qualified rent table (section 558d (1)), where the provisions of section 558d (2) have been complied with, contains information for the residential dwelling then the lessor must in his demand for a rent increase communicate such information even if he wishes to support his rent increase with another means of justification under subsection (2).

(4) When making reference to a rent table containing ranges it will be sufficient if the rent demanded lies within the range. If no rent table where sections 558c (3) or 558d (2) have been complied with is available at the time when the lessor makes his declaration then another rent table, including without limitation an outdated one, or a rent table from a comparable local community may be used.

(5) A divergent 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 then owes the increased rent as 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. Suit must be brought within three additional months.

(3) Where the suit has been preceded by a demand for increase that does not meet the demands in section 558a then the lessor may recover this in the legal dispute or remedy the flaws in the demand for increase. The lessee is in that case as well entitled to the approval period under subsection (2) sentence 1.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 558c

Rent table

(1) A rent table is a survey of locally customary reference rents to the extent that the survey has been jointly produced or recognised by the local community or by representatives of lessor or lessee interest groups.

(2) Rent tables may be produced for the territory of one local community or for that of several local communities or for parts of local communities.

(3) Rent tables should be adjusted for market trends at intervals of two years.

(4) Local communities should produce rent tables if there is a need for them and if this is possible at a reasonable cost. The rent tables and their modifications should be published.

(5) The Federal Government is authorised, by way of legal statutory order issued with the approval of the Federal Council [Bundesrat], to issue regulations of more detailed contents and with procedures for drawing up and adjusting rent tables.

Section 558d

Qualified rent table

- (1) A qualified rent table is a rent table produced according to recognised scientific principles and recognised by the local community or by representatives of lessor and lessee interest groups.
- (2) The qualified rent table is to be adjusted for market trends at intervals of two years. In doing so, a spot check or the trend of the price index for living standards of all private households computed by the Federal Statistical Office [Statistisches Bundesamt] may be used as a base. After four years a new qualified rent table must be produced.
- (3) If the provisions of subsection (2) are complied with, then the assumption is that the compensation cited in the qualified rent table reflects the locally customary reference rents.

Section 558e

Rent database

A rent database is a collection of rents maintained on an ongoing basis for computing locally customary reference rents jointly maintained or recognised by the local community or by representatives of lessor and lessee interest groups and from which information may be obtained that allow for conclusions for specific residential dwellings about locally customary reference rents.

Section 559

Rent increase in case of modernisation

- (1) Where the lessor has carried out construction measures sustainably enhancing the leased property's utility value, permanently improving living conditions or entailing permanent savings in energy or water (modernisation) or where he has carried out other construction measures due to circumstances for which he is not liable then he may increase the annual rent by 11 percent of the costs spent on the residential space.
- (2) Where the construction measures have been carried out for several dwelling units then the costs must be split up appropriately amongst the different dwelling units.
- (3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 559a

Crediting of external funds

- (1) Costs assumed by the lessee or assumed by a third party for the latter or covered with funds from the public treasury are not included in the costs spent within the meaning of section 559.
- (2) If the costs for the construction measures are covered in full or in part by low-interest or interest-free loans from the public treasury then the increase amount under section 559 is reduced by the annual amount of the interest discount. The latter is calculated from the difference between the reduced interest rate and the going market interest rate for the loans original amount. The going market interest rate for first-rate mortgages at the time when the measures were ended is determinative. Where allowances or loans are used to cover ongoing expenditures then the increase amount is reduced by the annual amount of the allowance or loan.
- (3) A lessee loan, advance rent payment or any service performed for the lessee by a third party for the construction measures are equated with a

loan from the public treasury. Funds from the Federal Governments or the Lands banking institutions are likewise deemed to be funds from the public treasury.

(4) Where it cannot be ascertained in what amount allowances or loans have been granted for the individual residences then they must be divided up according to the ratio of costs spent on individual residences.

(5) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 559b

Assertion of an increase; effect of declaration of increase

(1) The rent increase pursuant to section 559 must be declared to the lessee in written form. The declaration is only effective if in it the increase is calculated on the basis of costs incurred and explained in accordance with the prerequisites for sections 559 and 559a.

(2) The lessee owes the increased rent as of 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 under section 554 (3) sentence 1 or if the de facto rent increase is more than ten percent higher than the one notified.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 560

Changes in operating costs

(1) With a flat-rate sum for operating costs the lessor is entitled to assess the lessee in written form pro rata for increases in operating costs to the extent that this has been agreed in the lease agreement. The declaration is only effective if in it the basis for the assessment is cited and explained.

(2) The lessee owes the portion of the assessment attributable to him as of the second month subsequent to the one in which the declaration was made. To the extent that the declaration is based on the fact that operating costs have been raised retroactively it applies as of the date when the operating costs were raised, but at most as of the beginning of the calendar year preceding that of the declaration, provided the lessor has made the declaration within three months of learning of the increase.

(3) If operating costs are reduced then the flat rate 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 each of the contracting parties may subsequent to invoicing undertake an adjustment to an appropriate amount by means of a declaration in written form.

(5) In case of changes in operating costs, the principle of profitability must be observed.

(6) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 561

Lessees special right of notice of termination subsequent to a rent increase

(1) If the lessor claims a rent increase pursuant to sections 558 or 559 then the lessee may up to the end of the second month after receipt of the lessors declaration give notice for cause as of the end of the second month subsequent thereto. If the lessee gives notice then the rent increase does not take effect.

(2) A divergent agreement to the disadvantage of the lessee is ineffective.

Chapter 3

Lessors lien

Section 562

Extent of the lessors lien

(1) The lessor enjoys for his claims under the lease a lien on items contributed by the lessee. It does not extend to such items as are not subject to lien.

(2) The lien may not be asserted for future compensation claims and for rent for periods subsequent to the current year and the next lease year.

Section 562a

Lapse of the lessors lien

The lessors lien lapses upon removal of the items from the property except when such removal occurs without the knowledge of or over the objection of the lessor. The lessor may not object if such corresponds to conventional living conditions or if things left behind obviously suffice to secure the lessors claims.

Section 562b

Self-help; claim for return

(1) The lessor may prevent removal of items subject to his lien even without seizing 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 items.

(2) Where the items have been removed without the knowledge of or against the objection of the lessor then he may demand surrender of the items for the purpose of returning them to the property and, if the lessee has moved out, surrender of possession. The lien lapses at the end of one month after the lessor has learned of removal of the items unless he has previously asserted this claim in court.

Section 562c

Warding off lien by provision of security

The lessee may ward off assertion of lien by provision of security. He may exempt every single item from lien by providing security in the amount of its value.

Section 562d

Attachment of property by a third party

If an item subject to the lessors lien is attached for another creditor then in relation to that party the lien may not be asserted for rent from an earlier period than the last year prior to attachment.

Chapter 4

Change of contracting parties

Section 563

Right of accession upon death of the lessee

- (1) The spouse maintaining a joint household with the lessee accedes upon the lessee's death to the lease. The same applies to the common law partner.
- (2) Where offspring of the lessee live in the lessee's joint household then the latter accede to the lease upon the lessee's death, unless the spouse accedes. Accession of the common law partner is not affected by accession of the lessee's offspring. Other family members who maintain a joint household with the lessee accede to the lease upon the lessee's death unless the spouse or common law partner accedes. The same applies to persons with whom the lessee maintains a joint household set up to last permanently.
- (3) Where persons within the meaning of subsection (1) or (2) acceding within one month of having learned of the lessee's death declare to the lessor that they do not wish to continue the lease, then accession is deemed not to have occurred. For persons without the capacity to contract or limited in their capacity to contract section 210 applies with the necessary modifications. Where several persons accede to the lease, then each may make the declaration on his own behalf.
- (4) The lessor may give notice to the lease for cause with the statutory notice period within one month of having learned of the definite accession to the lease if the acceding person provides justified cause for rejection.
- (5) A divergent agreement to the disadvantage of the lessee or such persons as are entitled to accession under subsection (1) or (2) is ineffective.

Section 563a

Continuation with surviving lessees

- (1) Where several persons within the meaning of section 563 are joint lessees then the lease is continued with the surviving persons after the death of one lessee.
- (2) The surviving lessees may within one month of having learned of the death of the lessee give notice with cause with the statutory notice period.
- (3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 563b

Liability upon accession or continuation

- (1) Persons acceding to the lease under section 563 or continuing under section 563a are liable together with heirs as joint and several debtors for liabilities incurred up to the lessee's death. In relation to these persons the heir is solely liable to the extent that nothing else has been stipulated.
- (2) Where the lessee has paid in advance for a period of time subsequent to his death, persons acceding to the lease under section 563 or continuing it under section 563a are obliged to surrender to the heir what they save or gain due to such prepayment.
- (3) The lessor may, if the deceased lessee has not provided any security, demand provision of security under the provision of section 551 from persons acceding to the lease under section 563 or continuing it under

section 563a.

Section 564

Continuation of the lease with the heir, notice of termination for cause

Where no persons accede to the lease upon the death of the lessee or where it is not continued with them under section 563a then it is continued with the heir. In that case both the heir as well as the lessor are entitled to give notice to the lease for cause within one month with the statutory notice period after learning of the death of the lessee and of the fact that there has been no accession to the lease or no continuation thereof.

Section 565

Commercial re-letting

(1) If under the lease agreement the lessee is supposed to re-let the leased residential space to a third party in a commercial manner for residential purposes then upon termination of the lease the lessor accedes to the rights and obligations under the lease agreement between the lessee and that third party. Where the lessor again concludes an agreement for commercial re-letting then the lessee accedes instead of the previous contracting party to the rights and obligations under the lease agreement with that third party.

(2) Sections 566 to 566e apply with the necessary modifications.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 566

Purchase does not supersede lease

(1) If the leased residential space after surrender to the lessee by the lessor is alienated to a third party then the acquirer accedes to the rights and obligations emerging for the duration of his ownership under the lease.

(2) Should the acquirer fail to fulfil his obligations then the lessor is liable as a surety who has waived the benefit of discussion for damage to be compensated by the acquirer. Should the lessee learn of transfer of ownership by notification from the lessor then the lessor is exempted from liability unless the lessee gives notice to the lease as of the earliest date when notice of termination is allowed.

Section 566a

Lease security

If the lessee of the alienated residential space has provided security for fulfilment of his obligations with the lessor then the acquirer accedes to the rights and obligations established thereby. 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 control of the rent

(1) Where the lessor prior to transfer of ownership controls the rent attributable to the period of the acquirers entitlement then such control is effective to the extent that it relates to the rent for the calendar month current when ownership passes. If ownership passes after the fifteenth

day of the month then control is likewise effective to the extent that it relates to rent for the following calendar month.

(2) The acquirer must accept control of the rent as against himself for a subsequent period of time if he is aware of it at the time when ownership passes.

Section 566c

Agreement between lessee and lessor on the rent

A legal transaction concluded 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 learns of the passing of ownership. Should the lessee learn of this after the fifteenth day of the month then the legal transaction is likewise effective to the extent that it relates to rent for the next calendar month. A legal transaction undertaken after the passing of ownership is however ineffective if the lessee knew of the passing of ownership when the legal transaction was undertaken.

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 a claim to which he is entitled in relation to the lessor against the acquirer's claim to rent. Set-off is excluded if the lessee has acquired the counterclaim after having learned of the passing of ownership or if the counterclaim has only become due after learning of the passing of ownership and subsequent to when the rent fell due.

Section 566e

Notification by the lessor of passing of ownership

(1) Should the lessor make notification to the lessee that he has transferred title to the leased residential space to a third party then he must, in regard to the rent claim, accept that in relation to the lessee the notified transfer can be claimed in relation to him even if it does not occur or is not effective.

(2) Notification may only be retracted with approval by the person who has been named as the new owner.

Section 567

Encumbrance of the residential space by the lessor

If the leased residential space subsequent to surrender to the lessee by the lessor is encumbered with a third-party right then sections 566 to 566e are to be applied with the necessary modifications, if by exercise of such right the lessee is deprived of contractually agreed use of it. Where the lessee is restricted in his contractually agreed use by exercise of this right then the third party is under an obligation to the lessee to forgo exercise to the extent that it would impair contractually agreed use.

Section 567a

Alienation or encumbrance prior to permitting use of residential space

Where, prior to alienation of leased residential space to the lessee, the lessor has alienated the residential space to a third party or encumbered it with a right by execution of which the lessee is deprived of or restricted

in its contractually agreed use, then the same applies as in the cases in sections 566 (1) and 567 if the acquirer has assumed the obligations in relation to the lessor resulting from the lease agreement.

Section 567b

Further alienation or encumbrance by the acquirer

If the leased residential space is further alienated 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 fulfil the obligations resulting 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 requires written form.
- (2) The lessor should in timely fashion draw the lessee's attention to the option, the form and the period for objection under sections 574 to 574b.

Section 569

Immediate notice of termination for just cause

- (1) Just cause within the meaning of section 543 (1) likewise obtains for the lessee when the leased residential space is designed such that its use is associated with a significant health hazard. This also applies if the lessee knew of the hazardous nature at the time when the lease agreement was signed or waived the right to assert rights to which he was entitled due to such condition.
- (2) Just cause within the meaning of section 543 (1) additionally obtains if one of the contracting parties permanently disturbs domestic peace such that the party giving notice, taking all circumstances of the specific case into account, including without limitation culpability by the contracting parties and by weighing the interests of both parties, cannot be reasonably expected to continue the lease up to the end of the notice period or up to another termination of the lease.
- (3) In supplement to section 543 (2) sentence 1 no. 3, the rule is:
 1. In the case in section 543 (2) sentence 1, no. 3, letter a the outstanding portion of the rent may only be deemed not to be significant if it exceeds the rent for one month. This does not apply if the residential space has only been leased for temporary use.
 2. The notice of termination is also then ineffective if the lessor at the latest at the end of two months of litispendence of the eviction claim has come about in regard to the outstanding rent and outstanding compensation under section 546a (1) has been satisfied or if a public office obliges itself to satisfy it. This does not apply if notice of termination has already been preceded within the last two years by a notice of termination invalidated under sentence 1.
 3. If the lessee has been definitively sentenced to payment of increased rent under sections 558 to 560 then the lessor may not give notice to the lease prior to two months after definitive sentencing unless the prerequisites for immediate notice of termination for cause have

already been met due to rent already owed.

(4) The just cause entailing notice of termination must be indicated in the termination notice.

(5) An agreement diverging from subsections (1) to (3) of this provision or from section 543 to the disadvantage of the lessee is ineffective. Furthermore ineffective is an agreement according to which the lessor is said to be entitled to give notice immediately for cause for reasons other than those allowed by law.

Section 570

Exclusion of the right of retention

The lessee is not entitled to any right of retention against the lessors claim to return.

Section 571

Further damages for late return of residential space

(1) Should the lessee fail 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 return failed to occur for reasons for which the lessee is liable. Damage is only to be compensated to the extent that equity demands indemnification. This does not apply if the lessee has given notice.

(2) If the lessee has been granted an eviction period for vacation of premises under section 721 or section 794a of the Code of Civil Procedure [Zivilprozessordnung] then he is not further liable in damages for the period of time from termination of the lease up to the end of the eviction period.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 572

Agreed right of withdrawal; lease under a dissolving condition

(1) The lessor may not invoke an agreement according to which the lessor is said to be entitled to withdraw from the lease agreement after the lessee has been permitted to use the residential space.

(2) The lessor may in addition not invoke an agreement according to which the lease is subject to a condition subsequent to the disadvantage of the lessee.

Subchapter 2

Leasing for an indefinite period of time

Section 573

Notice of termination with advance notice by the lessor

(1) The lessor may only give notice if he has a justified interest in termination of the lease. Notice of termination for the purpose of raising the rent is excluded.

(2) A justified interest of the lessor in termination of the lease obtains in cases including without limitation if

1. the lessee has culpably violated his contractual duties significantly.
2. the lessor needs the space as residence 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 piece of land and would thereby suffer significant disadvantages; the possibility of attaining higher rent by leasing the residential space to others is disregarded; the lessor may likewise not invoke the fact that he wishes to alienate the residential space in connection with intended creation of condominium property or creation of condominium property after the lessee was given permission to use the residential space.

(3) The reasons for a justified interest of the lessor must be indicated in the notice of termination. Other reasons can only be taken into account to the extent that they have come about subsequently.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 573a

Simplified notice of termination by the lessor

(1) The lessor may also give notice to a lease for a residence in a building inhabited by the lessor himself and having no more than two residences without this requiring any 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 residence inhabited by the lessor himself to the extent that the residential space is not exempted from rent protection under section 549 (2) no. 2.

(3) In the notice of termination there must be an indication that the notice of termination is based on the prerequisites in subsection (1) or (2).

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 573b

Partial notice of termination by the lessor

(1) The lessor may not give notice to specific storage rooms or parts of a piece of land without a justified interest within the meaning of section 573 if he limits notice of termination to such rooms or parts of the piece of land and if he wishes to use them

1. to create residential space for purposes of leasing, or
2. to provide the intended or existing residential space with storage rooms or parts of the piece of land.

(2) Notice of termination is allowed at the latest on the third working day of a calendar month as of 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 a corresponding period of time.

(4) The lessee may demand appropriate reduction of the rent.

(5) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 573c

Notice periods for notice of termination with advance notice

(1) Notice of termination is allowed at the latest on the third working day of a calendar month as of the end of the second month thereafter. The notice period for the lessor is extended after five and eight years since permission to use the residential space was given by three months in each instance.

(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 the month as of the end of that month.

(4) An agreement divergent from subsections (1) or (3) to the disadvantage of the lessee is ineffective.

Section 573d

Notice of termination for cause with statutory notice period

(1) Where a lease may be given notice for cause with the statutory notice period then sections 573 and 573a apply with the necessary modifications with the exception of notice of termination in relation to the lessees heirs under section 564.

(2) Notice of termination is allowed at the latest on the third working day of a calendar month as of the end of the second month thereafter, in case of residential space under section 549 (2) no. 2 at the latest on the fifteenth day of the month as of the end of that month (statutory period). Section 573a (1) sentence 2 is not applicable.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 574

Lessees objection to notice of termination

(1) The lessee may object to the lessors notice of termination and demand continuation of the lease from the latter if termination of the lease would entail hardship for the lessee, his family or any other member of his household that could not be justified even if the lessors justified interests are taken into account. This does not apply if a reason obtains entitling the lessor to give notice for cause without notice.

(2) Hardship obtains as well if appropriate substitute residential space cannot be procured on reasonable terms.

(3) In considering the lessors justified interests only reasons in the notice of termination indicated under section 573 (3) are taken into account except where the reasons came about subsequently.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 574a

Continuation of lease subsequent to objection

(1) In the case cited in section 574 the lessee may demand that the lease be continued as long as is appropriate taking all circumstances into consideration. If the lessor cannot reasonably be expected to continue the lease under the previously applicable contractual terms, then the lessee may only demand that it be continued with appropriate modification of the terms.

(2) If no agreement can be reached then continuation of the lease, its

duration as well as the terms under which it is continued are determined by court ruling. If it is uncertain when the circumstances can be expected to lapse on the basis of which termination of the lease would entail hardship, then it may be determined that the lease is to be continued for an indefinite period of time.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 574b

Form and period for objection

(1) The lessee's objection to notice of termination must be declared in writing. Upon demand by the lessor the lessee should without undue delay provide information on his reasons for objecting.

(2) The lessor may reject continuation of the lease if the lessee does not declare the objection to him by two months prior to termination of the lease at the latest. If the lessor has not advised in timely fashion prior to the objection period of the possibility of objection as well as of its form and period then the lessee may still declare objection at the first hearing in eviction litigation.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 574c

Further continuation of lease in case of unforeseen circumstances

(1) If it has been determined on the basis of sections 574 to 574b by mutual agreement or court ruling 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 an essential change in circumstances or if circumstances have not come about whose predicted occurrence has been determinative for the period of time the lease was to continue.

(2) Should the lessor give notice to the lease whose continuation for an indefinite period of time has been determined by court ruling, then the lessee may object to the notice of termination and demand continuation of the lease for an indefinite period of time from the lessor. Where the circumstances have changed that had been determinative for continuation, then the lessee may only demand continuation of the lease under section 574; insignificant changes will not be taken into account.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Subchapter 3

Leasing for a definite period of time

Section 575

Fixed-term agreement

(1) A lease may be entered into for a fixed period of time if the lessor upon termination of the lease period

1. the lessor wishes to use the space as residence for himself, members of his family or members of his household, or
2. wishes to eliminate the space or change or furnish it so substantially that such measures would be significantly impeded by continuation of the lease, or
3. wishes to lease the space to a party obliged to perform work

and he notifies the lessee in writing of the reasons for such a fixed term when the agreement is concluded. 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 latter notify him within one month whether the grounds for the fixed term still apply. If such notification occurs later then the lessee may demand an extension of the lease by the same period of time as the delay.

(3) Where the reasons for fixed term occur later, then the lessee may demand an extension of the lease by the corresponding period of time. If the reason lapses 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 the duration of the delay is on the lessor.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 575a

Notice of termination for cause with statutory notice period

(1) Where the lease entered into for a fixed term may be given notice for cause with the statutory notice period then, with the exception of notice of termination in relation to the lessee's heirs under section 564, sections 573 and 573a apply with the necessary modifications.

(2) Sections 574 to 574c apply with the necessary modifications with the provision that continuation of the lease may be demanded at most up to the contractually determined date of termination.

(3) Notice of termination is allowed at the latest on the third working day of a calendar month as of the end of the second month thereafter, in case of residential space under section 549 (2) no. 2 at the latest on the fifteenth day of the month as of the end of that month (statutory period). Section 573a (1) sentence 2 is not applicable.

(4) A divergent agreement to the disadvantage of the lessee is ineffective.

Subchapter 4

Employee dedicated-residences

Section 576

Periods for notice of termination with notice period for employee-dedicated residences

(1) Where the residential space is leased in view of the existence of employment, then the lessor may upon termination of such employment and contrary to section 573c (1) sentence 2 give notice with the following notice periods:

1. for residential space the lessee was permitted to use for less than ten years on the third working day of a calendar month as of 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 as of the end of that month if the employment by its nature requires permission to use residential space located in immediate relation to or in the immediate vicinity of the place of work and the residential space for the same reason is needed for another such person obliged to perform services.

(2) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 576a

Peculiarities of the right of objection with employee-dedicated residences

(1) When applying sections 574 to 574c to employee-dedicated residences the interests of the party 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 employment without the party entitled to service having given him any legally established reason for doing so or the lessee, by his actions, provided the party entitled to service with legally established grounds for terminating employment.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 576b

Equivalent application of the right of lease with employment-dedicated residences

(1) If permission to use the residential space has been given in the context of employment, then for termination of the legal bond in regard to the residential space the provisions on leases apply with the necessary modifications if the party obliged to perform services has largely provided the residential space with furnishings or lives in the residential space with his family or persons with whom he maintains a joint household set up permanently.

(2) A divergent agreement to the disadvantage of the lessee is ineffective.

Chapter 6

Peculiarities when creating condominium property in leased residences

Section 577

Lessees right of pre-emption

(1) Where leased residential space in which condominium property 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 pre-emption on it. This does not apply if the lessor sells the residential space to a member of his family or a member of his household. To the extent that it is not otherwise stipulated in the subsections below, provisions of the right of pre-emption are applicable.

(2) The sellers or the third partys notification on the contents of the purchase agreement is to be combined with informing the lessee of his right of pre-emption.

(3) The right of pre-emption is exercised by written declaration of the lessee addressed to the seller.

(4) If the lessee dies then the purchase option passes to those who accede to the lease under section 563 (1) or (2).

(5) A divergent agreement to the disadvantage of the lessee is ineffective.

Section 577a

Restriction on notice of termination for conversion of the residence

(1) Where condominium property has been established in the residential space after the lessee was permitted to use it and such condominium property has been alienated, then the 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 such alienation.

(2) The period under subsection (1) amounts to up to ten years if adequate supply of residences leased to the population on appropriate terms in a local community or part of a local community is particularly put in jeopardy and these areas are determined under sentence 2. The Land governments are authorised to determine such territories and the period of time under sentence 1 by way of legal statutory order for the duration of ten years at most each time.

(3) A divergent agreement to the disadvantage of the lessee is ineffective.

Subtitle 3

Lease relating to other things

Section 578

Leases relating to pieces of land and spaces

(1) The provisions of sections 550, 562 to 562d, 566 to 567b as well as 570 are applicable to leases of pieces 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 spaces not constituting residential space. If the spaces are intended for human beings to stay in them, 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 applications in the case of alienation or encumbrance of a ship registered with the ship register.

(2) A decision made on the rent 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 undertaken between the lessee and the lessor on the rent claim, including without limitation regarding payment of rent; a legal transaction undertaken after the passing of ownership is however ineffective if the lessee, when undertaking the transaction, is aware of the passing of ownership. Section 566d applies with the necessary modifications.

Section 579

Due date of the rent

(1) The rent for a piece of land, a ship registered with the ship register and for movable items is payable at the end of the lease period. Where rent is assessed according to time periods, then it is to be paid at the

end of the various different time periods. Rent for a piece of land, unless apportioned for shorter time periods, is in each instance 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 space.

Section 580

Notice of termination for cause in case of the lessees death

Should the lessee die then both his heirs as well as the lessor are entitled within a month of learning of the lessees death to give notice for cause with the statutory notice period.

Section 580a

Notice periods

(1) With a lease relating to pieces of land, space not constituting commercial space or to ships registered with the ship register notice of termination with period of notice is allowed,

1. if rent is calculated in days, on any day for the end of the following day;
2. if rent is calculated by week, at the latest on the first working day of a week for the end of the following Saturday;
3. if the rent is calculated in months or longer periods of time, at the latest on the third working day of a calendar month as of the end of the second month thereafter, for a lease relating to commercially used undeveloped pieces of land or ships registered with the ship register however only as of the end of a calendar quarter.

(2) With a lease relating to business space, notice of termination with period of notice is allowed at the latest on the third working day of a calendar quarter as of the end of the next calendar quarter.

(3) For a lease relating to movable things, notice of termination with period of notice is allowed

1. if rent is calculated in days, on any day for the end of the following day;
2. if the rent is calculated in 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 only be given notice for cause with the statutory period.

Subtitle 4

Usufructuary lease agreement

Section 581

Contractually typical obligations in a usufructuary lease agreement

(1) With the usufructuary lease agreement the usufructuary lessor is put under an obligation to grant, for the duration of the usufructuary lease period, the usufructuary lessee the use of the usufructuarily leased item and the enjoyment of its fruits to the extent that they are deemed to be yield under the rules of proper business. The usufructuary lessee is obliged to pay the usufructuary lessor the agreed usufructuary rent.

(2) The provisions on the lease agreement are applicable with the necessary modifications to the usufructuary lease agreement with the exception of the agricultural lease unless otherwise emerges from

sections 582 to 584b.

Section 582

Preservation of inventory

(1) Where a piece of land is leased out under usufructuary lease with its inventory, then it is incumbent upon the usufructuary lessee to preserve the individual inventory items.

(2) The usufructuary lessor is obliged to replace inventory items retired due to circumstances for which the usufructuary lessee is not liable. However, the usufructuary lessee must replace routine retirement of animals forming part of the inventory to the extent that this corresponds to proper business practice.

Section 582a

Takeover of inventory at its estimated value

(1) Where the usufructuary lessee of a piece of land takes over the inventory at its estimated value with the duty of returning it at its estimated value upon termination of the usufructuary lease, then he bears the risk of accidental loss and accidental deterioration of such inventory. Within the bounds of proper business he may control the individual inventory items.

(2) The usufructuary lessee must maintain the inventory in such condition and replace it to such an extent as corresponds to the rules of proper business. The items purchased by him upon being incorporated into the inventory become the property of the usufructuary lessor.

(3) Upon termination of the usufructuary lease the usufructuary lessee must return the existing inventory to the usufructuary lessor. The usufructuary lessor may refuse to accept such inventory items purchased by the usufructuary lessee as are superfluous or too expensive for the piece of land, and with such rejection ownership of the rejected items passes to the usufructuary lessee. Where there is a difference between the total estimated value of the inventory taken over and that rejected then such difference is to be settled in money. The estimated values are to be based on the prices valid at the time of termination of the usufructuary lease.

Section 583

Usufructuary lessees lien on inventory

(1) The usufructuary lessee of a piece of land is entitled to a lien on the inventory items in his possession for claims on the usufructuary lessor that relate to inventory included in the usufructuary lease.

(2) The usufructuary lessor may ward off assertion of the usufructuary lessees lien by provision of security. He may in that way exempt every single inventory item from lien by providing security in the amount of the lien.

Section 583a

Restrictions on control of inventory

Contractual provisions obliging the usufructuary lessee of a business not to dispose of inventory items or not to dispose of them without prior consent by the usufructuary lessor or to alienate inventory items to the usufructuary lessor are only effective if the usufructuary lessor puts himself under an obligation to acquire the inventory upon termination of the usufructuary lease at its estimated value.

Section 584

Notice period

(1) If in the usufructuary lease relating to a piece of land or to a right the usufructuary lease period is not determined, then notice of termination is only allowed as of the end of a usufructuary lease year; it must occur at the latest by 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 given notice for cause with the statutory notice period.

Section 584a

Exclusion of certain lease-law termination rights

(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 give notice to the usufructuary lease under section 580.

Section 584b

Late return

Should the usufructuary lessee fail to return the usufructuarily leased property upon termination of the usufructuary lease, then the usufructuary lessor may for the duration of such retention demand the agreed usufructuary rent as compensation in the ratio in which the benefits the usufructuary lessee derived in that period or would have been able to derive stand to the entire annual usufructuary rent. Assertion of additional loss is not excluded.

Subtitle 5

Agricultural lease agreement

Section 585

Concept of agricultural lease agreements

(1) By means of an agricultural lease agreement, a plot of land with the residential and utility buildings that serve its husbandry, or a plot of land without such buildings, is leased largely for agriculture. Agriculture refers to tillage of the soil and animal husbandry associated with use of the soil in order to produce plant or animal products as well as horticultural production.

(2) Section 581 (1) and sections 582 to 583a as well as the special provisions below apply to agricultural leases.

(3) Provisions on agricultural leases also apply to leases relating to forestry properties if the pieces of land are leased for use in a predominantly agricultural business.

Section 585a

Form of the agricultural lease

Where an agricultural lease is entered into for more than two years without written form then it applies for an indefinite period of time.

Section 585b

Description of the leased property

(1) The usufructuary lessor and the usufructuary lessee should at the outset of the usufructuary lease jointly prepare a description of the leased property in which its extent as well as the condition in which it is when surrendered is set forth. This applies with the necessary modifications for termination of the usufructuary lease. The description should be provided with indication of the date of its preparation and must be signed by both parties.

(2) Should a party to the lease refuse to participate in preparation of a description or should factual differences of opinion emerge during such preparation, then each party to the lease may demand that a description be prepared by an expert, unless more than nine months have passed since surrender of the leased property or more than three months have passed since termination of lease; the expert is appointed by the agricultural court upon application. Costs thus incurred are borne by the parties to the lease at the rate of one-half each.

(3) Where a description of this type has been prepared, then the presumption between the parties to the lease is that it is correct.

Section 586

Contractually typical duties in an agricultural lease

(1) The usufructuary lessor must surrender the leased property to the usufructuary lessee in a condition suitable for its contractual use and must maintain it in such condition for the duration of the lease. However the usufructuary lessee must carry out customary improvements on the leased property at his own expense, including without limitation improvements on the residential and commercial buildings, the roads, trenches, drains and enclosures. 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 usufructuary lessors liability for material and legal defects in the leased property as well as for the usufructuary lessees rights and duties due 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 unable to do so

(1) The rent is to be paid at the end of the lease period. Where the lease period is determined in time periods, then it is to be paid on the first working day after the end of the various different time periods.

(2) The usufructuary lessee is not exempted 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 to preserve or improve

(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 legitimate interests of the usufructuary lessor are taken into account. The usufructuary lessor must compensate the usufructuary lessee for expenses and lost earnings incurred by such measures 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 as per subsection (2) sentence 1, earns higher revenues or could earn them with proper management, then the usufructuary lessor may demand that the usufructuary lessee give prior consent to an appropriate increase in rent unless the usufructuary lessee cannot be reasonably expected to accept an increase in rent under the circumstances of the business.

(4) Upon application, the agricultural court decides disputes under subsections (1) and (2). Should the usufructuary lessee fail to give prior consent in the cases in subsection (3), then the agricultural court may replace it upon application by the usufructuary lessor.

Section 589

Surrender to third parties for use

(1) Without the usufructuary lessors permission the usufructuary lessee is not entitled to

1. assign use of the leased property to a third party, including without limitation to re-let the item,
2. to assign the leased property, in full or in part, to an agricultural association for the purpose of joint use.

(2) Should the usufructuary lessee assign use of the leased property to a third party, then he is liable for any culpability committed by the third party in its use, even if the usufructuary lessor has given permission for such assignment.

Section 590

Change in agricultural purpose or in previous use

(1) The usufructuary lessee may only change the agricultural purpose of the leased property with prior permission given by the usufructuary lessor.

(2) For any change to the leased property's previous use, prior permission given by the usufructuary lessor is only required if the nature of use will be influenced beyond the lease period by such change. The usufructuary lessee may only erect buildings with the usufructuary lessors prior consent. Should the usufructuary lessor refuse such permission, then it may be replaced by the agricultural court upon application by the usufructuary lessee to the extent that the change appears to be appropriate for preservation or permanent improvement of the business's profitability and the usufructuary lessor can reasonably be expected to accept it when his justified interests are taken into account. This does not apply if the lease has been given notice or if the lease ends in less than three years. The agricultural court may replace the permission with terms and conditions, including without limitation by stipulating provision of security as well as determine the nature and extent of such security. If the reason for providing security has lapsed, then the agricultural court decides upon application on return of security. Section 109 of the Code of Civil Procedure [Zivilprozessordnung] applies with the necessary modifications.

(3) Where the usufructuary lessee has substantially reduced inventory taken over under section 582a at its estimated value, then the usufructuary lessor may demand compensation in money in analogous

application of section 582a (3) even during the lease period unless the proceeds of the inventory items alienated have been used in the amount of such proceeds for improvement of the leased property appropriate in value to the leased property under section 591.

Section 590a

Use contrary to the agreement

Should the usufructuary lessee make use of the leased property contrary to the agreement and should he continue such use contrary to the agreement despite warning by the usufructuary lessor, then the usufructuary lessor may sue for a prohibitory injunction.

Section 590b

Necessary preservation outlays

The usufructuary lessor is obliged to compensate the usufructuary lessee for necessary preservation outlays relating to the leased property.

Section 591

Outlays that improve value

- (1) The usufructuary lessor must compensate the usufructuary lessee at termination of the lease for other necessary outlays for which he has given his approval to the extent that such outlays enhance the value of the leased property beyond the lease period (added value).
- (2) Should the usufructuary lessor refuse such permission, then it may be replaced by the agricultural court upon application by the usufructuary lessee to the extent that the outlays appear to be appropriate for maintenance or permanent improvement of the business profitability and the usufructuary lessor can reasonably be expected to accept it when his justified interests are taken into account. This does not apply if the lease has been given notice or if the lease ends in less than three years. The agricultural court may replace approval by imposing terms and conditions.
- (3) The agricultural court may upon application decide on regulations relating to the added value and may determine the latter. It may determine that the usufructuary lessor need only compensate the added value in partial instalments and may set conditions for granting such partial instalments. If the usufructuary lessor cannot reasonably be expected to accept compensation for the added value upon termination of the lease, even in partial instalments, then the usufructuary lessee may only demand that the lease be continued on the conditions as heretofore until the leased property's added value has been paid for. If no agreement can be reached, then the agricultural court decides upon application on continuation of the lease.

Section 591a

Removal of installations

The usufructuary lessee is entitled to remove installations with which he furnished the item. The usufructuary lessor may avoid exercise of the right to remove by payment of appropriate compensation unless the usufructuary lessee has a justified interest in removal. Any agreement excluding the usufructuary lessee's right of removal is only effective if it provides for appropriate compensation.

Section 591b

Statute of limitation on compensation claims

- (1) The usufructuary lessor's compensation claims for modification or

deterioration of the leased item as well as the usufructuary lessees claims for compensation for outlays or for permission to remove an installation are time-barred in six months.

(2) The statute of limitations on the usufructuary lessors compensation claims commences on the date when the item is returned to him. The statute of limitations on the usufructuary lessees claims commences upon termination of the lease.

(3) Upon limitation of the usufructuary lessors claim to return of the item, the usufructuary lessors compensation claims likewise become time-barred.

Section 592

Usufructuary Lessors lien

The usufructuary lessor has a lien on the lessees contributed items as well as on the fruits of the lease for his claims under the lease. The lien may not be used to assert future compensation claims. With the exception of items cited in section 811 (1) no. 4 of the Code of Civil Procedure [Zivilprozessordnung] such lien does not extend to items not subject to attachment. The provisions of sections 562a to 562c apply with the necessary modifications.

Section 593

Amendments to agricultural leases

(1) Where after conclusion of the lease the conditions crucial for determining contractual performance have changed so sustainably that the mutual duties have come to be grossly discrepant in relation to each other, then each contracting party may demand amendment of the lease, with the exception of the leases duration. Should the leased property improve or deteriorate its yield as the result of its operation by the usufructuary lessee then, to the extent that nothing else has been agreed, an amendment of the lease may not be demanded.

(2) An amendment may be demanded at the earliest two years after commencement of the lease or after the most recent amendment has become effective. This does not apply if devastating natural disasters against which insurance coverage is not customary, have substantially and permanently changed the relationship of contractual performance.

(3) Amendment may not be demanded for a period prior to the lease year in which the demand for amendment is declared.

(4) Should one contracting party refuse to consent to an amendment, then the other party may apply to the agricultural court for a decision.

(5) The right to demand amendment of the lease under subsections (1) to (4) may not be waived. An agreement meant to impose special advantages or disadvantages on one contracting party for exercising or not exercising his rights under subsections (1) to (4) is ineffective.

Section 593a

Transfer of the business

Where in the context of transfer of a business by way of anticipated succession a leased piece of land is included in the transfer that serves agricultural purposes, then the transferee accedes to the usufructuary lease in lieu of the usufructuary lessee. The usufructuary lessor must however be promptly notified of such transfer. If proper management of the leased piece of land is not ensured by the transferee, then the usufructuary lessor is entitled to give notice to the lease for cause with statutory period of notice.

Section 593b

Disposal or encumbrance of the leased piece of land

If the leased property is disposed of or encumbered with third party rights then sections 566 to 567b apply with the necessary modifications.

Section 594

Termination and extension of the lease

The lease ends at the end of the period for which the lease has been entered into. With 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 contracting parties as to whether the other party is willing to continue the lease, the latter does not reject continuation within a period of three months. Inquiry and rejection must occur in writing. The inquiry is void of any effect if there is no explicit reference in it to the consequences of disregarding it and if it is not made within the ante-penultimate year of lease.

Section 594a

Notice periods

(1) If the lease period is indefinite then each contracting party may give notice to the lease at the latest on the third working day of a lease year as of the end of the next subsequent lease year. In case of doubt, the calendar year is deemed to be the lease year. The agreement of a shorter period must be made in writing.

(2) In the event that the lease may be given notice early for cause with the statutory notice period, then notice of termination is only allowed for 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 30 years

Where a lease has been entered into for a period of more than 30 years, then after 30 years each contracting party may give notice to the lease at the latest on the third working day of a lease year for the end of the next subsequent lease year. Notice of termination is not allowed if the lease has been entered into for the lifetime of the usufructuary lessor or the usufructuary lessee.

Section 594c

Notice of termination for occupational disability of the usufructuary lessee

If the usufructuary lessee has become occupationally disabled within the meaning of statutory social security pension insurance, then he may give notice to the lease for cause with statutory period of notice if the usufructuary lessor objects to assignment of the leased property for use to a third party who ensures proper management. A divergent agreement is ineffective.

Section 594d

Death of the usufructuary lessee

(1) Should the usufructuary lessee die then both his heirs as well as the usufructuary lessor are entitled within a month of having learned of the usufructuary lessee's death to give notice to the lease with period of notice of six months as of the end of a calendar quarter.

(2) The heirs may contest the usufructuary lessors notice of termination and demand continuation of the lease if proper management of the leased property appears to be ensured by them or by a co-heir commissioned by them or by a third party. The usufructuary lessor may reject continuation of the lease if the heirs have not stated their objection at the latest three months prior to expiry of the lease and informed of the circumstances according to which further proper operation of the leased property appears ensured. Inquiry and rejection must occur in writing. If no agreement can be reached then the agricultural court decides on application.

(3) In the face of notice of termination by the usufructuary lessor under subsection (1), a continuation demand by the heir under section 595 is excluded.

Section 594e

Immediate notice of termination for just cause

(1) Immediate notice of termination of the lease for cause is allowed in analogous application of sections 543, and 569 (1) and (2).

(2) Contrary to section 543 (2) n. 3 letters a and b, a just cause including without limitation obtains if the usufructuary lessee is in arrears with payment of the rent or of a non-negligible portion of the rent for more than three months. If the lease is calculated according to time periods of less than one year, then notice of termination is only allowed if the usufructuary lessee is in arrears for two successive dates with payment of the rent or of a non-negligible portion of the rent.

Section 594f

Notice of termination in written form

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 usufructuary lessor, if

1. with commercial lease the business constitutes the economic basis of his existence,
2. with lease of a piece of land, the usufructuary lessee must rely on that piece of land to sustain such business as constitutes the economic basis of his existence,

and contractual termination of the lease would involve such hardship for the usufructuary lessee or his family as would not be justifiable even if the usufructuary lessors justified interests be taken into account. Continuation may under these conditions be repeatedly demanded.

(2) In the case cited in subsection (1) the usufructuary lessee may demand that the lease be continued as long as is appropriate taking all circumstances into consideration. If the usufructuary lessor cannot reasonably be expected to continue the lease under the previously applicable contractual terms, then the usufructuary lessee may demand that it be continued with appropriate modification of the terms.

(3) The usufructuary lessee may demand continuation of the lease from the usufructuary lessor, if

1. he has given notice to the lease,
2. the usufructuary lessor is entitled to immediate notice of termination for

cause or in the case of section 593a to notice of termination for cause with the statutory period of notice.

3. the duration of the lease with leasing of a business, the additional leasing of pieces of land giving rise to a business or with the lease relating to marsh or barren land that has been cultivated by the usufructuary lessee has been agreed for at least 18 years, with the lease of other pieces of land for at least twelve years.
4. the usufructuary lessor wishes to repossess the only temporarily leased item for his own use or for fulfilment of statutory or other public tasks.

(4) The usufructuary lessee's declaration with which he demands continuation of the lease must be in writing. Upon demand by the usufructuary lessor the usufructuary lessee should provide information on his reasons for demanding continuation without undue delay.

(5) The usufructuary lessor may reject continuation of the lease if the usufructuary lessee has not demanded continuation from the usufructuary lessor at least one year prior to termination of the lease or has rejected continuation upon inquiry by the usufructuary 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 decides upon application on the duration of the lease as well as on the conditions under which it is continued. The court may order continuation of the lease but only up to a date that, starting with commencement of the current lease, does not exceed the periods cited in subsection (3) no. 3. Continuation may be limited to a part of the leased property.

(7) The usufructuary lessee must file application for a court decision with the agricultural court 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 subsequently admit the application 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 for settlement of a lease dispute heard by a court or by a professional lease mediation agency. An agreement meant to impose special advantages or disadvantages on one contracting party for exercising or not exercising its rights under subsections (1) to (7) is ineffective.

Section 595a

Early notice of termination of agricultural leases

(1) To the extent that the contracting parties are entitled to notice of termination for cause of an agricultural lease with statutory notice period, they are entitled to the same even after extension of agricultural lease or modification of the agricultural lease.

(2) Upon application by one of the contracting parties, the agricultural court may make arrangements for termination of an agricultural lease ended early or ended in part. If extension of the agricultural lease is limited to a portion of the leased property, then the agricultural court may determine the rent for that portion.

(3) The contents of agricultural court orders are deemed to be part of the contract between the contracting parties. The agricultural court decides upon application on disputes relating to such 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 such condition as corresponds to proper management continued up to its return.
- (2) The usufructuary lessee is not entitled to a right of retention of the piece of land for his claims on the usufructuary lessor.
- (3) Where the usufructuary lessee has assigned use of the leased property to a third party, the usufructuary lessor may likewise demand return of the leased property from that third party upon termination of the lease.

Section 596a

Duty to compensate for early lease termination

- (1) Where the lease terminates in the course of a lease year, the usufructuary lessor must compensate the usufructuary lessee for the value of any fruits not yet severed but to be severed prior to the end of the lease year according to the rules of proper management. In doing so, the risk of harvest must be given appropriate consideration.
- (2) Where the value referred to in subsection (1) cannot be determined for seasonal reasons, then the usufructuary lessor must compensate the usufructuary lessee for expenditures on such fruits to the extent that they correspond to proper management.
- (3) Subsection (1) also applies to timber intended for felling but not yet felled. Where the usufructuary lessee has felled more timber than allowed with proper use, then he must compensate the usufructuary 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 so much of the available agricultural products as are needed for continuation of operations up until the next harvest, even where he has not taken over such products at commencement of the lease.
- (2) To the extent that the usufructuary lessee under subsection (1) is obliged to leave products 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 usufructuary lessor.

Section 597

Late return

Where 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

Contractually typical duties in a gratuitous loan

By means of the gratuitous loan agreement the lender of an item is obliged to permit the borrower to use the item at no charge.

Section 599

Lenders liability

The lender is only responsible for deliberate intent and gross negligence

Section 600

Liability for defects

Where the lender maliciously conceals a defect in law or a flaw in the item lent, then he is liable to the borrower for any damage incurred thereby.

Section 601

Compensation for expenses

(1) The borrower must bear the customary costs of maintaining the item lent and, with the gratuitous loan of an animal, including without limitation, to bear the costs of feeding it.

(2) The lenders duty to compensate other expenses is governed by the provisions on agency without special authorisation. The borrower is entitled to remove installations with which he furnished the item.

Section 602

Wear and tear on the thing

The borrower is not liable for modification or deterioration of the thing lent and caused by contractually proper use.

Section 603

Contractually proper use

The borrower may not make any other than contractually proper use of the thing lent. He is not entitled without permission by the lender to assign 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 set for the gratuitous loan.

(2) Where no period of time has been set, then the thing must be returned after the borrower has made use of it as corresponded 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 such use of it.

(3) Where duration of the loan has neither been set nor can it be surmised from the loans purpose, then the lender may demand the thing back at any time.

(4) Where the borrower assigns 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 notice of termination

The lender may give notice to the gratuitous loan:

1. if he requires the thing lent due to an unforeseen circumstance,
2. if the borrower makes use of the thing in violation of the contract, including without limitation by unauthorisedly assigning its use to a third party, or jeopardises the thing by neglecting the diligence he owes,
3. if the borrower dies.

Section 606

Short limitation

(1) The lenders compensation claims for modification or deterioration of the thing lent as well as the borrowers claims for compensation for expenses or for permission to remove an installation are time-barred in six months. 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

Contractually typical duties in a contract for the loan of a thing

(1) By a contract for the loan of a thing, the lender is bound to hand over to the borrower an agreed fungible thing. The borrower is bound to pay remuneration for the loan and, on the due date, to return what he has received in things of the same kind, quality and quantity.

(2) The provisions of this title do not apply to the loan of money.

Section 608

Notice of termination

(1) If a time for the return of the thing handed over is not specified, the due date depends on the giving of notice by the lender or the borrower.

(2) To the extent that nothing else has been agreed, a contract for the loan of a thing for an indefinite period may be given notice in whole or in part by the lender or the borrower at any time.

Section 609

Remuneration

The borrower must pay remuneration at the latest upon return of the thing loaned.

Section 610

(repealed)

Title 8

Service agreement^{*)}

^{*)} 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

Contractually typical duties in a service contract

(1) By means of a service agreement that person committing his service is obliged to perform the service promised, the other party being obliged to grant the agreed remuneration.

(2) Services of any type may be the object of service agreements.

Section 611a

Gender-related discrimination

(1) The employer may not discriminate against an employee due to the latter's sex in any agreement or measure, including without limitation in establishing employment, in professional advancement, in instructions or in dismissal. Disparate treatment on the grounds of sex is however allowed to the extent that an agreement or a measure deals with the work to be performed by the employee and a specific sex is an indispensable prerequisite for such work. If, in case of dispute the employee is able credibly to show facts suggesting discrimination on the grounds of sex, the employer bears the burden of proof that objective grounds not relevant to gender justify different treatment or that that sex is an indispensable prerequisite for the work to be performed.

(2) Should the employer violate the ban on discrimination provided in subsection (1) in establishing employment, then the applicant thereby discriminated against may demand appropriate compensation in money; there is no claim to establishment of employment.

(3) Where the applicant would not have been hired even with non-discriminatory selection, then the employer must pay appropriate compensation in the amount of three monthly salaries at most. Monthly salary is deemed to be what the applicant would have been entitled to in money and benefits in kind for regular work in that month in which employment would have been established.

(4) A claim under subsections (2) and (3) must be asserted in writing within a period of time that commences upon receipt of application rejection. The length of the period of time is calculated according to a time limit provided for assertion of claims for damages in the employment sought; it amounts to at least two months. Where no period of time has been determined for the employment sought, then the period of time amounts to six months.

(5) Subsections (2) to (4) apply with the necessary modifications to professional advancement if there is no claim to advancement.

Section 611b

Job announcement

The employer may neither publicly nor within the enterprise announce a job exclusively for men or for women unless the case cited in section 611a (1) sentence 2 obtains.

Section 612

Remuneration

(1) Remuneration for work is deemed to have been tacitly agreed if in the circumstances it is to be expected that the work be performed only for remuneration.

(2) If the amount of remuneration is not specified and a tariff exists, the tariff rate of remuneration is deemed to have been agreed; if no tariff exists, the usual remuneration is deemed to have been agreed.

(3) For one job, for work that is the same or of equal value, less remuneration may not be agreed on the grounds of the employee's sex than is agreed with an employee of the other sex. Agreement of less remuneration cannot be justified by the fact that special safety regulations apply due to the employee's sex. Section 611a (1), sentence 3 applies with the necessary modifications.

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 personally. The claim to services is in case of doubt not transferable.

Section 613a

Rights and duties when ownership changes

(1) Where a business or part of a business passes to another owner by legal transaction, then the latter accedes to the rights and duties under employment existing at the time of transfer. Where such rights and duties are regulated by legal norms of a collective bargaining agreement or by a shop agreement, then they become part of the employment between the new owner and the employee and may not be changed to the employee's disadvantage 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 regulated by legal norms of another collective bargaining agreement or by means of another shop agreement. Prior to expiry of the period of time under sentence 2, the rights and duties may be changed if the collective bargaining agreement or the shop agreement no longer apply or where both parties are not parties to collective bargaining agreements within the scope of validity of another collective bargaining agreement whose application 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 were incurred prior to the date of transfer and are due before the end of one year after that date. Where such duties are due after the date of transfer, then the previous employer is however only liable for them to the extent that corresponds to the part of their assessed period of time that expired on the date of transfer.

(3) Subsection (2) does not apply if a legal person or a commercial partnership ceases to exist through transformation.

(4) Notice of termination of employment 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 give notice to the employment for other reasons is unaffected.

(5) The previous employer or the new owner must notify employees affected by such transfer in writing and prior to transfer:

1. of the date or planned date of transfer,
2. of the reasons for the transfer,
3. of the legal, economic and social consequences of the transfer for the employees, and
4. of measures taken in regard to employees.

(6) The employee may object in writing to the transfer of employment 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 services. Where remuneration is assessed according to time periods, then it is to be paid at the end of the various different time periods.

Section 615

Remuneration with late acceptance and with business risk

Where the party entitled to service is late in accepting it, then the party owing the services may demand the agreed remuneration not paid as the result of such lateness without being obliged to provide any subsequent performance. However, he must allow himself to be credited for the value saved him in the absence of performance or acquired elsewhere through other application of his services or that he maliciously fails to acquire. Sentences 1 and 2 apply with the necessary modifications in cases in which the employer bears the risk of time not worked.

Section 616

Temporary prevention from performing service

The party obliged to performed service is not deprived of his claim to remuneration by the fact that he is prevented from performing service for a non-insignificant period of time for a reason not having to do with his person without culpability on his part. However, he must allow to be credited with the amount he receives for the period of being prevented under health or accident insurance obtaining on the basis of a statutory duty.

Section 617

Duty to have health insurance

(1) Where in permanent employment that completely and primarily takes up the obliged party's gainful employment that obliged party is integrated into the domestic community, then the party entitled to services must grant him in the event of illness the required food and medical treatment up to a duration of six weeks, but not beyond termination of his employment, unless the illness was caused by the obliged party through deliberate intent or gross negligence. Such provision of food and medical treatment may be granted by the admission of the obliged party to a hospital. The costs may be credited against the remuneration owed for the period of illness. If the employment is given notice to by the party entitled to service under section 626 due to illness, then termination of the employment caused thereby is not taken into account.

(2) The duty of the party entitled to service does not occur if prevention has been arranged for provision of food and medical treatment by an

insurance company or by a public health institution.

Section 618

Duty to take safety measures

(1) The party entitled to service must furnish and maintain rooms, devices and equipment that he must provide for performance of service in such a way and must regulate services that must be undertaken on his order or under his supervision in such a way that jeopardy of life and limb is protected to the extent that the nature of the services permits.

(2) If the party obliged has been integrated into the domestic community, then the party entitled to service must arrange for such facilities and arrangements, in regard to living and sleeping space, provision of food and work and leisure time, as are required with a view to the obliged party's health, morality and religion.

(3) Should the party entitled to service fail to fulfil its incumbent duties in view of the obliged party's life and health, then the provisions of sections 842 to 846 applicable to tortious acts apply with the necessary modifications to his duty to provide damages.

Section 619

Absolute nature of welfare duties

The duties incumbent upon the party entitled to service under sections 617 and 618 may not be cancelled or limited in advance by contract.

Section 619a

Burden of proof of the employee's liability

Contrary to section 280 (1) the employee must only provide the employer with compensation for damage incurred through violation of a duty in employment if he is responsible for the breach of duty.

Section 620

Termination of the employment

(1) The employment ends at the end of the period of time for which it has been entered into.

(2) Where the duration of the employment is neither determined nor may be surmised from the nature of the purpose of the services, then either party may give notice to the employment under the provisions of sections 621 to 623.

(3) The Part-Time and Fixed Term Act [Teilzeit- und Befristungsgesetz] applies to employment contracts entered into for a specified period of time.

Section 621

Notice periods employment

With employment that does not qualify as employment relationship within the meaning of section 622, dismissal is allowed

1. if remuneration is calculated in days, on any day for the end of the following day;
2. if remuneration is calculated by week, at the latest on the first working day of a week for the end of the following Saturday;
3. if remuneration is calculated by month, at the latest by the fifteenth of one month for the end of the calendar month;

4. if remuneration is calculated by quarters or longer periods of time, with compliance with a notice period of six weeks, for the end of a calendar quarter;
5. if remuneration is not calculated in time segments, at any time with employment completely or primarily taking up the obliged party's gainful employment, however a notice period of two weeks must be observed.

Section 622

Notice periods with employment

(1) The employment of a worker or an employee may be given notice to with a notice period of four weeks as of the fifteenth or as of the end of a calendar month.

(2) For notice of termination by the employer the notice period is as follows if employment in the business or the company

1. has persisted for two years, one month as of the end of a calendar month,
2. has persisted for five years, two months as of the end of a calendar month,
3. has persisted for eight years, three months as of the end of a calendar month,
4. has persisted for ten years, four months as of the end of a calendar month,
5. has persisted for twelve years, five months as of the end of a calendar month,
6. has persisted for fifteen years, six months as of the end of a calendar month,
7. has persisted for twenty years, seven months as of the end of a calendar month,

In calculating the duration of employment, time periods prior to completion of the employee's twenty-fifth year of life are not taken into account.

(3) During an agreed probationary period, at most for the duration of six months, employment may be given notice to with a notice period of two weeks.

(4) Regulations differing from subsections (1) to (3) may be agreed in collective bargaining agreements. Within the scope of applicability of such a collective bargaining agreement, the different collective bargaining provisions between employers and employees bound by the collective bargaining agreements apply if their application has been agreed between them.

(5) in individual contracts, shorter periods of times than those cited in subsection (1) may only be agreed

1. if an employee is only employed as temporary help; this does not apply if the employment is extended beyond the period of three months;
2. if the employer as a rule employs not more than 20 employees exclusively for their training and the notice period does not fall short of four weeks.

In determining the number of employed employees, employees employed part-time 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. Agreement of longer notice periods than those cited in subsections (1) to (3) in individual contracts remain 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 notice of termination

Termination of employment by notice of termination or separation agreement requires written form for its effectiveness; electronic form is excluded.

Section 624

Period for notice of termination with contracts lasting more than five years

Where the employment has been entered into for the lifetime of a person or for a longer period of time than five years, then it may be given notice to by the party obliged at the end of five years. The notice period is six months.

Section 625

Tacit extension

If the employment is continued after the end of the service period by the obliged party 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

Immediate notice of termination for just cause

(1) The employment may be given notice to by either contracting party for just cause without complying with a notice period where facts are present on the basis of which the party giving notice cannot reasonably be expected to continue the employment up to the end of the notice period, taking all circumstances of the individual case into account and after weighing the interests of both contracting parties.

(2) Notice of termination may only occur within two weeks. The notice period commences with the date on which the party entitled to give notice becomes aware of facts authoritative for the notice of termination. The other party must be notified, on demand, of the reason for notice of termination without undue delay.

Section 627

Immediate notice of termination with a position of trust

(1) In employment that is not an employment relationship within the meaning of section 622, notice of termination is likewise allowed, even without the precondition identified in section 626 if the party obliged to perform service, without being in permanent employment with fixed compensation, must perform services of a higher order that are customarily entrusted on the basis of special trust.

(2) The party obliged to service may only give notice in such a manner that the party entitled to service can obtain the services from elsewhere unless there is just cause for untimely notice of termination. If he should give notice in untimely fashion without such cause, then he must compensate the party entitled to service for damage thus incurred.

Section 628

Partial remuneration and damages in case of immediate notice of termination

(1) If after commencement of performance of the service, the employment is given notice to on the grounds in sections 626 or 627, then the party obliged may demand a portion of his remuneration corresponding to his services performed thus far. If he should give notice without being prompted to do so by action of the other party in violation of the contract, or if he should prompt notice of termination by the other party by action in violation of the contract, then he is not entitled to a claim to remuneration to the extent that his services performed theretofore are of no interest to the other party due to the notice of termination. Where remuneration is paid in advance for a later period of time, then the party obliged must reimburse it under the provisions of section 346 or, if notice of termination has occurred due to a circumstance for which he is not responsible, under the provisions on surrender of unjust enrichment.

(2) Where notice of termination is prompted by the other party's conduct in violation of the contract, then the latter is liable for damage incurred by dissolution of the employment.

Section 629

Time-off for search of employment

After notice of termination of permanent employment, the party entitled to service must grant the obliged party, on demand, appropriate time to seek other work.

Section 630

Duty to provide a reference

Upon termination of permanent employment, the obliged party may demand a written letter of reference on the employment and its duration from the other party. The letter of reference must extend, on demand, to performance and comportment in service. Providing the letter of reference in electronic form is excluded. If the obliged party is an employee, section 109 of the Industrial Code [Gewerbeordnung] applies.

Title 9

Contract for work and services and similar contracts

Subtitle 1

Contract for work and services

Section 631

Contractually typical duties in a contract for work and services

(1) By a contract for work and services the contractor is bound to produce the work or render the service promised and the customer is bound to pay the remuneration agreed.

(2) The subject matter of a contract for work and services may be the production or alteration of a thing or some other result to be brought about by labour or the performance of a service.

Section 632

Remuneration

(1) Remuneration for work is deemed to have been tacitly agreed if in the circumstances it is to be expected that the work or service is to be performed only for remuneration.

(2) If the amount of remuneration is not specified and a tariff exists, the tariff rate of remuneration is deemed to have been agreed; if no tariff exists, the usual remuneration is deemed to have been agreed.

(3) In case of doubt, an estimate of costs is not remunerable.

Section 632a

Part payments

The contractor may demand from the customer for coherently definable parts of the work or service part payments for contractual performance rendered. This also applies to required materials or building components that are specially prepared or supplied. There is only a claim if the customer enjoys the transfer of title to parts of the work, to the materials or building components or if security is provided for them.

Section 633

Defects as to quality and defects in title

(1) The contractor must procure the work for the customer free of defects as to quality and defects in title.

(2) The work or service is free of defects as to quality if it is of the agreed nature. To the extent that the nature has not been agreed, the work or service is free from defects in quality

1. if it is suitable for the use presupposed by the contract, otherwise
2. if it is suitable for customary use and has a nature that is customary with works and services of the same type and that the customer may expect from that type of work.

If the contractor produces work different from the work ordered or work of a lesser amount than that ordered, that is equivalent to a defect as to quality.

(3) The work or service is free of defects in title if third parties cannot assert against the customer any rights in relation to the work or service or can assert only such rights as are assumed in the contract.

Section 634

Customers rights in case of defects

If the work is defective, if the provisions of the following regulations obtain and to the extent that nothing else has been agreed, the customer may

1. demand cure under section 635,
2. remedy the defect himself under section 637 and demand compensation for required expenses,
3. withdraw from the contract under sections 636, 323 and 326 (5) or reduce remuneration under section 638, and
4. under sections 636, 280, 281, 283 and 311a demand damages or under section 284 demand compensation for futile expenses.

Section 634a

Limitation of claims for defects

(1) The claims cited in section 634 nos. 1, 2 and 4 are time-barred

1. with reservation made for no. 2 in two years with a work, the result of which consists of manufacture, servicing or alteration of a thing or in the performance of planning or monitoring services for this purpose,

2. in five years with construction work and a work, the result of which consists of performance of planning or monitoring services for this purpose, and
3. in other respects in the regular limitation period.

(2) In cases falling under subsection (1) nos. 1 and 2, limitation begins when the work or service is accepted.

(3) In derogation from subsection (1) nos. 1 and 2, and subsection (2), claims are time-barred after the standard limitation period if the contractor fraudulently concealed the defect. However, in the case of subsection (1) no. 2, claims are not time-barred before the expiry of the period there specified.

(4) Section 218 applies to the right of withdrawal referred to in section 634. Notwithstanding the ineffectiveness of withdrawal under section 218 (1), the customer may refuse to pay the remuneration in so far as he would be entitled to do so by virtue of withdrawal. If he makes use of that right, the contractor may withdraw from 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 the costs of carriage, transport, labour and material.

(3) Without prejudice to section 275 (2) and (3), the contractor may refuse cure if it is only possible at disproportionate cost.

(4) If the contractor produces a new work, he may demand return of the defective work from the customer in accordance with sections 346 to 348.

Section 636

Special provisions concerning withdrawal and damages

Except for the cases in 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 or service, the customer may remedy the defect himself after the expiry to no avail of a reasonable period set by him for cure and claim reimbursement for the necessary expenditure, unless the contractor rightly refuses cure.

(2) Section 323 (2) applies with the necessary modifications. Nor does a period of time have to be set if cure has failed or cannot reasonably be expected of the customer.

(3) The customer may demand from the contractor advance payment of expenditure necessary to remedy the defect.

Section 638

Reduction

- (1) Instead of withdrawal from the contract, the customer may, by declaration to the contractor, reduce remuneration. The grounds for exclusion under section 323 (5) sentence 2 do not apply.
- (2) If several persons constitute the customer or the contractor, price reduction may be declared only by or to all persons.
- (3) In the case of price reduction, the remuneration is reduced in the ratio which the value of the work free of defects would, at the time of the conclusion of the contract, have been to the actual value. To the extent necessary, the price reduction is to be estimated.
- (4) If the customer has paid more than the reduced remuneration, the contractor must refund the excess amount. 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 customer's rights in respect of a defect are excluded or restricted to the extent he fraudulently concealed the defect or if he has guaranteed the nature of the work.

Section 640

Acceptance

- (1) The customer is obliged to accept the work produced in accordance with the contract save where the nature of the work precludes such acceptance. Acceptance may not be refused on account of insubstantial defects. A failure by the customer to accept the work within a period of time specified by the contractor even though he is under a duty to do so is equivalent to acceptance of the work.
- (2) If the customer accepts a defective work under subsection (1) sentence 1, even though he is aware of the defect, he has the rights referred to in section 634 nos. 1 to 3 only if, upon accepting the work, he reserves his rights in respect of the defect.

Section 641

Due date of remuneration

- (1) Remuneration must be paid upon acceptance of the work. If the work is to be accepted in parts and the remuneration is specified for the individual parts, then remuneration is to be paid for each part when it is accepted.
- (2) The contractor's remuneration for work whose production the customer has promised to a third party is due at the latest when and to the extent that the customer has received from the third party in full or in part his remuneration for the promised work. If the customer has given the third party security in respect of possible defects in the work, this applies only if the contractor gives the customer security in a corresponding amount.
- (3) If the customer can demand remedy of a defect, he may, after he has accepted the work, refuse to pay an appropriate portion of the remuneration, at least three times the necessary cost of remedying the defect.
- (4) Unless payment of remuneration has been deferred, the customer

must, from acceptance of the work, pay interest on remuneration expressed in monetary terms.

Section 641a

Completion certification

(1) It is deemed to be equivalent to acceptance if the contractor is granted certification by an expert to the effect that

1. the work promised, including a part thereof in the case cited in section 641 (1) sentence 2 has been produced, and
2. the work is free of defects claimed by the customer to the expert or which can be ascertained by the expert upon inspection

(completion certification). That does not apply if the procedure under subsections (2) and (4) has not been complied with or if the requirements in section 640 (1) sentences 1 and 2, were not met; in case of dispute, the burden of proof is on the customer. Section 640 (2) does not apply. The assumption is that a calculation of areas or volumes or a calculation based on an hourly rate on which the contractor has based his invoice are correct if the expert confirms this in the completion certification.

(2) The expert may be

1. an expert on whom the contractor and the customer have agreed, or
2. an officially appointed and sworn expert appointed on application by the contractor by a Chamber of Commerce and Industry, or a chartered institute of architects or engineers.

The expert is commissioned by the contractor. He is under a duty to him and to the customer of the work on which he is to give his opinion to issue certification impartially and to the best of his knowledge and belief.

(3) The expert must carry out at least one inspection; an invitation to the inspection, indicating the reason, must reach the customer at least two weeks in advance. The question whether the work is free of defects is to be determined by the expert in accordance with a written contract which the contractor must submit to him. Amendments to that contract are to be taken into account only if they are agreed in writing or submitted to the expert in identical terms by the contracting parties. If the contract does not indicate relevant particulars, generally accepted technical rules are to be applied. Defects claimed by the customer are not considered in the issuing certification if such claims were only advanced after the conclusion of the inspection.

(4) The customer is obliged to allow the expert to inspect the work or parts of it. Should he refuse to allow inspection, the assumption is that the work to be inspected has been produced in accordance with the contract; certification as per subsection (1) above is to be granted.

(5) The expert must issue a copy of certification to the customer. With respect to periods of time, interest and the passing of risk, certification takes effect only upon receipt by the customer.

Section 642

Collaboration by the customer

(1) If an act by the customer is necessary when the work is being produced, the contractor may claim appropriate compensation if the customer, because of his failure to perform that act, is in default with acceptance.

(2) The amount of compensation is determined, on the one hand, by reference to the period of delay and the amount of agreed remuneration

and, on the other, by reference to the amount which, as a result of the delay, the contractor saves in expenditure or can earn by employing his workforce elsewhere.

Section 643

Notice of termination for failure to collaborate

In cases cited in section 642 the contractor is entitled to set an appropriate period of time for the act to be performed by declaring that he will give notice to the contract if the act is not undertaken by the end of the period of time. The contract is deemed to be cancelled if there is no subsequent performance by the end of the period of time.

Section 644

Bearing risk

(1) The contractor bears risk until the work is accepted. If the customer is late in acceptance then risk passes to him. The contractor is not liable for any accidental loss or accidental deterioration of material supplied by the customer.

(2) If, at the customer's demand, the contractor dispatches the work to a place other than the venue of performance, then the provisions of section 447 applicable to the sale, apply with the necessary modifications.

Section 645

Customers responsibility

(1) If, prior to the acceptance, the work has been destroyed or has deteriorated or cannot be completed because of a defect in materials supplied by the customer or because of an instruction given by him and if no circumstance has contributed to this for which the contractor is liable, then the contractor is entitled to demand a part of the remuneration which corresponds to the work performed as well as to reimbursement of those expenses which are not included in the remuneration. The same applies if the contract is cancelled under section 643.

(2) Any further liability of the customer beyond this due to fault remain unaffected.

Section 646

Completion in lieu of acceptance

If acceptance is excluded due to the nature of the work, then in the cases cited in sections 634a (2) and 641, 644 and 645 completion of the work replaces acceptance.

Section 647

Contractors lien

For satisfaction of his claims under the contract, the contractor has a lien on the movable things he has produced or repaired if they have come into his possession for production or for the purpose of repair.

Section 648

The building contractors debt-securing mortgage

(1) The contractor for building work or a part thereof may demand for satisfaction of his claims under the contract the grant of a debt-securing mortgage in the customers building property. Where the work is not yet completed, then he may demand the grant of a debt-securing mortgage

for a portion of the remuneration equivalent to the work performed and for expenses not included in his remuneration.

(2) The owner of a shipbuilding yard may demand the grant of a ship's mortgage over the customer's ship or ship under construction for his claims incurred in construction or repair of the ship; subsection (1) sentence 2 applies with the necessary modifications. Section 647 does not apply.

Section 648a

Building craftsmans security

(1) A contractor for a building, outside grounds or a part thereof may demand a security from the customer for the preliminary services he has contracted for, including ancillary indirect claims, such that he sets an appropriate period of time for the customer for payment of the security, that he will cease performance when the period of time has passed. Security may be demanded up to the amount of the tentative claim for remuneration under the contract or under a subsequent additional contract as well as for ancillary claims; the ancillary claims are to be estimated at 10 per cent of the remuneration claim to be secured. It is likewise deemed to suffice if the provider of the security reserves the right to revoke his promise in case of substantial deterioration of the customers financial conditions with effect for the latters 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 within this statutes applicable range. The banking institution or credit insurer may only make payments to the contractor to the extent that the customer recognises the contractors claim to remuneration or has been sentenced to pay by a provisionally enforceable judgment and if the prerequisites obtain under which judicial execution may commence.

(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 annum. This does not apply to the extent that the security must be maintained due to the customers objections to the contractors claim to remuneration and if the objections prove 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 grant of a debt-securing mortgage under section 648 (1) is excluded.

(5) If the customer does not provide the security in timely fashion, then the contractors rights are determined in accordance with sections 643 and 645 (1). 1. If, by virtue of those provisions, the contract is deemed cancelled, the contractor may also claim compensation for the loss which he has incurred as a result of his reliance on the validity of the contract. The same applies if the customer gives notice in temporal proximity to the demand for security as per subsection (1) unless the notice of termination has not been made in order to avoid provision of security. The presumption is that the loss amounts to five per cent of the remuneration.

(6) The provisions of subsections (1) to (5) are not applicable if the customer

1. is a legal person of public law or a separate fund under public law.
2. is a natural person and is having the construction work done for building or repair of a one-family house with or without a sublet residence; this does not apply when servicing the construction project by a construction agent authorised to control the customers finances.

(7) Any agreement deviating from the provisions of subsections (1) to (5) above is ineffective.

Section 649

Customers right for notice of termination

The customer may give notice to the contract at any time up to completion of the work. If the customer gives notice to the contract, then the contractor is entitled to demand the agreed remuneration but must allow set-off of his expenses saved by cancellation of the contract or that he obtains or maliciously fails to obtain from other employment of his workforce.

Section 650

Cost estimate

(1) Where the contract is based on a cost estimate without the contractor having guaranteed the accuracy of the estimate and should it turn out that the work cannot be carried out without substantially exceeding the estimate, then the contractor is only entitled, if the customer gives notice to the contract for this reason, to the claim stipulated in section 645 (1).

(2) Where such exceeding of the estimate must be expected, then the contractor must notify the customer thereof without undue delay.

Section 651

Application of sales law^{*)}

The provisions of sales 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 moveable things to be produced or manufactured are not fungible things, sections 642, 643, 645, 649 and 650 apply, provided that the acceptance under sections 446 and 447 is replaced by the relevant time.

^{*)} 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 EC L 171, p. 12).

Subtitle 2

Travel agreement^{*)}

^{*)} 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 of, p. 59).

Section 651a

Contractually typical duties in a travel agreement

(1) By means of the travel agreement the travel organiser is put under a duty to perform a complete set of travel services (trip) for the traveller. The traveller is obliged to pay the travel organiser the agreed price for the trip.

(2) The declaration that only contracts with such persons are being arranged as are supposed to carry out the individual travel services

(service providers) will not be considered if under all other circumstances the impression is created 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 travel agreement (travel confirmation) upon or without undue delay after conclusion of the agreement. The travel confirmation and a prospectus provided by the travel organiser must include the information stipulated in the legal ordinance under article 238 of the Introductory Act to the Civil Code [Einführungsgesetz zum Bürgerlichen Gesetzbuch].

(4) The travel organiser may only raise the trip price if this is provided for in the agreement with precise information on calculation of the new price and if it thereby takes account of an increase in transport costs, fees for specific services, port or airport fees or fluctuation in foreign exchange rates relating to the trip in question. A price increase demand 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 any admissible cancellation of the trip for the traveller without undue delay after being informed of the reason for change or the cancellation. In the event of an increase in the trip price by more than five per cent or of a substantial change of an essential travel service, the traveller may withdraw from the agreement. He may instead, just as with any cancellation of the trip by the travel organiser, demand to be able to participate in another trip of equivalent value if the travel organiser is in a position to offer such a trip 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 latter's declaration.

Section 651b

Transfer of the agreement

(1) Up until commencement of the trip the traveller may demand that a third party accedes to rights and duties under the travel agreement in his stead. The travel organiser may object to such accession by a third party if the latter is not up to the particular travel requirements or if the latter's participation is opposed by statutory regulations or regulatory orders.

(2) Where a third party accedes to the agreement, then he and the traveller are liable to the travel organiser as joint and several debtors for the travel price and any extra charges incurred by accession of the third party.

Section 651c

Remedies

(1) The travel organiser is obliged to provide the trip in such a way that it has the properties guaranteed and is not impaired by flaws obviating or reducing its value or usefulness for the customarily presumed or contractually agreed benefit.

(2) If the trip is not of that quality, then the traveller may demand a remedy. The travel organiser may refuse such remedy if it requires disproportionate expense.

(3) Should the travel organiser not provide remedy within an appropriate period of time set by the traveller, then the traveller may himself provide a remedy and demand compensation for the required expenses. It does not require setting of a period of time if the remedy is refused by the travel organiser or if immediate remedy is called for by the travellers

particular interests.

Section 651d

Reduction

(1) If the trip is defective within the meaning of section 651c (1), then the trip price is reduced for the duration of the defect according to the provisions of section 638 (3). Section 638 (4) applies with the necessary modifications.

(2) The reduction does not occur to the extent that the traveller culpably fails to make notification of the defect.

Section 651e

Notice of termination for defect

(1) Where the trip is substantially impaired due to a defect of the type cited in section 651c the traveller may give notice to the agreement. The same applies if he cannot reasonably be expected to accept the trip due to such a defect for an important reason that the travel organiser can recognise.

(2) Notice of termination is only admissible if the travel organiser has let an appropriate period of time set by the traveller pass without providing any remedy. It does not require setting of a period of time if the remedy is impossible or is refused by the travel organiser or if immediate notice of termination of the agreement is called for by the travellers particular interests.

(3) If the agreement is given notice to, then the travel organiser loses his claim to the agreed trip price. However, he may demand compensation to be quantified under section 638 (3) for travel services already provided or yet to be provided for the termination of the trip. This does not apply to the extent that the traveller has no more interest in such services as the result of the agreements cancellation.

(4) The travel organiser is obliged to take measures necessitated by cancellation of the agreement, including without limitation where the agreement includes return transport, to transport the traveller back home. Extra costs are at the expense of the travel organiser.

Section 651f

Damages

(1) Notwithstanding any reduction or notice of termination, the traveller may demand damages for non-fulfilment unless the trips defect was due to a circumstance for which the travel organiser is not liable.

(2) If the trip 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 trip. Section 174 is not applicable. Upon passing of the period of time the traveller may only assert claims if he was prevented from meeting the period of time through no fault of his own.

(2) Claims by the traveller under sections 651c to 651f are time-barred after two years. The statute of limitations commences with the day on

which the trip was to end under the agreement.

Section 651h

Admissible limitation on 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 price of the trip.

1. to the extent that damage suffered by the traveller was neither caused deliberately nor through gross negligence.
2. to the extent that the travel organiser is responsible for damage suffered by the traveller simply due to the fault of a service provider.

(2) Where international agreements or statutory regulations based on international agreements apply to travel services to be rendered by a service provider and according to which a claim for damages is only incurred or may only be asserted under certain conditions or with certain restrictions or is barred under certain conditions, then the travel organiser may 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 agreement at any time.

(2) If the traveller withdraws from the agreement, then the travel organiser loses his claim to the agreed trip price. He may however demand appropriate compensation. The amount of such compensation is determined by the price of the trip minus the value of the expenses saved by the travel organiser as well as what he can gain by other deployment of the travel services.

(3) In the agreement, for each type of trip and taking the customarily saved expenses and the customarily potential savings gained by other deployment of the travel services, a percentage of the price of the trip may be set as compensation.

Section 651j

Notice of termination due to force majeure

(1) If the trip is substantially obstructed, jeopardised or impaired as the result of force majeure not foreseeable when the agreement was entered into, then both the travel organiser as well as the traveller may give notice to the agreement simply under the provisions of such stipulation.

(2) If the agreement is given notice to 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 at one-half each. In other respects, extra costs are at the expense of the traveller.

Section 651k

Guarantee; payment

(1) The travel organiser must guarantee that the travel is reimbursed for

1. the price of the trip paid to the extent that travel services fail to materialise due to insolvency or opening of insolvency proceedings relating to the travel organisers assets, and
2. necessary expenses incurred by the traveller for return travel due to insolvency or opening of insolvency proceedings relating to the travel

organisers assets.

The duties under sentence 1 may only be met by the travel organiser

1. by means of an insurance policy taken out with an insurance company authorised to conduct business within the area of application of this Code, or
2. by the payment commitment of a banking institution authorised to operate commercially within the area of application of this Code.

(2) The insurer or the banking institution (customer financial backup) may limit its liability for the total amounts to be reimbursed by it in one year to 110 million Euro. Should the total of the amounts to be reimbursed by a customer financial backup under this law in one year exceed the maximum amounts cited in sentence 1, then the individual reimbursement claims will be reduced in the ratio in which their total amounts stands to the maximum amount.

(3) To meet his duty under subsection (1) the travel organiser must provide the traveller with a direct claim on the customer financial backup and must certify it by surrender of a confirmation (guarantee certificate) issued by the customer financial backup or at its behest. The customer financial backup may not invoke in relation to a traveller to whom a guarantee certificate has been surrendered, either objections under the customer financial backup agreement or the fact that the guarantee certificate was only issued after termination of the customer financial backup agreement. In the cases cited in sentence 2, the travellers claim on the travel organiser passes to the customer financial backup to the extent that the latter satisfies the travellers claim. A travel broker is under a duty to the traveller to check the guarantee certificate for its validity if he surrenders the same to the traveller.

(4) The travel organiser and the travel broker may only demand or accept payments on the price of the trip from the traveller prior to the end of the trip if a guarantee certificate was given to the traveller. A travel broker is deemed to be authorised by the travel organiser to accept payments on the price of the trip if he surrenders a guarantee certificate or if other circumstances attributable to the travel organiser imply that he has been entrusted by the latter to broker travel agreements on his behalf. This does not apply if acceptance of payments by the travel broker is excluded in relation to the traveller in the form emphasised.

(5) Where the travel organiser at the time when the agreement is concluded, maintains his main branch in another state of the European Communities or in another state party to the Agreement on the European Economic Area, then it suffices as well for the travel organiser to meet his duties under subsection (1) by providing the traveller with a guarantee in accordance with the provisions of that other state and if those provisions meet the demands in subsection (1) sentence 1. Subsection (4) applies with the proviso that the guarantee must be certified to the traveller.

(6) Subsections (1) to (5) do not apply if

1. the travel organiser only organises travel occasionally and outside of his commercial activities,
2. the trip does not last longer than 24 hours, does not include any overnight stay and the price of the trip does not exceed 75 Euro,
3. the travel organiser is a legal person under public law whose assets may not be the object of insolvency proceedings.

Section 651I

Exchange student stays

(1) The provisions below apply to a travel agreement 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 travel agreement dealing with a shorter exchange student stay (sentence 1) or with a stay with a host family in the host country coupled with the regulated conduct of an traineeship if this has been agreed.

(2) The travel organiser is obliged

1. with participation of the exchange student, to see to lodging, supervising and caring for the exchange student with a host family, appropriate to conditions of the host country, and
2. to create the necessary conditions for the exchange students regular attendance at school in the host country.

(3) Where the traveller withdraws prior to the start of the trip, 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 trip in any case of

1. the name and address of the host family appointed for the exchange student after his arrival, and
2. the name and availability of a contact person in the host country from whom assistance may be demanded,

and appropriately prepared the stay.

(4) The traveller may give notice to the agreement at any time prior to the start of the trip. If the traveller gives notice, then the travel organiser is entitled to demand the agreed price of the trip minus the expenses saved. The travel organiser is obliged to take measures necessitated by notice of termination of the agreement, including without limitation where the agreement includes return transport, to transport the exchange student back home. Extra costs are at the expense of the traveller. The sentences above do not apply if the traveller may give notice in accordance with sections 651e or 651j.

Section 651m

Divergent agreements

With reservation made for sentence 2, no deviation may be made from the provisions of sections 651a to 651l to the disadvantage of the traveller. The limitation set in section 651g (2) may be facilitated, prior to notification of the travel organiser of a defect, but not 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

Incurrence of the fee claim

(1) Anyone promising a brokers fee for referral of the opportunity to conclude a contract or for brokering a contract is only obliged to pay the fee if the contract comes about due to such referral or brokering by the broker. If the contract is concluded with a condition precedent, the brokers fee may only then be demanded if the condition has occurred.

(2) The broker is only to be compensated for expenses if this has been agreed. This also applies even if the contract does not come about.

Section 653

Brokers fee

(1) A brokers 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 and a tariff exists, the tariff rate of remuneration is deemed to have been agreed; if no tariff exists, the usual remuneration is deemed to have been agreed.

Section 654

Forfeiture of the fee claim

The claim to a brokers fee and compensation for expenses are excluded if the broker has, contrary to the contents of the contract, also worked for the other party.

Section 655

Reduction of the brokers fee

Where for referral of an opportunity to sign a service contract or for brokering of such a contract, a relatively high brokers fee has been agreed, then it may upon application by the party owing it be reduced to an appropriate amount by court decision. Reduction is excluded after the fee has been paid.

Subtitle 2

Loan brokerage agreement between a businessperson and a consumer

Section 655a

Loan brokerage agreement

With reservation made for sentence 2, the following provisions apply to a contract according to which a businessperson undertakes for a fee to broker a consumer loan agreement or refers him to an opportunity to conclude a consumer loan agreement. This does not apply to the extent specified in section 491 (2).

Section 655b

Written form

(1) The loan brokerage agreement must be in writing. With reservation made for other disclosure duties, the agreement must, including without limitation, indicate the loan brokers fee as a percentage of the loan amount; where the loan broker has also agreed remuneration with the businessperson, then the latter must likewise be indicated. The agreement may not be linked to the loan grant application. The loan broker must notify the consumer in textual form of the terms of the agreement.

(2) A loan brokerage agreement not meeting the requirements in 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 loan broker referral or brokering 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 the loan broker is aware that the consumer loan agreement is intended for the early repayment of another loan (debt rescheduling), claim to remuneration arises only if the effective annual interest rate or the initial effective annual interest rate is not increased; when the effective or initial effective annual interest rate is calculated for loan redemption, any possible brokerage costs are not taken into account.

Section 655d

Ancillary charges

For services linked to brokering the consumer loan agreement or referral to an opportunity to conclude a consumer loan agreement, the loan broker may not agree any charges except for remuneration in accordance with section 655c sentence 1. However, it may be agreed that required expenses incurred by the loan broker be reimbursed.

Section 655e

Divergent agreements, application to start-ups

(1) Divergence from the provisions of this subtitle are not allowed to the disadvantage of the consumer. The provisions of this subtitle apply even if they are circumvented by other arrangements.

(2) This subtitle also applies to loan brokerage agreements between a businessperson and a start-up business within the meaning of section 507.

Subtitle 3

Marriage brokering

Section 656

Marriage brokering

(1) No obligation is established by promising a fee for referral to an opportunity to contract matrimony or for brokering the arrangement of a marriage. What has been paid due to such a promise, may not be demanded 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 for an acknowledgement of debt.

Title 11

Promise of an award

Section 657

Binding promise

Anyone offering by means of public announcement a reward for undertaking an action, including without limitation for producing an outcome, is obliged to pay the reward to that party that has undertaken the action even if the latter did not do so with a view to the promise of an award.

Section 658

Revocation

(1) The promise of an award may be revoked up until the action is undertaken. Revocation is only effective if it is announced in the same way as the promise of an award was or if it occurs by means of a special announcement.

(2) Revocability may be waived in the promise of an award; in cases of doubt, a waiver may be seen in the setting of a period of time for undertaking the action.

Section 659

Multiple action taken

(1) If an action for which an award has been promised is undertaken several times, then the party first undertaking such action is entitled to the reward.

(2) If the action has simultaneously been undertaken by several parties, then each is entitled to an equal portion of the reward. Where the reward cannot be shared due to its nature or if according to the contents of the promise of a reward only one party be given the reward, then the matter is decided by drawing lots.

Section 660

Collaboration by several parties

(1) Where several parties have contributed to an outcome for which the reward has been promised, then the party promising the reward must divide it up according to its equitable discretion taking the contribution of each one in the outcome into account. Dividing up is not mandatory if it is obviously inequitable; in such a case the matter is decided by court decision.

(2) Where the division by the party promising the reward is not recognised as binding by one of those concerned, then the party promising the reward is entitled to refuse fulfilment until those concerned have settled the dispute amongst them on their entitlement; 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 contest

(1) A promise dealing with a prize contest 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 contest or which entry among several is to be given preference, is to be made by the person designated in the promise or, where such a person is lacking, by the person promising the award. The decision is binding on the participants.

(3) With entries of equal value, the provisions of section 659 (2) are applicable to awarding the prize.

(4) The person promising the award may only transfer ownership title to the work if he has stipulated in the announcement that transfer is to occur.

Section 661a

Profit commitments

A businessman sending profit commitments or comparable announcements to consumers and creating the impression with the design of such mailings that the consumer has won a prize must give the consumer that prize.

Title 12

Mandate and contract for services

Subtitle 1

Mandate

Section 662

Contractually typical duties in a mandate

By accepting a mandate the mandatee puts himself under a duty to carry out an assignment entrusted to him by the mandator for the latter without remuneration.

Section 663

Duty to notify when rejecting

Anyone officially appointed to perform certain services or offering publicly to do so and not accepting an assignment to perform such services is obliged to notify the mandator of such rejection without undue delay. The same applies if someone has offered to perform certain services in regard to the mandator.

Section 664

Non-transferability; liability for assistants

(1) In cases of doubt the mandatee may not transfer execution of the assignment to a third party. Where transfer is allowed then he is only liable for faults committed by him in such a transfer. He is liable under section 278 for culpability of an assistant.

(2) The claim to execution of the assignment is not transferable in case of doubt.

Section 665

Deviation from instructions

The mandatee is entitled to deviate from the mandator's instructions if he may assume in the circumstances that the mandator would approve of such deviation if he were aware of the factual situation. The mandatee must make notification to the mandator prior to such deviation and must wait for the latter's decision unless postponement involves jeopardy.

Section 666

Duty to disclose and account

The mandatee is obliged to provide the mandator with the required reports, on demand to provide information on the status of the business and after carrying out the mandate to account for it.

Section 667

Duty to surrender

The mandatee is obliged to surrender to the mandator everything received to carry out the mandate and what he has obtained from the contract for services.

Section 668

Interest on money used

If the mandatee uses money for himself that he must surrender to the mandator or use for him, then he is obliged to put it out at interest from the time given onwards.

Section 669

Duty to advance

For expenses required to carry out the mandate the mandator must upon demand make advance payment to the mandatee.

Section 670

Compensation of expenses

If the mandatee for the purpose of carrying out the mandate incurs expenses that he may consider to be necessary in the circumstances, then the mandator is obliged to pay compensation.

Section 671

Revocation; notice of termination

(1) The mandate may be revoked by the mandator at any time and may be given notice to by the mandatee at any time.

(2) The party obliged to service may only give notice in such a manner that the party entitled to service can obtain the services from elsewhere unless there is just cause for untimely notice of termination. If he should give notice in untimely fashion without such cause, then he must compensate the party entitled to service for damage thus incurred.

(3) Where a just cause obtains, then the mandatee is entitled to give notice even if he has waived the right to give notice.

Section 672

Death or incapacity of the mandator to contract

The mandate does not lapse in cases of doubt with the death of, or loss of capacity to contract by, the mandator. If the mandate lapses, then the mandatee must continue the contract for service if postponement involves jeopardy until the mandator's heir or legal representative can otherwise make arrangements for the service; the mandate is thus deemed to continue.

Section 673

Death of the mandatee

The mandate lapses in cases of death with the death of the mandatee. If the mandate lapses, then the mandatee's heir must notify the mandator of the death without undue delay and if postponement should involve jeopardy, must continue performance of the business entrusted to him until the mandator is otherwise able to arrange for the service; the mandate is thus deemed to continue.

Section 674

Fictional continuation

If the mandate lapses any other way than by revocation, then it is still deemed to continue for the benefit of the mandatee until the mandatee

becomes aware of the lapse or must be aware of it.

Subtitle 2

Contract for services^{*)}



Official note:

This title 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, p. 25) and
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 delivery and settlement systems (OJ L 166 of, p. 45).

Chapter 1

General provisions

Section 675

Remunerated contract for service

- (1) The provisions of sections 663, 665 to 670 and 672 to 674 apply to a service contract or a contract for work and services dealing with performance of service to the extent that nothing else is agreed in this subtitle and, if the obliged party is entitled to give notice without complying with a notice period, the provisions of section 671 (2) also apply with the necessary modifications.
- (2) Anyone giving another person advice or a recommendation is, without prejudice to responsibility on the basis of a contractual relationship, a tortious act or any other statutory regulation, not liable for damage incurred in following such advice or such a recommendation.

Section 675a

Duties to disclose

(1) Anyone officially appointed to perform services or publicly offering to do so, provides for regularly occurring standardised business transactions (standard services) in writing or in appropriate cases electronically as well and for no charge information on fees and expenses for such services, to the extent that pricing does not occur in accordance with section 315 or the fees and expenses are regulated statutorily with binding effect. Banking institutions, as per section 1 (1) of the Banking Regulation Act [Kreditwesengesetz], must additionally provide information on transaction periods, value dating, reference rates for bank transfers and additional details determined 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 identified in section 676c (3).

(2) The following are equated within the meaning of this title with banking institutions:

1. the German Bundesbank,
2. other companies that carry out bank transfers on a commercial basis, and
3. domestic branch offices of banking institutions and other companies headquartered abroad that carry out bank transfers on a commercial basis.

Section 676

Notice of termination of transfer agreements

Notice of termination of contracts for services dealing with the forwarding of securities or claims to surrender of securities by way of booking or by other means (transfer agreement) is only effective if it transmitted to the beneficiary's custodial agency company in such timely fashion that such notice of termination with application of due diligence can still be taken into account prior to booking on the beneficiary's deposit account. The securities or claims to surrender of securities are in that case to be returned to the initially commissioned company. In the framework of securities delivery and settlement systems a transfer agreement may, contrary to sentence 1, no longer be given notice to after the time determined in the systems rules.

Chapter 2

Bank transfer agreement

Section 676a

Contractually typical terms; notice of termination

(1) By means of the bank transfer agreement the banking institution (remitting banking institution) is put under a duty in relation to the party transferring (transferor) to make a specified amount of money available to the beneficiary for credit to the latter's account at the transferring banking institution (bank transfer) as well as to make notification of information on the identity of the transferor and on the purpose of the transfer, to the customary extent. Where crediting is to occur by another banking institution, the transferring banking institution is obliged to transfer the bank transfer amount in timely fashion and, to the extent that nothing else has been agreed, without deduction to the beneficiary's banking institution directly or with the participation of intermediate banking institutions for that purpose and to forward the information specified in sentence 1. The transferor may, to the extent agreed, also 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. Executable are

1. cross-border bank transfers in states members of the European Union or in states party to the Agreement on the European Economic Area denominated in their currency or currency unit 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 beneficiary's banking institution,
2. domestic bank transfers in domestic currency at the latest within three banking days to the account of the beneficiary's banking institution, 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 beneficiary's account,

(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 an account balance sufficient for carrying out the bank transfer is available or sufficient credit has been granted.

(3) The transferring banking institution may thereafter only give notice to the bank transfer agreement without indicating any reasons as long as the transaction period has not yet begun if insolvency proceedings have been opened in relation to the assets of the transferor or if credit required to carry out the bank transfer has been given notice to. In the framework of payment settlement systems a transfer agreement may, contrary to

sentence 1, no longer be given notice to after the time determined in the systems rules.

(4) The transferor may at any time give notice to the bank transfer agreement prior to commencement of the transaction period, but may thereafter only give notice if the beneficiary's banking institution is notified of notice of termination at the time at which the transfer amount is finally made available for credit to the beneficiary's account. In the framework of payment settlement systems a transfer agreement may, contrary to sentence 1, no longer be given notice to after the time determined in the systems rules. The transferring banking institution must arrange for informing the beneficiary's banking institution of the notice of termination without delay.

Section 676b

Liability for late transaction; money-back guarantee

(1) If the bank transfer is only executed after the end of the transaction period, then the transferring banking institution must pay interest to the transferor on the transfer amount for the duration of the delay unless the transferor or the beneficiary is liable for the delay. The interest rate is five percentage points per annum above the base interest rate.

(2) The transferring banking institution must at no additional charge and at the transferor's option, either return to the latter or transfer to the beneficiary any amounts retained by itself or by intermediate banking institutions contrary to the transfer agreement.

(3) The transferor may demand the return of the transfer amount up to an amount of Euro 12,500 (guarantee amount) plus fees and expenses already paid for the transfer if the transfer has neither been executed by the end of the transaction period or within an additional period of time of 14 banking days from the demand for return onwards. The transfer amount is in such a case to bear interest from commencement of the transaction period up to crediting of the guarantee amount on the transferor's account at the interest rate determined in subsection (1) sentence 2. Upon demand for return by the transferor and the end of the additional period of time the bank transfer agreement is deemed to be given notice to. The banking institution is entitled to give notice to the agreement if the banking institution cannot reasonably be expected to continue the agreement, taking mutual interests into account, provided it has paid the guarantee amount or simultaneously pays it. 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 obtain 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 determined by the transferor has failed to execute the bank transfer. In the second case cited in sentence 6 the banking institution expressly determined by the transferor is liable to the latter instead of the transferring banking institution.

(4) Claims under subsections (1) to (3) are excluded if force majeure is the cause of the error in settlement of the bank transfer.

Section 676c

Non-culpable liability; other claims

(1) Claims under section 676b do not presuppose any culpability. Other claims that presuppose culpability as well as claims for unjust enrichment remain unaffected. The transferring banking institution must be liable for any culpability on the part of an intermediate banking institution as it would be for its own culpability unless the essential cause lies with an intermediate banking institution determined by the transferor. Liability under sentence 3 may be limited for bank transfers to an account abroad

to Euro 25,000. Liability for damage incurred by delay in or non-execution of the bank transfer may be limited to Euro 25,000; this does not apply to intent and gross negligence, to interest losses 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 determined by the transferor is liable instead of the transferring banking institution.

(3) To the extent not otherwise stipulated, there may be no provisions diverging to the disadvantage of the transferor from those of sections 675 (1), 676a and 676b and subsection (1),

1. the transferor of which is a banking institution,
2. that exceeds the amount of Euro 75,000, or
3. that is to be credited to an account at a banking institution with its seat outside of the European Union or the European Economic Area.

Chapter 3

Payment contract

Section 676d

Contractually typical duties in a payment contract

(1) By means of a payment contract an intermediate banking institution puts itself under a duty to another banking institution in the framework of bank transfer traffic to forward a bank transfer amount to another banking institution or to the beneficiary's banking institution.

(2) The beneficiary's banking institution is obliged to return the bank transfer amount to the transferring banking institution if it receives a corresponding notification by the transferring banking institution prior to receipt of the amount. In the framework of payment settlement systems, notice of termination need not be heeded from the point of time stipulated in the system's rules onwards.

Section 676e

Compensation claims

(1) Where the cause for a late execution of a bank transfer lies in the scope of responsibility of the intermediate banking institution, then the latter must compensate 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 at no additional charge and expenses and at the transferring banking institution's option, either return to the latter or transfer to the beneficiary any amounts retained by itself contrary to the transfer agreement.

(3) The banking institution that concluded a payment contract with the transferring banking institution is obliged to return to the latter such payments made as the latter was obliged to the transferor for under section 676b (3). Each intermediate banking institution is obliged to return payments made under sentence 1 or under this provision to the banking institution with which it has concluded a payment contract for forwarding of the bank transfer. If the bank transfer is not executed because a banking institution has issued erroneous or incomplete instructions to its intermediate banking institution, then that latter banking institution's reimbursement claim is excluded under sentences 1 and 2. The banking institution liable for the error must compensate the transferring banking institution for the additional 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 research the whereabouts of the transfer amount on their own and return the transfer amount it discovers to the party entitled to the claim minus appropriate compensation for its search efforts.

(5) Where claims lapse because the transferor determined the banking institution commissioned with forwarding, then the latter must put the transferor in the same position he would be in if section 676b (3) applied. In other respects section 676b (4) applies with the necessary modifications.

Chapter 4

Giro contract

Section 676f

Contractually typical duties in a giro contract

By means of a giro 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 transfer contracts concluded for debit from that 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.

Section 676g

Customers claim for credit

(1) Where a transfer amount has been received by the customers banking institution it must credit that amount to the customer within the agreed period of time or, where there is no agreement thereon, within one banking business 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 on time to the customers account, 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 are liable for the delay. Section 676b (1) sentence 2 applies. The credit, including where it occurs subsequently, must be undertaken in such a way that value dating of the incoming amount on the customers account, to the extent not otherwise agreed with entrepreneurs, occurs as of the date on which the amount is made available to the banking institution.

(2) If the banking institution when crediting the amount to the customers account has contrary to contractual agreement reduced the transfer amount, then it must credit the shortfall to the beneficiary free of fees and expenses. The banking institutions claim to a fee agreed in the giro contract for crediting of incoming payments remains unaffected.

(3) If a payment contract is not executed by a banking institution commissioned by the beneficiary's banking institution with receiving it, then the latter must credit its customer with the transfer amount up to an amount of Euro 12,500 without any additional fees and costs.

(4) Claims under subsections (1) to (3) do not presuppose any culpability. Claims going beyond this that presuppose culpability remain unaffected. The customers banking institution must in this context assume the same liability for any culpability on the part of any intermediate banks commissioned as it itself assumes. Liability under sentence 3 may be limited for bank transfers to an account abroad to Euro 25,000. Liability for damage incurred by delay in or non-execution of the bank transfer may be limited to Euro 25,000; this does not apply to

intent and gross negligence, to interest losses and risks specifically assumed by the banking institution. 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 agreed there, deviation from the provisions of subsection (1) to (4) is only allowed to the beneficiary's disadvantage with bank transfers of the type cited in section 676c (3).

Section 676h

Abuse of payment cards^{*)}

The banking institution may only demand reimbursement of expenses for use of payment cards or their data if the latter have not been abused by a third party. If the payment card is not based on a giro contract but another contract for services, sentence 1 applies with the necessary modifications to the issuer of the card.

^{*)} 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 EC L 144 of, p. 19).

Title 13

Agency without specific authorisation

Section 677

Duties of the agent

Anyone conducting business for another party without being authorised by him or entitled to do so, must conduct the business in such a way as the interests of the principal would require in view of the latter's real or assumed will.

Section 678

Agency contrary to the will of the principal

Where assumption of agency is contradicted by the principal's real or assumed will and if the agent must have realised this, then he is liable to the principal for damage incurred in his agency even where he is not guilty of any other fault.

Section 679

Irrelevance of the principal's contrary will

Any contrary will of the principal in the agency is not taken into consideration if without such agency a duty of the principal, the fulfilment of which is in the public interest, or a statutory maintenance duty of the principal would otherwise not have been fulfilled in time.

Section 680

Agency to avert jeopardy

Where agency seeks to avert jeopardy threatening the principal, then the agent is only liable for deliberate intent and gross negligence.

Section 681

Ancillary duties of the agent

The agent must notify the principal, as soon as feasible, of his assumption of agency and, where postponement does not involve

jeopardy, wait for the latter's decision. In other respects, the provisions relating to a mandatee in sections 666 to 668 apply to the duties of the agent with the necessary modifications.

Section 682

Lack of capacity to contract on the part of the agent

If the agent lacks the capacity to contract or is limited in his capacity to contract, then he is only responsible under the provisions on damages for tortious acts and on the surrender of unjust enrichment.

Section 683

Compensation of expenses

Where assumption of agency corresponds to the interest and the real or assumed will of the principal, then the agent may demand compensation for expenses as a mandatee. In the cases cited in section 679 the agent is entitled to this claim, even if assumption of agency is contrary to the will of the principal.

Section 684

Restitution of enrichment

Where the prerequisites of section 683 do not obtain, then the principal is obliged to surrender everything to the agent that he obtains by agency according to the provisions on restitution of unjust enrichment. If the principal ratifies agency, then the agent is entitled to the claim determined in section 683.

Section 685

Intention to donate

(1) The agent is not entitled to a claim if he did not intend to demand compensation from the principal.

(2) Where parents or ancestors grant their descendants maintenance, or vice versa, then in case of doubt it is to be assumed that there is no intention to demand compensation from the recipient.

Section 686

Error as to the identity of the principal

If the agent is in error in regard to the principal's identity, then the real principal becomes entitled and obliged as the result of agency.

Section 687

Spurious agency

(1) The provisions of sections 677 to 686 do not apply if someone manages another party's business believing that it is his own.

(2) If someone treats another party's business 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 agent under section 684 (1).

Title 14

Safekeeping

Section 688

Contractually typical duties in safekeeping

By means of a safekeeping contract the safekeeper is put under a duty to store a movable thing surrendered to him by a bailor.

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 without remuneration, then the safekeeper is only liable for such diligence as he customarily applies in his own affairs.

Section 691

Deposit with third parties

The safekeeper is in case of doubt not entitled to deposit the deposited thing with a third party. If deposit with a third party is permitted, then the safekeeper is only liable for culpability incurred in such deposit. He is liable under section 278 for culpability of an assistant.

Section 692

Change of safekeeping

The safekeeper is entitled to change the agreed type of safekeeping if he may assume in the circumstances that the bailor would approve of such a change if he were aware of the factual situation. The safekeeper must make notification to the bailor prior to such a change and must wait for the latter's decision unless postponement involves jeopardy.

Section 693

Compensation of expenses

If the safekeeper for the purpose of safekeeping incurs expenses that he may consider to be necessary in the circumstances, then the bailor is obliged to pay compensation.

Section 694

Duties of the bailor for damages

The bailor must compensate for damage incurred by the safekeeper due to the nature of the thing deposited, unless he neither knows of the nature threatening jeopardy to the thing when depositing nor could have known thereof or if he notifies the safekeeper thereof or if the latter knew thereof without such notification.

Section 695

Bailors right to demand return

The bailor may at any time demand return of the thing deposited, even if the period of safekeeping has been specified. Limitation of the claim to return of the thing commences with the demand to return it.

Section 696

Safekeepers claim for repossession

The safekeeper 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 an important reason to do so. The limitation of the claim commences upon demand for repossession.

Section 697

Place for return

Return of the thing deposited must take place where the thing was to be stored; the safekeeper is not obliged to bring the thing to the bailor.

Section 698

Interest on money used

If the safekeeper uses money deposited for him, then he is obliged to put it out at interest from the moment of use onwards.

Section 699

Due date of remuneration

(1) The bailor must pay the agreed remuneration upon termination of safekeeping. Where remuneration is assessed according to time periods, then it is to be paid at the end of the various different time periods.

(2) If safekeeping ends prior to expiry of the time specified for it, then the safekeeper may demand the previous pro rata portion of his remuneration unless something else emerges from the agreement on remuneration.

Section 700

Irregular safekeeping contract

(1) If fungible things are deposited in such a way that ownership passes to the safekeeper and the latter is to be put under a duty to return things of the same type, quality and quantity, then for money the provisions on the loan agreement, and for other things the provisions on the agreement for the loan of things are to be applied. If the bailor permits the safekeeper to consume fungible things, then for money the provisions on the loan agreement and for other things the provisions on the agreement for the loan of things apply from the point of time onwards when the safekeeper appropriates the things. In both cases, the time and place for return is nonetheless determined in case of doubt according to the provisions of the safekeeping contract.

(2) With deposit of securities an agreement of the type cited in subsection (1) is only valid if it has been expressly reached.

Title 15

Deposit of things with hoteliers

Section 701

Hoteliers liability

(1) A hotelier who commercially takes in lodgers must compensate the damage incurred by the loss, or destruction or damage to things deposited by a guest taken in in operating such a business.

(2) Deemed to be deposited are

1. things that during the time when the guest has been taken in as a lodger were brought into the hotel or to a place indicated by the

hotelier or the latter's servants or generally intended for this purpose by the hotelier outside of the hotel, or otherwise taken into safekeeping by the hotelier or his servants outside of the hotel,

2. things that within an appropriate period of time prior to or after the period when the guest was taken in as a lodger, were taken into safekeeping by the hotelier or his servants.

In the case of instructions or assumption of safekeeping by the hotelier's servants however, this only applies if they were ordered or must be considered to have been ordered in the circumstances for this purpose.

(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 due to the nature of the thing or due to force majeure.

(4) Liability in damages does not extend to vehicles, things left in a vehicle, and to live animals.

Section 702

Limitation on liability; valuables

(1) The hotelier is only liable on the basis of section 701 up to an amount corresponding to one-hundred times the cost of lodgings for one day but at least up to the amount of Euro 600 and at most up to an amount of Euro 3,500; for money, securities and valuables the amount of Euro 800 replaces the amount of Euro 3,500.

(2) The hotelier's liability is unlimited

1. if the loss, destruction or damage has been culpably caused by him or his servants,
2. this involves things deposited that he took in for safekeeping or the acceptance of which for safekeeping he rejected despite the provisions of subsection (3).

(3) The hotelier 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 ranking of the hotel or if they are hazardous. He may demand that they be delivered in closed or sealed containers.

Section 702a

Waiver of liability

(1) The hotelier's liability may only be waived in advance to the extent that it exceeds the applicable maximum amount under section 702 (1). To that extent as well it may not be waived in the case that the loss, destruction or damage was caused intentionally or by gross negligence by the hotelier or the latter's servants or that it involves things the acceptance of which for safekeeping the hotelier rejected contrary to the provisions of section 702 (3).

(2) The waiver is only effective if the guest's declaration has been issued in writing and if it does not include any other provisions.

Section 703

Lapse 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 hotelier without undue delay after becoming aware of the loss, destruction or damage. This does not apply if the things were accepted by the hotelier for safekeeping or if the loss,

destruction or damage was culpably caused by him or his servants.

Section 704

Hoteliers lien

For his claims for providing living space and other services to satisfy the guests needs, including expenses, the hotelier has a right of lien on the guests deposited things. The provisions relating to the lessors right of lien in sections 562 (1) sentence 2 and 562a to 562d apply with the necessary modifications.

Title 16

Partnership

Section 705

Contents of the partnership agreement

By means of the 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, including without limitation to make the agreed contributions.

Section 706

Partners contributions

(1) In the absence of any other agreement, the partners must make equal contributions.

(2) Where fungible or consumable things are to be contributed, then in case of doubt it is to be assumed that they are to become the partners joint property. The same applies to non-fungible and non-consumable things if they are to be contributed according to an estimate that is not merely intended for 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 meeting the duties incumbent upon him for such diligence as he customarily applies in his own affairs.

Section 709

Joint management

(1) The partners are jointly entitled to manage the companys business; for each transaction the approval of all partners is required.

(2) Where the majority of votes decides under the partnership agreement, then a majority in case of doubt must be calculated according to the number of partners.

Section 710

Transfer of management

Where conduct of business has been transferred in the partnership agreement to one partner or several partners, then the remaining partners are excluded from management. Where management has been transferred to several partners, the provisions of section 709 apply with the necessary modifications.

Section 711

Right to object

If the partnership agreement entitles all or several partners to conduct business in such a way that each is authorised to act on his own then each may object to undertaking of business 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 transferred to a partner by the partnership agreement may be withdrawn from that partner by a unanimous resolution or, if under the partnership the majority of votes decides, by majority resolution of the remaining partners if there is an important reason; such a reason includes without limitation gross violation of duties or incapacity for proper management.

(2) The partner may also in turn dismiss management if there is an important 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 managing partners are determined by the provisions in sections 664 to 670 applicable to mandates to the extent that nothing else emerges from the partnership relationship.

Section 714

Power of representation

To the extent that a partner is entitled under the partnership agreement to the authority to manage, he is also, in case of doubt, authorised to represent the other partners in relation to third parties.

Section 715

Withdrawal of the power of representation

If one partner is authorised in the partnership agreement to represent the other partners in relation to third parties, then the power of representation 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

Partners right of control

(1) A partner may, even if excluded from management, personally inform himself of the partnerships affairs, inspect the partnerships accounts and documents and provide himself with a survey of the state of the partnerships assets.

(2) Any agreement excluding or limiting the assertion of 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 mutually entitled under the partnership relationship are not transferable. Exempted are the claims to which a partner is entitled in his management to the extent that their satisfaction may be demanded prior to settlement as well as claims to profit sharing or to what the partner is owed in a settlement.

Section 718

Partnership assets

(1) The contributions of the partners and the items acquired by management for the partnership become the joint assets of the partners (partnership assets).

(2) Partnership assets also include anything acquired due to any rights held by partnership assets or as compensation for destruction, damage or removal of any item included in partnership assets.

Section 719

Joint commitment

(1) A partner may not control his share in partnership assets and in the latter's individual items; he is not entitled to demand division.

(2) The debtor may not set off a claim on an individual partner to which he is entitled against a claim that is part of partnership assets.

Section 720

Protection of debtor in good faith

A debtor must only then have claims under section 718 (1) as being part of partnership assets to be asserted against himself, if he has been informed 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) Where 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 profits and losses

(1) If the partners' shares in profits and losses have not been determined then each partner, without regard to the nature and size of his contribution, has an equal share in profits and losses.

(2) If only the share in profits or in losses has been determined, then in case of doubt such determination applies to profits and losses.

Section 723

Notice of termination by partners

(1) If the partnership has not been set up for a definite period of time, then each partner may give notice to it at any time. Where a period of time has been determined, then notice of termination prior to the expiry of that period is admissible where there is an important reason. An important reason includes without limitation

1. if another partner has intentionally or out of gross negligence violated an essential duty incumbent upon him under the partnership agreement or if fulfilment of such a duty becomes impossible,
2. if the partner has reached the age of 18.

The partner reaching majority may only declare notice of termination under no. 2 within three months from the point of time when he knew of or must have known of his position as a partner. There is no right to give notice if the partner was authorised in regard to the partnerships purpose to independently operate a commercial business in accordance with section 112 or if the partnerships purpose served solely to satisfy his personal needs. Under the same conditions, if a notice period has been determined, notice of termination is admissible without complying with the notice period.

(2) Notice of termination may not occur in untimely fashion unless there is an important reason for such untimely notice of termination. If a partner should give notice in untimely fashion without such cause, then he must compensate the remaining partners for any damage thus incurred.

(3) Any agreement according to which the right to give notice is excluded or is limited contrary to these provisions is void.

Section 724

Notice of termination with a partnership for life or a continuous partnership

If a partnership has been set up for the lifetime of a partner, then it may be given notice to 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

Notice of termination by attachment lien creditors

(1) Where the creditor of a partner has obtained attachment of the partners share in partnership assets, then he may give notice to the partnership without complying with a notice period provided the debt title is not merely provisionally executable.

(2) As long as the partnership exists, the creditor may not assert the partners rights stemming from the partnership relationship with the exception of the claim to a share in profits.

Section 726

Dissolution due to achievement or impossibility of its purpose

The partnership comes to an end when the agreed purpose 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 otherwise stipulated in its partnership agreement.

(2) In the case of dissolution, the deceased partners heir must inform the remaining partners of the death without undue delay and, where postponement involves a risk, to carry on the business transferred to the deceased by the partnership agreement until the remaining partners can jointly reach another arrangement with him. The remaining partners are in like manner bound to temporary continuation of the business transferred to them. The partnership is to that extent deemed to continue in existence.

Section 728

Dissolution due to insolvency of the partnership or one of its partners

(1) The partnership is dissolved by opening of insolvency proceedings relating to the partnerships assets. 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 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 becomes aware of the dissolution or must have become aware of it. The same applies to the authority of a partner leaving the partnership to manage when the partnership is carried on or for its loss in any other way.

Section 730

Settlement; management

(1) After dissolution of the partnership settlement takes place amongst the partners in regard to the partnerships assets unless insolvency proceedings have been opened in relation to the partnerships assets.

(2) For termination of pending business, for required entering into of new business as well as for preservation and administration of the partnerships assets, the partnership is deemed to be carried on to the extent the purpose of settlement so requires. However, the authority to manage to which a partner is entitled under the partnership agreement, lapses unless otherwise stipulated by the contract upon dissolution of the partnership; from dissolution onwards all partners are entitled to jointly manage its business.

Section 731

Procedure for settlement

Settlement occurs in the absence of any other agreement in accordance with sections 732 to 735. In other respects the provisions on association apply to division.

Section 732

Return of items

Items a partner has assigned to the partnership for use must be returned to him. He may not demand compensation for an item accidentally lost or deteriorated.

Section 733

Fulfilment of partnership debts; reimbursement of capital contributions

(1) From the partnerships assets at first joint debts must be fulfilled with the inclusion of those divided amongst the partners in relation to the creditors or for which one partner enjoys the debtor liability of the remaining partners. Where a debt is not yet due for repayment or is contested, then the amount required for fulfilment must be withheld.

(2) From the partnerships assets remaining after fulfilment of debts, the capital contributions are to be repaid. For capital contributions that did not consist of money, the value must be compensated that they had at the time when they were contributed. Compensation may not be demanded for capital contributions consisting in the performance of services or in assignment of use of an item.

(3) For fulfilment of debts and repayment of capital contributions, the companys assets, to the extent required, must be converted into money.

Section 734

Distribution of the surplus

Where a surplus remains after fulfilment of joint debts and repayment of capital contributions, then it is owed to the partners in the ratio of their shares in profits.

Section 735

Duty to provide subsequent contributions in case of losses

Should the partnerships assets not suffice to fulfil joint debts and for repayment of capital contributions, then the partners must make up the shortfall in the ratio in which they must bear losses. Where an amount attributable to a partner cannot be obtained from him, then the remaining partners must bear the shortfall in the same ratio.

Section 736

Departure of a partner; continuing liability

(1) If the partnership agreement stipulates that where a partner gives notice or dies or if insolvency proceedings are opened in relation to his assets, the partnership will then be carried on by the remaining partners, then upon the occurrence of such an event that partner personally so affected leaves 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 whose circumstances entitle 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 in relation to the partner to be excluded.

Section 738

Settlement upon departure

(1) Where a partner leaves the partnership, then his share in the partnerships assets accrues to the remaining partners. The latter are obliged to return to the departing partner the items he assigned to the partnership for use under the provisions of section 732 and to exempt him from joint debts and to pay him what he would receive in case of settlement if the partnership had been dissolved at the time of his departure. Where joint debts are not yet due for repayment, then the remaining partners may provide the departing partner with security instead of exempting him.

(2) The value of the partnerships assets is, to the extent required, to be determined by means of an estimate.

Section 739

Liability for shortfall

Should the partnerships assets not suffice to cover the joint debts and the capital contributions, then the departing partner is liable to the remaining partners for shortfall in the ratio of his share in losses.

Section 740

Sharing in the financial results of pending transactions

(1) The departing partner shares in profits and losses resulting from transactions pending at the time of his departure. The remaining partners are entitled to terminate such transactions in the way that appears most advantageous to them.

(2) The departing 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 pending.

Title 17

Community

Section 741

Community of part owners

Where several are jointly entitled to a right, unless otherwise stipulated by law, the provisions of sections 742 to 758 apply (community of part owners).

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 yield; authority to use

(1) A fraction of the yield corresponding to his share is owed to each part owner.

(2) Each part owner is authorised to use the joint item to the extent that co-use by other part owners is not impaired.

Section 744

Joint administration

(1) The part owners are jointly entitled to administration of the joint item.

(2) Each part owner is entitled to take the measures required to preserve the item 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 majority of votes proper administration and use corresponding to the nature of the joint item may be resolved. The majority of votes must be calculated according to the size of the shares.

(2) Each part owner may, where administration and use is not regulated by agreement or majority voting, demand administration corresponding to the interests of all part owners according to their equitable discretion.

(3) No substantial change in the item may be resolved or demanded. Each part owners right to a fraction of the emoluments corresponding to his share may not be impaired without his approval.

Section 746

Effect in relation to successor in interest

Where the part owners have regulated administration and use of the joint item, the determination reached also has effects for and against successors in interest.

Section 747

Control of a share and joint items

Each part owner may control its own share. The part owners may only jointly control the joint item as a whole.

Section 748

Bearing of charges and costs

Each part owner is obliged to the other part owners to bear the charges of the joint item as well as costs of preservation, administration and joint use according to the ratio of his share.

Section 749

Cancellation claim

(1) Each part owner may at any time demand cancellation of the community.

(2) If the right to demand cancellation is excluded by agreement forever or for a period of time, then cancellation may still be demanded if there is an important reason to do so. Under the same conditions, if a notice period has been determined, cancellation is admissible without complying with the notice period.

(3) Any agreement according to which the right to cancellation is excluded or is limited contrary to these provisions is void.

Section 750

Exclusion of cancellation in case of death

Where the part owners have temporarily excluded entitlement to demand cancellation of community, then the agreement loses its effect in case of doubt upon the death of a part owner.

Section 751

Exclusion of cancellation and successors in interest

Where the part owners have excluded entitlement to demand cancellation of community temporarily or permanently or have determined a notice period, then the agreement is effective for or against successors in interest as well. Where a creditor has a part owners share attached, then he may demand cancellation of community regardless of the agreement if the debt title is not just provisionally executable.

Section 752

Division in kind

Cancellation of community occurs by division in kind if the joint item is or, if there are several items held jointly, are capable of being dismantled into identical parts corresponding to the shares of the part owners without reducing their value. The distribution of identical parts amongst the part owners occurs by drawing lots.

Section 753

Division by sale

(1) If division in kind is excluded, then cancellation of community occurs by sale of the joint item according to the regulations on sale of lien property and with a piece of land by compulsory auction and by means of division of the proceeds. If alienation to a third party is inadmissible, then the item must be auctioned off amongst the part owners.

(2) If the attempt to sell the item has been unsuccessful, then each part owner may demand a repetition but must bear the costs if a repeat 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

Fulfilment of a joint debt

(1) Where the part owners are jointly and severally liable for an obligation that they will have to fulfil in the ratio of their shares in accordance with section 748 or that they have entered into for the purpose of fulfilling such an obligation, then each part owner may demand upon cancellation that the debt be fulfilled with the joint item.

(2) The claim may also be asserted against successors in interest.

(3) To the extent that sale of the joint item is required for fulfilment of the debt, sale must occur in accordance with section 753.

Section 756

Fulfilment of a part owner debt

If one part owner has a debt in relation to another part owner based on the community, then in cancelling the community he may demand fulfilment of his claim out of the part of the joint item attributable to the debtor. The provisions of section 755 (2) and (3) apply.

Section 757

Warranty in allocation to a part owner

Where upon cancellation of community a joint item is allocated to one part owner, then each of the remaining part owners must provide warranty amounting to his share for a defect in title or a defect as to quality in the same manner for his share as a seller

Section 758

Non-limitation on the right to cancel

The claim to cancellation of community is not subject to limitation.

Title 18

Life annuity

Section 759

Duration and amount of the annuity

(1) Anyone obliged to provide warranty for a life annuity must in case of doubt pay the annuity for the duration of the creditors lifetime.

(2) The amount intended for the annuity is in case of doubt the annual amount of the annuity.

Section 760

Prepayment

(1) The life annuity is payable in advance.

(2) An annuity in money is payable three months in advance, with any other kind of annuity the period of time for which it must be paid in advance is determined according to the nature and purpose of the annuity.

(3) If the creditor has survived up to 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 for life annuity commitment

For the validity of a contract by means of which a life annuity is promised, unless another form be specified, a written issue of the commitment is required. Issuing of the life annuity commitment in electronic form is excluded to the extent that the commitment serves to provide maintenance in family law.

Title 19

Incomplete obligations

Section 762

Gaming, betting

(1) No obligation is established by games and bets. What has been paid due to such a game or bet may not be demanded back on the grounds that there was no obligation.

(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 a debt acknowledgement.

Section 763

Lottery and gaming contracts

A lottery contract or gaming contract is binding if the lottery or the gaming has been officially permitted. Otherwise the provisions of section 762 apply.

Section 764

(repealed)

Title 20

Suretyship

Section 765

Contractually typical duties in suretyship

(1) By contract of suretyship the surety puts himself under a duty to the creditor of a third party to be responsible for meeting 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

Written issue of the declaration of suretyship is required for it to be valid. Providing the declaration of suretyship in electronic form is excluded. Where the surety meets the main obligation the defect of form is remedied.

Section 767

Scope of the suretyship debt

(1) The currently applicable amount of the main obligation determines the surety's duty. This applies inclusively without limitation if the main obligation has been changed through no fault of or delay by the main debtor. The surety's duties are not extended by means of a legal transaction that the main debtor undertakes after assumption of the suretyship.

(2) The surety is liable for costs of notice of termination and prosecution of rights reimbursable by the main debtor to the creditor.

Section 768

Surety's objections

(1) The surety may assert objections to which the main debtor is entitled. If the main debtor dies, then the surety may not invoke the fact that his heir is only limitedly liable for the obligation.

(2) The surety is not deprived of an objection by the fact that the main debtor forgoes it.

Section 769

Co-suretyship

Where several parties enter a suretyship commitment for the same obligation they are jointly and severally liable even if they do not assume suretyship jointly.

Section 770

Objections to voidability and offsetability

(1) The surety may refuse to satisfy the creditor as long as the main 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 satisfy a claim due of the main debtor by set-off.

Section 771

Benefit of discussion

The surety may refuse to satisfy the creditor as long as the creditor has not failed in an attempt at judicial execution against the main debtor (benefit of discussion). Where the surety raises the benefit of discussion, the limitation on the creditors claim against the surety is suspended until the creditor has failed in an attempt at judicial execution.

Section 772

Creditors duty to execute and realise

(1) Where the suretyship applies to a monetary claim, then judicial execution must be attempted against the main debtors movable property at his residence and, if the main debtor has a branch office of his business in another locality, at the latter as well, and in the absence of a residence and a business branch office at his place of habitual abode.

(2) Where the creditor is entitled to a lien on or right of retention to the main debtors movable property, then he must likewise attempt to satisfy his claim with the said thing. Where the creditor is entitled to 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 benefit of discussion

(1) The benefit of discussion is excluded:

1. if the surety forgoes the objection, including without limitation if he has assumed suretyship as principal debtor,
2. if pursuit of rights against the main debtor is made appreciably more difficult due to a change of residence, of business branch office or place of habitual abode occurring after assumption of suretyship,
3. if insolvency proceedings have been opened in relation to the main debtors assets,
4. if it must be assumed that judicial execution against the main debtors assets will not result in satisfaction of the creditors claim.

(2) In the cases cited in nos. 3 and 4 the objection is admissible to the extent that the creditor may satisfy his claim with a movable thing on which he has a lien or in which he has a right of retention; the provisions of section 772 (2) sentence 2 apply.

Section 774

Passing of statutory claims

(1) To the extent that the surety satisfies the debtors claims, the creditors claim on the main debtor passes to him. Passing of title may not be asserted to the disadvantage of the creditor. Objections by the main debtor under a legal relationship obtaining between him and the surety remain unaffected.

(2) Co-sureties are only liable to each other under section 426.

Section 775

Surety's claim to exemption

(1) Where the surety has provided suretyship with the main debtors mandate or where he is entitled to the principals rights in relation to the main debtor under the provisions on agency without specific authorisation due to having assumed the suretyship, then he may demand to be exempted from the latter:

1. if the main debtors financial situation has substantially deteriorated,
2. if pursuit of rights against the main debtor is made appreciably more difficult due to a change of residence, of business branch office or place of habitual abode occurring after assumption of suretyship,
3. if the main debtor is in delay meeting his obligation,
4. if the creditor has obtained an executable judgment for fulfilment against the surety.

(2) If the main obligation has not yet fallen due, then the main debtor may provide security to the surety instead of exempting him.

Section 776

Abandonment of a security

Where the creditor abandons a preferential right connected with the claim, a mortgage or ships mortgage, a lien obtaining for the claim or the right against a co-surety, then the surety is exempted to the extent that he would have been able to demand a replacement for the right abandoned under section 774. This also applies if the right abandoned only arose after assumption of the suretyship.

Section 777

Temporary suretyship

(1) Where the surety has provided suretyship for an existing obligation for a specified period of time, then at the end of that specified period of time he will be released, unless the creditor effects collection of the claim without undue delay under the provisions of section 772, the proceedings are continued without any substantial delay and without undue delay after the end of the proceedings notifies the surety that he intends to hold him liable. Where the surety is entitled to the benefit of the discussion, then he is relieved at the end of a specified period of time, unless the creditor notifies him of such without undue delay.

(2) Where notification has been made in timely fashion, then the surety's liability in the case cited in subsection (1) sentence 1 is limited to the scope the main obligation has at the time when the proceedings ended, 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

Anyone who mandates another party, on his own behalf and for his own account, to grant a third party a loan or financial assistance, is liable to the agent for the third party's obligation as surety arising from the loan or the financial assistance.

Title 21

Compromise settlement

Section 779

Concept of compromise settlement; error on the basis of the compromise settlement

(1) A contract by means of which the parties dispute or uncertainty about a legal relationship is eliminated by way of mutual compromise (compromise settlement) is ineffective if the set of facts used as a basis according to the contract's contents does not correspond to reality and the dispute or uncertainty would not have occurred if the facts had been known.

(2) Equated with uncertainty about a legal relationship is if the realisation of a claim is uncertain.

Title 22

Debt commitment; debt acknowledgement

Section 780

Debt commitment

For the validity of a contract by means of which performance is promised such that the promise is supposed to establish the duty by itself (debt commitment) and to the extent that no other form is specified, providing the commitment in written form is required. Providing the commitment in electronic form is excluded.

Section 781

Debt acknowledgement

For the validity of a contract by means of which the existence of a debt relationship is acknowledged (debt acknowledgement), providing the declaration of acknowledgement in writing is required. Providing the declaration of acknowledgement in electronic form is excluded. Where for establishing the debt relationship the existence of which is being acknowledged another form is specified, then the acknowledgement contract requires such a form.

Section 782

Free form with compromise settlements

Where a debt commitment or debt acknowledgement is provided on the basis of a settlement or by way of a compromise settlement, then observance of the written form specified in sections 780 and 781 is not required.

Title 23

Orders

Section 783

Rights derived from an order

Where a legal document in which someone orders another person to furnish money, securities or other fungible things to a third party is transmitted to that third party, the latter is authorised to collect payment from the drawee on his own behalf; the drawee is authorised to pay to the payee for the account of the drawer.

Section 784

Acceptance of the order

(1) Where the drawee accepts the order, then he is obliged to pay to the payee; he may only counterpose such objections as relate to the validity of acceptance or as emerge from the contents of the order or the contents of the acceptance or as the drawee is directly entitled to in relation to the payee.

(2) Acceptance occurs by means of a written notation on the order. Where the notation is placed on the order prior to its transmittal to the payee of the order, then acceptance only becomes effective in relation to the latter upon transmittal.

Section 785

Transmittal of the order

The drawee is only obliged to pay in return for transmittal of the order.

Section 786

(repealed)

Section 787

Order for debt

(1) In the case of an order for debt, the drawee is released from the debt to the extent of its amount.

(2) For acceptance of the order or for payment to the payee, the drawee is not under a duty to the drawer simply because the debtor is the drawer.

Section 788

Underlying debt relationship

Where the drawee issues the order for the purpose of in turn effecting payment to the drawee, then the payment, even if the drawee accepts the order, is only effected upon payment of the drawee to the payee.

Section 789

Payees duty of notification

Should the drawee refuse acceptance of the order prior to occurrence of the payment moment, then the payee must notify the drawer without undue delay. This 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 not accepted it in relation to the payee or has not made payment. This also applies if the drawer by means of 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 upon death or the incurrance of incapacity to contract by one of the participants.

Section 792

Transfer of the order

(1) The payee may transfer the order to a third party by contract with that same third party even when the order has not yet been accepted. The declaration of transfer requires written form. For transfer, transmittal 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. In other respects provisions applying to assignment of a claim apply with the necessary modifications to transfer of the order.

Title 24

Debenture to bearer

Section 793

Rights under a debenture to the bearer

(1) Where someone has issued a legal document in which he promises the bearer payment (debenture to the bearer), then the bearer may demand payment from him under the provisions of the promise unless he is not entitled to make use of the legal document. However, the issuer is also released even by payment to a non-entitled bearer.

(2) The validity of the signature may be made dependent upon a determination included in the legal document on observance of a specific form. For signature a name signature produced by means of mechanical replication will suffice.

Section 794

Issuers liability

(1) The issuer is even obliged under a debenture to bearer if it has been stolen from him or if it goes missing or if it otherwise comes into circulation against his will.

(2) It has no bearing on the effectiveness of a debenture to the bearer if the legal document is issued after the issuer has died or becomes incapable of contracting.

Section 795

(repealed)

Section 796

Issuers objections

The issuer may only counterpose such objections to the debenture bearer as relate to the validity of the issue or as emerge from the legal document or as the issuer is directly entitled to in relation to the bearer.

Section 797

Duty to pay only in return for surrender

The issuer is only obliged to pay in return for surrender of the debenture. Upon surrender he acquires title to the legal document even if the bearer is not entitled to make use of it.

Section 798

Replacement legal document

Where a debenture to bearer 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 issue of a new debenture to the bearer from the issuer in return for surrender of the damaged or disfigured one. He must himself bear and advance the costs.

Section 799

Declaration of invalidity

(1) A lost or destroyed debenture to the bearer may, if the opposite is not stipulated in the legal document, be declared invalid by way of public notice procedure. Excepted from this are interest, annuity and profit share coupons as well as non-interest bearing debentures payable on sight.

(2) The issuer is obliged to provide the previous bearer, when requested, with information necessary for the public notice procedure or payment blockage and to issue the required testimony. The costs of testimonials must be borne and advanced by the previous bearer.

Section 800

Effect of the declaration of invalidity

Where a debenture to the bearer has been declared invalid, the party that obtained the exclusion judgment may, without prejudice to the authority of asserting claims from the legal document, demand issue of a new debenture to the bearer instead of the invalidated one. He must himself bear and advance the costs.

Section 801

Lapsing; limitation

(1) The claim under the debenture to the bearer lapses at the end of 30 years from the occurrence of the time stipulated for payment if the legal document has not been presented to the issuer for redemption prior to the end of 30 years. If submission occurs, then the claim is time-barred in two years prior to the end of the submission period. Submission is equated with judicial assertion of the claims under the legal document.

(2) For interest, annuity and profit share coupons the submission period is four years. The period of time begins to run at the close of the year in which the time stipulated for payment occurred.

(3) Duration and commencement of the submission period may be determined differently by the issuer in the legal document.

Section 802

Payment stoppage

Commencement and running of the submission period as well as the limitation are suspended in favour of the applicant by means of payment stoppage. Suspension commences upon lodging of the application for payment stoppage; it ends upon completion of the public notice procedure and, should payment stoppage be ordered prior to initiation of the procedure has been ordered, even if, since elimination of the obstacle to initiation, six months have passed and application has not previously been made. The provisions of sections 206, 210 and 211 apply to this period with the necessary modifications.

Section 803

Interest coupons

- (1) Where interest coupons are issued for a debenture to the bearer, then the coupons, unless they contain stipulations to the contrary, remain in effect even if the main claim lapses or if the duty to pay interest is cancelled or modified.
- (2) Where such interest coupons are not returned when the main debenture 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) Where an interest, annuity or profit share coupon is lost or destroyed and where 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 passed. The claim is excluded if the lost coupon is submitted to the issuer prior to redemption or if the claim from the coupons is asserted judicially, unless such submission or judicial assertion occurs after the period of time has passed. The claim is time-barred after four years.
- (2) The claim stipulated in subsection (1) can be excluded in the interest, annuity or profit share coupon itself.

Section 805

New interest and annuity coupons

New interest and annuity coupons for a debenture to the bearer may not be issued to the bearer of a legal document authorising receipt of the coupons (renewal coupon), if the bearer of the debenture has objected to such issuing. The coupons are in that case to be surrendered to the bearer of the debenture if he submits the debenture.

Section 806

Conversion to name

Conversion of a debenture to the bearer to a debenture registered in the name of a specified beneficiary may only be done by the issuer. The issuer is not obliged to convert to name registration.

Section 807

Bearer cards and stamps

Where cards, stamps or similar legal documents in which a creditor is not identified are under certain conditions issued by the issuer and from which it emerges that he wishes to put the bearer under a duty to pay, 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) Where a legal document in which the creditor is named is issued with the stipulation that the payment promised in the legal document can be made to any bearer, then the debtor is released from obligation by payment to the documents bearer. The bearer is not entitled to demand payment.

(2) The debtor is only obliged to pay in return for surrender of the legal document. If the legal document has been lost or destroyed, then if not otherwise provided for, 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

Anyone having a claim in respect of a thing against its possessor or wishing to obtain certainty whether he is entitled to such a claim may, if inspection of the thing is of interest to him for this reason, demand that the possessor submits the thing to him for inspection or permits inspection.

Section 810

Right to inspect legal documents

Anyone having a legal interest in inspecting a legal document possessed by another person may demand permission to inspect it from its possessor if the legal document has been drawn up in his interests or if in the legal document a legal relationship existing between himself and another has been documented or if the document contains negotiation of a legal transaction engaged in between him and another or between one of them and a joint broker.

Section 811

Place of presentation, risk and costs

(1) Presentation must in the cases cited in sections 809 and 810 take place 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 an important reason for doing so.

(2) Risk and costs must be borne by the party 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) Anyone gaining something through another party's efforts or otherwise at his expense without legal grounds for doing so is under a duty to make restitution to him. This duty also obtains if the legal grounds later lapse or if the results intended with those efforts according to the contents of the legal transaction do not occur.

(2) Efforts also include acknowledgement of the existence or non-existence of a debt relationship.

Section 813

Fulfilment despite objection

(1) Restitution of efforts provided for the purpose of fulfilling an obligation may also be demanded if the claim is obstructed by an objection by means of which assertion of the claim was permanently excluded. The

provisions of section 214 (2) remain unaffected.

(2) Where an old obligation is fulfilled early, then demand for restitution is excluded and reimbursement of interim interest may not be demanded.

Section 814

Knowledge of non-culpability

Restitution of efforts provided for the purpose of fulfilling an obligation may not be demanded if the party making the efforts knew that he was not obliged to do so or if the efforts corresponded to a moral duty or considerations of decency.

Section 815

Failure of results to occur

Demand for restitution for failure of intended results of an effort to occur is excluded if there was never any possibility for the results to occur and the party making the efforts knew this or if that party prevented those results from occurring contrary to good faith.

Section 816

Disposition by an unauthorised party

(1) Where an unauthorised party disposes of an item with effect in relation to the authorised party, then he is obliged to make restitution of what he gains by such disposal to the authorised party. Where disposal has been gratuitous, then the same duty applies to anyone directly gaining a legal advantage due to such disposal.

(2) If payment has been made to an unauthorised party that is effective in relation to the authorised party, then the unauthorised party is under a duty to make restitution of what has been paid.

Section 817

Breach of law or public policy

Where the purpose of payment was determined such that the recipient by accepting it was breaching a legal prohibition or breaching public policy, then the recipient is obliged to make restitution. Demand for restitution is excluded if the party paying was likewise guilty of such a breach, unless the payment consisted of entering into an obligation; restitution may not be demanded of anything paid in fulfilment of such an obligation.

Section 818

Scope of the claim to enrichment

(1) The duty to make restitution extends to benefits derived as well as to whatever the recipient acquires due to the right derived or in compensation for destruction, damage or deprivation of the item obtained.

(2) If restitution is not possible due to the nature of the benefit obtained or if the recipient is for another reason unable to make restitution, then he must compensate for its value.

(3) The liability to undertake restitution or to compensate the value is excluded to the extent that the recipient is no longer enriched.

(4) The recipient is liable under the general provisions of law from onset of action pending.

Section 819

Heightened liability for knowledge and for breaches of law or public policy

(1) Where the recipient knew at the time of receipt of flaws in the legal basis or if he should later learn of them, then he is obliged to make restitution from the moment of receipt or from having learned of the flaws to make restitution as if the claim for restitution had been pending from that time on.

(2) If the recipient by accepting the payment breaches a statutory prohibition or public policy, then he is likewise under the same obligation from receipt of payment onwards.

Section 820

Heightened liability in case of uncertainty about results

(1) Where the payment sought to produce results the occurrence of which, according to the contents of the legal transaction, were regarded as uncertain, then the recipient is as much under a duty for restitution if the results do not occur, as he would be if the claim for restitution had been pending at the time of receipt. The same applies if payment for a legal reason, the lapse of which was regarded as possible according to the contents of the legal transaction, has been made and the legal grounds lapse.

(2) The recipient must only pay interest from the moment onwards when he learns that the results have not occurred or that the legal grounds have lapsed; he is not obliged to make restitution for benefits to the extent that he is no longer enriched at that time.

Section 821

Enrichment objection

Anyone entering into an obligation without legal grounds to do so may also refuse fulfilment if the claim to release from the obligation is time-barred.

Section 822

Third parties restitution duty

If the recipient should bestow the gains on a third party at no charge, then that third party is obliged to make restitution as if he had received the bestowal from the creditor without legal grounds, to the extent that as a result of this the recipients duty to make restitution of his enrichment is excluded.

Title 27

Tortious acts

Section 823

Liability in damages

(1) Anyone intentionally or negligently trespassing, contrary to law, on the life, body, health, freedom, property or any other right of another party shall be liable for the damage thus incurred to that other party.

(2) The same duty affects anyone breaching a law aiming to protect another party. If, according to the contents of such law, a breach thereof is also possible without culpability, then liability in damages only occurs in case of culpability.

Section 824

Jeopardising credit

(1) Anyone falsely stating or spreading information that can jeopardise another party's credit or to produce other disadvantages for his business or progress shall be liable for the damage thus incurred, even in cases where he is not aware of such falsity but should have been aware of it.

(2) The party making a communication without knowing that it is untrue is not liable in damages if he or the recipient of the communication has a legitimate interest in it.

Section 825

Prompting sexual acts

Anyone prompting another person to undertake or acquiesce in sexual acts by means of deceptions, threat or abuse of a dependency relationship is liable to him for the resulting damage incurred.

Section 826

Intentional damaging in breach of public policy

Anyone intentionally inflicting damage on another person in a manner contra bonos mores is liable to the other party for damages.

Section 827

Exclusion and reduction of responsibility

Anyone who in an unconscious state or in a state of pathological disturbance of mental activity precluding free determination of will inflicts damage on another person is not responsible for such damage. Where he has temporarily inflicted such a state upon himself with intoxicating beverages or similar agents, he is then responsible for such damages, caused contrary to law in such a state, in the same way as if he were responsible because of negligence; responsibility does not ensue if he got into such a state through no fault of his own.

Section 828

Minors

(1) Anyone who has not reached the age of seven is not responsible for damages caused to another party.

(2) Anyone who has reached the age of seven but not the age of ten is not responsible for damages that he inflicts on another party in an accident with a motor vehicle, a rail-bound train or a suspension train. This does not apply if he intentionally caused the injury.

(3) Anyone who has not yet reached the age of eighteen is, where his responsibility is not excluded under subsection (1) or (2), not responsible for damages inflicted on another person if, when committing the damaging act, does not have the insights required to recognise his responsibility.

Section 829

Liability in damages for reasons of equity

Anyone not responsible for damages he caused in the instances cited in sections 823 to 826 for reasons cited in sections 827 and 828, must nonetheless compensate the damages, unless damage compensation cannot be obtained from a third party under a duty to supervise, to the extent that in the circumstances equity, including without limitation the circumstances of the parties involved, requires compensation and he is

not deprived of the resources needed for reasonable maintenance as well as meeting his statutory maintenance duties.

Section 830

Co-perpetrators and parties involved

(1) Where several parties have caused damage by means of a jointly committed tortious act, then each of them is responsible for said damages. The same applies if it can not be established who of several involved parties caused the damage with his actions.

(2) Instigators and accomplices are equated with co-perpetrators.

Section 831

Liability for vicarious agents

(1) Anyone using another person to perform a task is liable for the damage that the other has inflicted contrary to law on a third party when carrying out assistance. Liability in damages does not apply if the principal, when selecting the party deployed and, provided he was to procure supplies or equipment or to manage the business activity, observes the diligence required in business in procurement or management or if the damage would still have occurred with the application of such diligence.

(2) The same responsibility affects anyone assuming the performance of the business cited in subsection (1) sentence 2 by contract with the principal.

Section 832

Liability of those with a duty to supervise

(1) Anyone obliged by law to conduct supervision over a person requiring supervision due to age or physical or mental condition is liable for damage inflicted on a third party by that person contrary to law. Liability in damages does not apply if he is adequate in his duty to supervise or if the damage would likewise have been caused in case of proper conduct of supervision.

(2) The same responsibility affects anyone who assumes conduct of supervision by means of a contract.

Section 833

Liability of animal keepers

Where a human being is killed by an animal or where a human beings body or health is injured by an animal or where a thing is damaged by an animal, then that party that keeps the animal is liable in damages to the aggrieved party for damage done. Liability in damages does not apply if the damage is caused by a domestic animal intended to serve the profession, business or maintenance of the keeper of the animal and either the keeper of the animal in supervising the animal has observed the diligence required in contacts or if the damage would likewise have occurred even if such diligence had been applied.

Section 834

Liability of the animal minder

Anyone assuming by contract supervision of the animal for the keeper of the animal is responsible for the damage inflicted by the animal on a third party in the manner cited in section 833. The responsibility does not apply if in conducting supervision the diligence required in contacts has

been observed and if the damage would likewise have occurred even if such diligence had been applied.

Section 835

(repealed)

Section 836

Liability of the owner of the piece of land

(1) Where a human being is killed or suffers injuries to body or health or where a thing is damaged due to the collapse of a building or any other structure attached to a piece of land or due to the severing of parts of the building or structure, then the possessor of the piece of land is liable in damages to the aggrieved party for damage resulting from this, provided 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 the diligence required in contacts for the purpose of avoiding danger.

(2) A previous possessor of the piece of land is responsible for the damage if the collapse or severing occurs within one year after he vacated possession, unless he during his period of possession observed the diligence required in contacts or if the later possessor would have been able to avoid the danger by observing such diligence.

(3) Possessor within the meaning of these provisions is the owner-occupier.

Section 837

Liability of the building possessor

If anyone possesses on another party's piece of land and in the exercise of his right a building or another structure, then the responsibility stipulated in section 836 applies to him instead of the possessor of the piece of land.

Section 838

Liability of the party with a duty to upkeep of the building

Anyone assuming for the possessor upkeep of a building or a structure attached to a piece of land or who must maintain such building or such structure by virtue of a right of use to which he is entitled, is responsible in the same way as the possessor for damage caused by the collapse or severing of parts of the building.

Section 839

Liability in case of breach of official duties

(1) Where a public official intentionally or negligently breaches the official duties incumbent upon him in relation to a third party, then he must compensate the third party for damage incurred thereby. Where the public official is only responsible because of negligence, then he may only be held liable where the aggrieved party is not able to obtain compensation in any other way.

(2) Where a public official breaches his official duties with a judgment in a legal case, then he is only responsible for any damage incurred thereby if the breach of duty consists of a criminal offence. This provision is not applicable to refusal or delay in breach of duty in exercising a public function.

(3) Liability for damage does not arise where the aggrieved party has

intentionally or negligently omitted to avert the damage by having recourse to appeal.

Section 839a

Liability of the court appointed expert

(1) Where an expert appointed by the court intentionally or by gross negligence submits a false expert opinion, then he is liable for damage incurred by a party to the proceedings due to a court decision based on that expert opinion.

(2) Section 839 (3) applies with the necessary modifications.

Section 840

Liability of several parties

(1) Where several parties are each responsible for damages incurred through a tortious act they are jointly and severally liable.

(2) If besides the party liable for damage caused by another party under sections 831 and 832 the other party is likewise responsible for the damages, then in their internal relationship the other is obliged alone, in the case cited in section 829 the party with the duty to supervise is obliged alone.

(3) If besides the party liable in damages 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 a public officials liability

Where a public official who by virtue of his public office must appoint a third party for management for a third party or must supervise or participate in it by ratifying legal transactions is liable together with that other party for damage caused by the latter, then the other party is solely liable in their internal relationship.

Section 842

Scope of liability for damage when a person is injured

Liability for damage due to a tortious act committed against the person extends as well to the disadvantages the tortious act produces for the aggrieved party's business or progress.

Section 843

Annuity or lump sum settlement

(1) Where the aggrieved party's earning capacity is eliminated or reduced due to an injury to body or health or where his needs are thereby increased, then the aggrieved party must be paid damages by means of the establishment of an annuity.

(2) The provisions in section 760 apply to the annuity. Whether the party liable in damages must provide security and of what kind and for what amount is determined by the circumstances of the case.

(3) In lieu of the annuity the aggrieved party may demand a lump sum settlement if there is an important reason for doing so.

(4) The claim is not excluded by the fact that another party must provide the aggrieved party with maintenance.

Section 844

Third party compensation claims where death is caused

(1) In cases where death is caused the party liable in damages must compensate the party under a duty to pay for funeral expenses for such expenses.

(2) Where the person killed at the time of injury stood in a relationship to a third party on the basis of which he was obliged by virtue of law to provide maintenance for that person or could be so obliged and where the third party due to the death caused has been deprived of his right to maintenance, then the party liable in damages must pay the third party damages by setting up an annuity to the extent that the person killed would have been obliged to provide maintenance for the assumed 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 was not yet born.

Section 845

Compensation claims for lost services

In the case of causing death, injuries to body or health as well as in cases of deprivation of liberty the party liable in damages must pay a third party compensation for loss of services by setting up an annuity if the aggrieved party by virtue of law was under a duty to that third party for the performance of services in the latter's household or business. The provisions of section 843 (2) to (4) apply with the necessary modifications.

Section 846

Co-culpability of the aggrieved party

In the cases cited in sections 844 and 845, where in causing the damage suffered by the third party culpability of the aggrieved party contributed, then the provisions of section 254 are applicable to the claim of the third party.

Section 847

(repealed)

Section 848

Liability for accidental happening in depriving of a thing

Anyone obliged to return a thing of which he has deprived another party by means of a tortious act is likewise responsible for accidental loss, for any 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 such deprivation.

Section 849

Interest on the compensation amount

Where due to the deprivation of a thing the value, or due to damage to it, the reduced value must be compensated for, then the aggrieved party may demand interest on the amount to be compensated from that moment onwards that is used as a base for determining its value.

Section 850

Compensation for outlays

If the party liable for restitution of a thing deprived of has made outlays for the thing, then he is entitled in relation to the aggrieved party to such rights as the possessor has for outlays in relation to the owner.

Section 851

Compensation payment to unauthorised parties

Where the party liable in damages for deprivation of or damage to a movable thing pays compensation to the party in whose possession the thing was at the time of deprivation or damage, then he is released through payment even if a third party was the owner of the thing or had other rights to it, unless he knew of the third party's right or was unaware of it due to gross negligence.

Section 852

Claim for restitution after occurrence of limitation

If as a result of a tortious act the party liable in damages obtains something at the expense of the aggrieved party, then he is obliged to make restitution under the provisions on restitution of unjust enrichment after the limitation of the claim to compensation of damage caused by a tortious act. This claim is time-barred ten years after it arises or, irrespective of the date on which it arises, 30 years from the date on which the injurious act was committed or on which the other event causing the loss occurred.

Section 853

Objection on account of fraud

Where someone obtains a claim against the aggrieved party by committing a tortious act, then the aggrieved party may refuse fulfilment even if the claim to cancellation of the claim is by then time-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 is 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 him.

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 interference. 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

Defences of the taker 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 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 non-appealable 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.

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 living space or other premises.

Section 866

Co-possession

If more than one person has co-possession of property, there is 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. If 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 depository or in a similar relationship by virtue of which he is, as against another, entitled to possession or obliged to have possession for a period of time, the other person is also 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 party on the occurrence of the change in title and the registration of the change in title 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 party an approval of registration that satisfies the provisions of the Land Register Act.

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 content 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 bound 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, which complies with the provisions of the Land Register Act.

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. If 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 content 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 become binding on 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 alienated, 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

If 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 content 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 insolvency administrator.

(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 as against 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 prima facie evidence to be presented of an endangerment of the claim to be secured.

(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

If the person whose claim is secured by the priority notice is unknown, he and 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. On the issue of the judgment of exclusion, 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 alienation.

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 accuracy 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. If 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 as against the acquirer only if it is apparent from the Land Register or known to the acquirer.

(2) If 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 another result.

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 prima facie evidence to be presented of an endangerment of the right of the person objecting.

Section 900

Acquisition by prescription following registration

(1) A person who is registered in the Land Register as the owner of a plot of land 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 movable property 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

If 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 as against 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. If 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

Installations threatening danger

(1) The owner of a plot of land may require that on the neighbouring plot of land no installations 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. If an installation satisfies the provisions of *Land* law that prescribe a specific distance from the boundary or other protective measures, the removal of the installation may be required only if the impermissible influence actually occurs.

(2) Trees and bushes are not installations 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 it 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 impair 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, reimburses 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 judgment.

(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 sale 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 alienation of one part is equivalent to the alienation of one of several 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 marks and, if a boundary mark 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 another result.

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 community.

Section 923

Boundary tree

(1) If there is a tree standing on the boundary, the fruits and, if the tree is felled, the tree itself belongs 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 mark and in view of the circumstances cannot be replaced by another appropriate boundary mark.

(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 alienation 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 alienation is intended to extend to the accessories.

(2) If the acquirer, on the basis of the alienation, 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 movable property by prescription. If 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 judgment of exclusion obtains ownership by having himself registered in the Land Register as owner.

(3) If, before the judgment of exclusion 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 judgment 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 whose territory 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 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 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 alienation 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 an alienation 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

If a ship alienated under section 929a does not belong to the alienor, 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; if a share in a ship is the subject of the alienation, delivery is replaced by the granting of joint possession of the ship.

Section 933

Good faith acquisition on constructive delivery

If 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

If 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 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 alienation 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 alienation.

(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

Prescription

Section 937

Requirements, exclusion in 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) 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 without his will 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 expenses incurred and on the right of removal of an installation are unaffected. In the cases of section 946 and 947, the removal under the provisions applying to the right of removal of the possessor as against 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 ownership of a certificate of indebtedness issued with regard to a claim belongs to the creditor. 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, rent 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 result.

Section 954

Acquisition by person entitled in rem

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 defect in title 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) If 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 the products or other components of a thing belong after separation.

Section 957

Permission by the person not entitled

The provisions of section 956 apply even if 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 defect in title 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) If 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 provided for it.

Section 961

Loss of ownership of bee swarms

If a swarm of bees moves out, 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 to keep in safe custody

(1) The finder has a duty to keep the thing in safe custody.

(2) If it is to be feared that the thing will decay, or if keeping the thing in safe custody entails 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 liable 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 as against 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 ascertaining a person entitled to receive, incurs expenses which he may in the circumstances regard as necessary, he may require reimbursement from the person entitled to receive.

Section 971

Finders 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 expenses 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 local authority

(1) If the finder waives as against the competent authority the right to acquire the ownership of the thing, the finder's right passes to the local authority 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 local authority 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 section 973 and 974 from the finder, in the cases of section 976 from the local authority 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 local authority, 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 expenses, 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] and the local authorities may have the auction carried out by one of their civil servants.

(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 it is to be feared that the thing will decay, or if keeping the thing in safe custody entails disproportionately great 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*], in the case of local authorities and local authority transport agencies fall to the local authority, 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 [*Bundesrat*], and in the other cases under the provisions issued by the central authority of the [*state*].

Section 983

Undeliverable things in the possession of authorities

If 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 return

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 as against 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 challenge the new owner with 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 as against 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 from the date of the acquisition on 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 case of indirect possession

(1) If 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 from the date of the acquisition on 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 proceeds 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 provisions of section 101.

Section 994

Necessary expenses

(1) The possessor may require from the owner reimbursement of the necessary expenses incurred for 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, incurs necessary expenses, the duty of the owner to reimburse is governed by the provisions on agency without specific authorisation.

Section 995

Charges

The necessary expenses 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 expenses

For expenses that are not necessary, 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 expense 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 returned, 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 relate to proper management and do not exceed the value of these fruits.

Section 999

Reimbursement of expenses of predecessor in title

(1) The possessor may require reimbursement for the expenses of a previous possessor whose successor in title he is in 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 expenses 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 expenses 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 expenses

The possessor may assert the claim to reimbursement of expenses only if the owner regains possession of the thing or ratifies the expenses. Until the expenses 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 expenses

(1) If the possessor returns the thing to the owner, the claim to reimbursement of expenses 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 expenses.

(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 expenses. After the expiry of the period, the possessor is entitled to seek satisfaction out of the thing under the provisions on the sale of a pledge, 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) If the owner denies the claim before the expiry of the period, the possessor may satisfy himself out of the thing only when, after the amount of the expenses 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 out of 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 as against 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) If 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 community 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 to 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) If 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

If 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) If 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 provisions of section 892 do not apply.

Section 1029

Protection of possession of the lawful possessor

If 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

Extension 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

Grant 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 installations 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 amount 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

If 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 stock is the subject of usufruct, 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 expenses

(1) If the usufructuary incurs expenses for 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 material 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 alienation of leased residential premises 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 claims for compensation

The claims for compensation of the owner for alterations or deterioration of the thing and the claims of the usufructuary to reimbursement of expenses or to permission to remove an installation are subject to a six-month limitation period. The provisions of section 548 ((1) sentences 2 and 3 and 548 (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. If 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. If another enterprise operated by a legal person or a part of such an enterprise is transferred to another, a usufruct may also be assigned 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 is binding on the courts and the administrative authorities. The *Land* governments shall establish the competent *Land* authority by statutory order. The *Land* governments may delegate the authorisation by statutory order 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 as against 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 alienation of leased residential premises 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 things

In order to terminate usufruct in a movable thing by legal transaction, 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 community of the co-owners with regard to the administration of the thing and the manner of its use.

(2) The dissolution of the community may be required only jointly by the co-owners and the usufructuary.

(3) If the community is dissolved, the usufructuary has a right to the usufruct in the items that take the place of the share.

Section 1067

Usufruct in consumable things

(1) If consumable things are the subject of the usufruct, the usufructuary becomes the owner of the things; after the termination of the usufruct, he must reimburse the grantor the value that the things had at the time of the grant. 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 provide otherwise.

Section 1069

Grant

- (1) The grant of the usufruct in a right is governed by the provisions applying to the transfer of the right.
- (2) No usufruct may be granted 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) If the exercise of the usufruct is transferred to an administrator under section 1052, the transfer does not take effect as against 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. The 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 termination 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 section 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 is 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 collecting

If 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 on 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 appertaining to the instrument belongs to the usufructuary and the owner jointly. The possession of the interest, annuity or dividend coupons 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

Grant 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 items 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, to the extent that 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 as against the usufructuary to satisfy the creditor.

(2) The usufructuary may satisfy the obligation by providing the object owed. If 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 an alienation.

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 as against 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 section 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 installations 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 installations and facilities intended for the common use of the occupants.

Division 5

Right of pre-emption

Section 1094

Statutory content of the real right of pre-emption

(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 pre-emption against the owner.

(2) The right of pre-emption may also be granted 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 pre-emption only if it consists of the share of a joint owner.

Section 1096

Extension to accessories

The right of pre-emption may be extended to the accessories which are

sold with the plot of land. In case of doubt, it is to be presumed that the right of pre-emption is to be extended to these accessories.

Section 1097

Grant for one or more cases of sale

The right of pre-emption is restricted to the case of sale by the owner who owns the plot of land at the time of the grant, or by his heir; however, it may also be granted for several or for all cases of sale.

Section 1098

Effect of a right of pre-emption

(1) The legal relationship between the person entitled and the person bound is governed by the provisions of sections 463 to 473. The right of pre-emption may also be exercised, if the plot of land is sold by the trustee in insolvency by private agreement.

(2) The right of pre-emption has, as against third parties, the effect of a priority notice entered to secure the claim arising from the exercise of the right to transfer the ownership.

(3) If a legal person or a partnership having legal personality is entitled to a right of pre-emption based on 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 manner as the person bound, notify the person entitled of the content of the purchase agreement with the effect specified in section 469 (2).

(2) The person bound must notify the new owner as soon as the exercise of the right of pre-emption has taken place or is excluded.

Section 1100

Rights of the purchaser

The new owner may, if he is the purchaser or a legal successor 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 bound and the purchaser, insofar as it is settled, is paid to him. If the person entitled achieves registration as the owner, the former owner may demand from him the payment of the settled purchase price against the delivery of the plot of land.

Section 1101

Release of the person entitled

To the extent that the person entitled is required to pay the purchase price to the purchaser or his legal successor in accordance with section 1100, he is released from his obligation to pay the purchase price owed under the pre-emption.

Section 1102

Release of the purchaser

If the purchaser or his legal successor loses the ownership as a result of

the exercise of the right of pre-emption, 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 pre-emption

(1) A right of pre-emption existing in favour of the current owner of a plot of land may not be severed from the ownership of this plot of land.

(2) A right of pre-emption existing in favour of a specific person may not be connected with the ownership of a plot of land.

Section 1104

Exclusion of an unknown entitled person

(1) If the person entitled is unknown, he may be excluded with his right by way of a public notice procedure, if the requirements for the exclusion of a mortgage creditor set out in section 1170 are fulfilled. The right of pre-emption is extinguished upon the passing of a judgement of exclusion.

(2) These provisions are not applicable to a right of pre-emption which exists in favour of the current owner of a plot of land.

Division 6

Charges on land

Section 1105

Statutory content of the charge on land

(1) A plot of land may be encumbered in such a manner that recurring performances are to be rendered 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 content of the charge on land that the performances to be rendered are adjusted to changed circumstances without notice if, based on the requirements set out 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 of the share of a joint owner.

Section 1107

Individual performances

The provisions applicable to the interest on a mortgage claim apply with the necessary modifications to the individual performances.

Section 1108

Personal liability of the owner

(1) The owner is also personally liable for the payments falling 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 for the individual parts. If the performance is divisible, the shares of the owners are determined according to the relation 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 manner that it does not become more onerous for the owner of the encumbered plot of land.

(2) The person entitled may determine that the right shall be linked only to one of the parts. This determination is to be made before 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 linked to the part which he retains.

(3) If the charge on land is beneficial to only one of the parts, it remains linked 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 severed 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 the claim for the individual performance is not transferable, the right may not be alienated or encumbered.

Section 1112

Exclusion of an unknown entitled person

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 charge

Title 1

Mortgage

Section 1113

Statutory content of the mortgage

(1) A plot of land may be encumbered in such a manner that a certain sum of money is to be paid out of the land to the person in whose favour the encumbrance is created for the satisfaction of a claim on the land to which he is entitled (mortgage).

(2) The mortgage may also be granted 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 of the share of a joint owner, except in the cases set out in section 3 (6) of the Land Register Act.

Section 1115

Registration of the mortgage

(1) Upon the registration of the mortgage, the creditor, the amount of the claim and, if the claim bears interest, the rate of interest, if other supplementary payments are to be made, their amount must be stated in the Land Register; in other respects, reference may be made to the consent to the registration for a description of the claim.

(2) Upon the registration of the mortgage for a loan by a credit institution, the by-laws of which have been publicly disclosed by the public authority responsible, reference to the by-laws is sufficient for the description of the supplementary payments, except for the interest, to be made in accordance with the by-laws.

Section 1116

Certificated and uncertificated mortgage

(1) A mortgage certificate shall be issued on the mortgage.

(2) The issuance of the certificate may be excluded. This exclusion may also take place subsequently. The agreement of the creditor and of the owner as well as registration in the Land Register are required for the exclusion; the provisions of section 873 (2) and of sections 876 and 878 apply with the necessary modifications.

(3) The exclusion of the issuance of the certificate may be cancelled; the cancellation takes place in the same manner as the exclusion.

Section 1117

Acquisition of the certificated mortgage

(1) Unless the issuance of a mortgage certificate is not excluded, the creditor acquires the mortgage only when the certificate is delivered to him 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 have the authority to receive the certificate from the Land Registry.

(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 virtue of the mortgage, the plot of land is also liable for the legal interest on the claim and for the costs of calling it in and of the pursuit of rights for the purpose of obtaining satisfaction out of the plot of land.

Section 1119

Extension of liability for interest

(1) If the claim bears no interest or if the interest rate is less than five

percent, the mortgage may, without the approval of the persons with equal or lower ranking claims, be extended so that the plot of land is liable for interest not exceeding five percent.

(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, upon separation in accordance with sections 954 to 957, they passed into the ownership of a person other than the owner or the possessor claiming ownership of the plot of land, as well as to the accessories of the plot of land with the exception of accessory items which have not passed into the ownership of the owner of the plot of land.

Section 1121

Release from liability through alienation and removal

(1) Products and other components of the plot of land as well as accessory items are released from liability, if they are alienated and removed from the plot of land before they have been seized for the benefit of the creditor.

(2) If the alienation takes place before the removal, the purchaser may not plead as against the creditor that he was in good faith in respect of the mortgage. If the purchaser removes the thing from the plot of land, a seizure effected prior to the removal is effective against him only if he was not in good faith in respect of the seizure upon removal.

Section 1122

Release from liability without alienation

(1) If the products or components have, within the limits of proper management, been separated from the plot of land, their liability is extinguished even without alienation if they were removed from the plot of land prior to seizure, unless the removal takes place for a temporary purpose.

(2) Accessory items are released from liability without alienation if their property as accessories is eliminated, within the limits of proper management, before they are seized.

Section 1123

Extension to the claim for rent or for usufructuary rent

(1) If the plot of land is given in 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 has been 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 in which the attachment takes place; if the attachment is made 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 in respect 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 any other manner prior to the attachment, the disposition is effective as against the mortgage creditor. If the disposition consists of the assignment of the claim to a third party, the liability for the claim is extinguished; if a third person acquires a right to the claim, it has priority over the mortgage.

(2) The disposition is ineffective as against the mortgage creditor to the extent that it relates to the rent or usufructuary rent for a period later than the calendar month in which the attachment is effected; however, if the attachment is made after the fifteenth day of the month, the disposition is effective to the extent that it relates to the rent or usufructuary rent for the following calendar month.

(3) The assignment of the claim to a third person is equivalent to the alienation of the plot of land without the claim.

Section 1125

Set-off against rent or usufructuary rent

To the extent that a collection of the rent or usufructuary rent is ineffective as against the mortgage creditor, the lessee or the usufructuary lessee may not set off against the mortgage creditor a claim due to the lessee or usufructuary lessee from the lessor or the usufructuary lessor.

Section 1126

Extension to recurring performances

If a right to recurring performances is connected with the ownership of the plot of land, the mortgage extends to the claims for these performances. The provisions of section 1123 (2) sentence 1, section 1124 (1) and (3) and of section 1125 apply with the necessary modifications. A disposition in respect of a claim for a performance made before the attachment, which first becomes due three months after the attachment, is ineffective as against the mortgage creditor.

Section 1127

Extension to the insurance claim

(1) If objects which are subject to the mortgage are covered by insurance for the owner or the possessor claiming ownership, the mortgage extends to the claim against the insurer.

(2) Liability for the claim against the insurer is extinguished, if the insured object is replaced or a substitute is provided for it.

Section 1128

Insurance on buildings

(1) If a building is insured, the insurer may pay the insured sum to the insured with effect as against the mortgage creditor, only once he or the insured has notified the mortgage creditor of the occurrence of the damage and if one month has passed since the receipt of the notification. The mortgage creditor may, before the expiry of this period, raise an objection to the insurer against the payment. The notification may be omitted, if it is impractical; in this case the month is calculated from the time when the insured sum becomes due.

(2) If the mortgage creditor has notified the insurer of his mortgage, the insurer may pay to the insured, with effect as against the mortgage creditor, only if the mortgage creditor has given his approval in writing to the payment.

(3) In other respects, the provisions applicable to a pledged claim apply; the insurer may not, however, raise as a defence 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

Clause on replacement

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 as against 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 pursuant to section 890 (2), the mortgages existing 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 several plots 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 out of each plot of land for the whole or for a part.

(2) The creditor is entitled to distribute the amount of the claim between the individual plots of land in such a manner that each plot of land is liable only for the allotted amount. The provisions of sections 875, 876 and 878 apply with the necessary modifications to the distribution.

Section 1133

Endangering 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 for the elimination of the danger. After the expiry of the period, the creditor is entitled to seek immediate satisfaction out of the plot of land, if the danger has not been eliminated by the improvement of the plot of land or by the creation of a mortgage in some other manner. If the claim bears no interest, and is not yet due, the creditor is entitled only to the amount which, with the addition of the legal interest for the period from the payment until the due date, equals the amount of the claim.

Section 1134

Application for an injunction

(1) If the owner or a third person acts on the plot of land in such a manner that a deterioration of the plot of land endangering the security of the mortgage is feared, the creditor may seek a prohibitory injunction.

(2) If the act is initiated by the owner, the court shall, upon application by the creditor, order the taking of the measures required to avert the danger. The same applies if the deterioration is to be feared because the owner fails to take the necessary precautions against actions of third persons 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 accessory items, to which the mortgage extends, deteriorate or are removed from the plot of land contrary to the principles of proper management.

Section 1136

Restraint on disposition by legal transaction

An agreement, by means of which the owner obliges himself as against 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 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, the owner may not plead that the heir has only limited liability for the debt.

(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 apply also to the mortgage, taking into consideration the claim and the defences available to the owner in accordance with section 1137.

Section 1139

Objection in case of an uncertificated mortgage for a loan

If upon the creation of a mortgage for a loan, the issuance of a mortgage certificate was excluded, the application of the owner to the Land Registry, provided that it is made before the expiry of one month after the registration of the mortgage, suffices to register an objection which is based on the non-delivery of the loan. If the objection is registered within one month, 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

To the extent that the inaccuracy of the Land Register appears from the mortgage certificate or from a note on the certificate, invoking the provisions of sections 892 and 893 is excluded. An objection to the accuracy of the Land Register, which appears from the certificate or from a note on the certificate, is equivalent to an objection entered in the Land Register.

Section 1141

Notice of termination of the mortgage

(1) If the maturity of the claim is contingent on giving notice, the notice of termination is effective in respect of the mortgage only if it is declared by the creditor to the owner or by the owner to the creditor. The person registered as owner in the Land Register is deemed to be the owner as far as the creditor is concerned.

(2) If the owner has no residence within the country or the requirements of section 132 (2) have been fulfilled, the local court [Amtsgericht], within the district of which the plot of land is located, shall appoint for the owner, upon application by the creditor, a representative to whom the notice of the creditor can be served.

Section 1142

Owners right of satisfaction

(1) The owner is entitled to satisfy the creditor if the claim against him has become 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 the claim, to the extent that he satisfies the creditor, passes to him. The provisions of section 774 (1), applicable to a surety, apply with the necessary modifications.

(2) If there is a blanket mortgage for the claim, the provisions of section 1173 apply to it.

Section 1144

Delivery of documents

The owner may, against satisfaction of the creditor, demand the delivery of the mortgage certificate and the other documents which are required for the rectification of the Land Register or for the deletion of the mortgage.

Section 1145

Partial satisfaction

(1) If the owner only partially satisfies the creditor, he is not entitled to demand the delivery of the mortgage certificate. The creditor is obliged to note the partial satisfaction on the certificate and to present the certificate to the Land Registry for the purpose of the rectification 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 will fall due later than in the calendar quarter in which the creditor is satisfied or in the following quarter. The provision does not apply to costs for which the plot of land is liable pursuant to section 1118.

Section 1146

Default interest

If the requirements under which a debtor is in default are fulfilled in respect of the owner, the creditor is entitled to default interest out of the

plot of land.

Section 1147

Satisfaction by execution

The satisfaction of the creditor out of the plot of land and out of the objects to which the mortgage extends takes place by way of execution.

Section 1148

Fiction of ownership

In the pursuit of the right arising under the mortgage, the person who is registered as owner in the Land Register is, as far as the creditor is concerned, deemed to be the owner. The right of the unregistered owner, to assert the objections which he is entitled to enter against the mortgage, remains unaffected.

Section 1149

Prohibited agreements on satisfaction

The owner may not, as long as the claim against him has not fallen due, grant the creditor the right, for the purpose of satisfaction, to demand the transfer of the ownership of the plot of land or to effect the alienation of the plot of land in any manner other than by execution.

Section 1150

Right of redemption of a third party

If the creditor demands satisfaction out of 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 priority of the partial mortgages among themselves.

Section 1152

Partial mortgage certificate

In case of the division of the claim, a partial mortgage certificate may, unless the issuance of a mortgage certificate is not excluded, be issued for each part; the approval of the owner of the plot of land is not required. The partial mortgage certificate replaces the previous certificate for the part to which it relates.

Section 1153

Transfer of mortgage and claim

(1) With the transfer of the claim the mortgage is transferred to the new creditor.

(2) The claim may not be transferred without the mortgage, nor the mortgage without the claim.

Section 1154

Assignment of the claim

(1) For the assignment of the claim, it is necessary to submit the declaration of assignment in writing and to hand over the mortgage

certificate; the provision of section 1117 applies. The previous creditor shall, upon demand by the new creditor, have the declaration of assignment notarially certified at his expense.

(2) Registration of the assignment in the Land Register may replace the written form of the declaration of assignment.

(3) If the issuance 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 ensues from a connected series of notarially certified declarations of assignment leading back to a registered creditor, the provisions of sections 891 to 899 apply in the same manner as if the holder of the certificate were registered as creditor in the Land Register. A notarially certified declaration of assignment is equivalent to a judicial transfer order and a notarially certified acknowledgement of an assignment of the claim effected by virtue of the law.

Section 1156

Legal relationship between the owner and the new creditor

The provisions of sections 406 to 408 applicable to the assignment of the claim do not apply to the legal relationship between the owner and the new creditor in respect of the mortgage. The new creditor must, however, permit against himself a notice of the owner served on the previous creditor, unless at the time of the notice the assignment is known to the owner or is registered in the Land Register.

Section 1157

Continuance of defences against the mortgage

A defence which the owner is entitled to raise against the mortgage based on the legal relationship existing between him and the previous creditor may also be asserted as against 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 which fall due no later than in the calendar quarter in which the owner gains knowledge of the assignment, or in the following quarter, the legal relationship between the owner and the new creditor is governed by the provisions of sections 406 to 408; the creditor may not invoke the provisions of 892 against the objections which 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 assignment and the legal relationship between the owner and the new creditor is determined in accordance with the general provisions applicable to the assignment 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 issuance of a mortgage certificate is not excluded, if the creditor does not present the certificate; if the creditor is not registered 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 required 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 concerning the mortgage certificate

If the mortgage certificate has been mislaid or destroyed, it may be declared invalid by means of the public notice procedure.

Section 1163

Owners mortgage

(1) If the claim for which the mortgage is created fails to come into existence, the mortgage belongs to the owner. If the claim is extinguished, the owner acquires the mortgage.

(2) A mortgage, in respect of which the issuance 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 legal predecessor of the owner. If the debtor is to be compensated only partially, the owner may not enforce the mortgage, insofar as it has passed to him, to the detriment of the mortgage of the debtor.

(2) The consolidation of the claim and debt in one person is equivalent to the satisfaction of the creditor.

Section 1165

Discharge of the debtor

If the creditor waives the mortgage, or cancels it in accordance with section 1183, or grants priority to another right, the personal debtor is discharged insofar as he, without this disposition, might have obtained compensation from the mortgage in accordance with section 1164.

Section 1166

Notification of the debtor

If the personal debtor is entitled to demand compensation from the owner in case he satisfies the creditor, he may, if the creditor proceeds with a compulsory auction of the plot of land without notifying him without undue delay, refuse to satisfy the creditor for a loss at the compulsory auction insofar as he suffers damage as a result of the omission of notification. The notification may be omitted, if it is impractical.

Section 1167

Delivery of rectification documents

If the personal debtor, in case he satisfies the debtor, acquires the mortgage, or if, in the event of satisfaction, he has any other legal interest in a rectification of the Land Register, he is entitled to the rights set out in sections 1144 and 1145.

Section 1168

Waiver of the mortgage

- (1) If the creditor waives the mortgage, the owner acquires it.
- (2) The waiver must be declared to the Land Registry or to the owner and it requires registration in the Land Register. The provisions of section 875 (2) and of sections 876 and 878 apply with the necessary modifications.
- (3) If the creditor waives the mortgage for a part of the claim, the owner is entitled to the rights set out in section 1145.

Section 1169

Defence with a destructive effect on a right

If the owner is entitled to a defence by means of which the enforcement of the mortgage is permanently excluded, he may demand that the creditor waives the mortgage.

Section 1170

Exclusion of unknown creditors

- (1) If the creditor is unknown, he may be excluded with his right by means of a public notice procedure, if ten years have passed since the last entry in the Land Register referring to the mortgage and if 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 period is determined for payment of the claim, this period does not commence before the expiry of the payment date.
- (2) Upon the issuance of the judgement of exclusion, the owner acquires the mortgage. The mortgage certificate issued for the creditor becomes invalid.

Section 1171

Exclusion by deposit

- (1) The unknown creditor may also be excluded with his right by way of the public notice procedure if the owner is entitled to satisfy the creditor or to give him notice of termination, and deposits the amount of the claim for the creditor by waiving his right to withdraw it. The deposit of interest

is required only if the interest rate is registered in the Land Register; interest for a period preceding the fourth calendar year prior to the issuance of the judgement of exclusion is not required to be deposited.

(2) Upon the issuance of the judgement of exclusion, the creditor is deemed to have been satisfied, unless under the provisions on deposit, satisfaction has not already taken place. 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 issuance of the judgement of exclusion, 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

Owners 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 be allocated to him with this restriction. The value is calculated by deducting the encumbrances which have priority in ranking over 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 remaining plots of land is extinguished. It is equivalent to the satisfaction of the creditor by the owner if the creditor's right is transferred to the owner, or if the claim and debt are consolidated 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 legal predecessor of this owner, the mortgage on the plot of land of this owner also passes to him to the amount of the claim for compensation; it remains with the mortgage on his own plot of land as a blanket mortgage.

Section 1174

Satisfaction by the personal debtor

(1) If the personal debtor satisfies the creditor who is entitled to a blanket mortgage, or if the claim and debt are consolidated in one person for a blanket mortgage, and if the debtor is entitled to demand compensation only from the owner of one of the plots of land or from a legal predecessor 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 part of the amount, the owner must allow this amount to be added to 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 falls to 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 is extinguished on that one.

(2) The same applies if the creditor is excluded with his right in accordance with section 1170.

Section 1176

Owners 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 by virtue of these provisions falls to the owner or one of the owners or to the personal debtor, may not be enforced to the detriment of the mortgage remaining for the creditor.

Section 1177

Owners land charge, owners mortgage

(1) If the mortgage and the ownership become consolidated in one person, without the owner also being entitled to the claim, the mortgage changes into a land charge. Taking into consideration the yield of interest, rate of interest, due date of payment, notice of termination and place of payment, the provisions determined for the claim remain authoritative.

(2) If the owner is also entitled to the claim, his rights from the mortgage are governed, as long as the consolidation exists, by the provisions applicable for a land charge of the owner.

Section 1178

Mortgage for supplementary payments and costs

(1) The mortgage for arrears of interest and other supplementary payments as well as for costs, which are payable to the creditor, is extinguished if it becomes consolidated with the ownership in one person. The extinction does not occur as long as a third person is entitled to a claim for any such performance.

(2) For a waiver of the mortgage for the performance set out in (1), a declaration of the creditor to the owner suffices. As long as a third person is entitled to a claim for such a performance, the approval of the third person is required. The 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

If the owner undertakes as against another to have the mortgage deleted if it becomes consolidated 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 intended:

1. holds a right having equal or lower priority as a mortgage, land charge or annuity charge on the plot of land, or
2. is entitled to be granted another such right or to the transfer of ownership of the plot of land; the claim may also relate to the future or be conditional.

Section 1179a

Claim for deletion in case of third party rights

(1) The creditor of a mortgage may demand of the owner that the latter has a mortgage having higher or equal priority deleted if, at the time of registration of the creditors mortgage, it becomes consolidated with the ownership in one person or such consolidation occurs subsequently. If, after registration of the mortgage preferred under sentence 1, the ownership was passed to another by way of individual succession, each owner is obliged to effect deletion on account of the consolidations existing at the time of his ownership. The claim for deletion is secured in the same manner as if a priority notice had been entered into the Land Register for its security at the same time as the preferred mortgage.

(2) The deletion of a mortgage, which becomes consolidated with the ownership in one person in accordance with section 1163 (1) sentence 1, may not be demanded under subsection (1) unless it appears that the claim to be secured will no longer arise; however, the claim for deletion arises at this point in time also as a result of prior consolidations. A claim under (1) is not constituted by the consolidation of a mortgage with ownership in accordance with section 1163 (2).

(3) If, in case of a preferred mortgage, the requirements under section 1163 are fulfilled but the right of the owner or of his legal successor is not entered in the Land Register, the registered creditor or his legal successor are entitled to demand deletion.

(4) If a mortgage becomes lower ranking, subsections (1) to (3) apply with the necessary modifications to the deletion of the prior or equal-ranking mortgage as a result of the change of priority, provided that the time of registration of the waiver of the right is replaced by the time of the registration of the change of priority.

(5) A mortgage, the creditor of which is entitled to claim its deletion under the above provisions, may contain a provision excluding this claim as the content of the mortgage; the exclusion may be restricted to a specific case of consolidation. The exclusion is to be stated in the Land Register with a description 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 consolidation, reference may be made to the approval for registration in order to name the cases subject thereto. If the exclusion is cancelled, no claims for deletion arise by reason thereof for consolidations which only existed prior to the cancellation.

Section 1179b

Claim for deletion based on ones own right

(1) Whoever is registered in the Land Register as the creditor of a mortgage or is shown 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 becomes consolidated with the ownership in one person or such a consolidation occurs subsequently.

(2) Section 1179a (1) sentences 2 and 3, (2) and (5) applies with the necessary modifications.

Section 1180

Exchange of the claim

(1) The claim, for which the mortgage exists, may be replaced by another claim. The agreement of the creditor and of the owner as well as registration in the Land Register are required to make the alteration; the provisions of section 873 (2) and sections 876 and 878 apply with the necessary modifications.

(2) If the previous mortgage creditor is not entitled to the claim, which

should replace the previous claim, 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 out of the plot of land

- (1) If the creditor is satisfied out of the plot of land, the mortgage is extinguished.
- (2) If the creditor is satisfied out of one of the plots of land encumbered with a blanket mortgage, the other plots of land become free also.
- (3) Satisfaction out of the plot of land is equivalent to satisfaction out of the objects to which the mortgage extends.

Section 1182

Transfer in case of satisfaction out of the blanket mortgage

To the extent that, in the case of a blanket mortgage, the owner of the plot of land out of which the creditor is satisfied, may demand compensation from the owner of one of the other plots of land or from the legal predecessor of this owner, the mortgage on the plot of land of this owner passes to him. However, if the creditor is only partially satisfied, the mortgage may not be enforced to the detriment of the mortgage remaining to the creditor and, if the plot of land is encumbered with an equal or lower ranking right, to the detriment of this right.

Section 1183

Cancellation of the mortgage

For the cancellation of the mortgage by legal transaction, the approval of the owner is required. 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 manner that the creditors right under the mortgage is determined solely by the claim and the creditor may not invoke the registration for the purpose of proving the claim (debt-securing mortgage).
- (2) The mortgage must be designated 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 issuance 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 the holders of equal or lower ranking rights is not required.

Section 1187

Debt-securing mortgage for bearer and to-the-order instruments

Only a debt-securing mortgage can be created for the claim based on a bearer bond, on a bill of exchange or on any other instrument which can be transferred by endorsement. The mortgage is deemed to be a debt-securing mortgage, even if it is not designated 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 the claim based on a bearer bond, the declaration of the owner to the Land Registry that he is creating the mortgage and the registration in the Land Register are sufficient; the provision of section 878 applies.

(2) The exclusion of the creditor with his right in accordance with section 1170 is permitted only if the presentation period named in section 801 has expired. If the bond is presented within the period, or the claim based on the document has been judicially enforced, the exclusion may take place only if limitation has occurred.

Section 1189

Appointment of a representative before the Land Registry

(1) In case of a mortgage of the kind designated in section 1187, a representative may be appointed for the current creditor with the authority to make certain dispositions in respect of the mortgage with effect for and against each subsequent creditor, and to represent the creditor in enforcing the mortgage. Registration in the Land Register is required for the appointment of the representative.

(2) If the owner is entitled to demand from the creditor a disposition which the representative is authorised to make, he may demand that the representative effects the disposition.

Section 1190

Maximum amount mortgage

(1) A mortgage may be created in such a manner that only the maximum amount, up to which the plot of land is to be liable, is determined, and otherwise the determination of the claim is reserved. The maximum amount must be entered into 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 designated as such in the Land Register.

(4) The claim may be transferred in accordance with the general provisions applicable to the transfer of claims. If it is transferred in accordance with these provisions, the transfer of the mortgage is excluded.

Title 2

Land charge, annuity charge

Subtitle 1

Land charge

Section 1191

Statutory content of the land charge

(1) A plot of land may be encumbered in such a manner that a certain sum of money is payable out of the plot of land to the person in whose favour the encumbrance is created (land charge).

(2) The encumbrance can be created in such a manner that interest on the sum of money and other supplementary payments are payable out of the plot of land.

Section 1192

Applicable provisions

(1) The provisions on mortgage apply with the necessary modifications to the land charge, unless a contrary intention may be inferred that the land charge requires the existence of a claim.

(2) For interest on the land charge, the provisions on the interest of a mortgage claim are applicable.

Section 1193

Notice of termination

(1) The principal of the land charge does not fall 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.

Section 1194

Place of payment

The payment of the principal and interest and other collateral performance, unless otherwise provided, is to be made at the place at which the Land Registry has its seat.

Section 1195

Bearer land charge

A land charge may be created in such a manner 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

Owners land charge

(1) A land charge may also be created for the owner.

(2) For the creation of the land charge, the declaration of the owner before the Land Registry that the land charge is to be registered for him in the Land Register as well as registration is necessary; the provision under section 878 applies.

(3) A claim for deletion of the land charge in accordance with section 1179a or section 1179b exists only for such consolidations of the land charge and the ownership in one person, which occur after the land charge had belonged to a person other than the owner.

Section 1197

Deviations from the third party land charge

(1) If the owner is the creditor, he may not have execution levied for the purpose of his 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 this receivership.

Section 1198

Permitted conversions

A mortgage may be converted into a land charge, and a land charge into a mortgage. The approval of the holders of equal or lower ranking rights is not required.

Subtitle 2

Annuity charge

Section 1199

Statutory content of the annuity charge

(1) A land charge may be created in such a manner that a certain sum of money is payable out of the plot of land on periodically recurring dates (annuity charge).

(2) Upon creation of the annuity charge, the sum, by the payment of which the annuity charge can be redeemed, must be determined. The amount of redemption must be stated in the Land Register.

Section 1200

Applicable provisions

(1) For the individual payments, the provisions applicable to mortgage interest, and to the amount of redemption, those applicable to the principal of a land charge, apply with the necessary modifications.

(2) The payment of the amount of redemption 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 event of section 1133 sentence 2, the creditor is entitled to demand the payment of the amount of redemption out of the plot of land.

Section 1202

Notice of termination

(1) The owner may exercise the right of redemption only after previous notice. The notice period is six months, unless otherwise provided.

(2) A restriction of the right to give notice is permitted only to the extent that the owner may, after thirty years, give notice by observing a six-month notice period.

(3) If the owner has given notice, the creditor is entitled, after the expiry of the notice period, to demand the payment of the amount of redemption out of the plot of land.

Section 1203

Permitted conversions

An annuity charge may be converted into an ordinary land charge, and an ordinary land charge into an annuity charge. The approval of the holders of equal or lower ranking rights is not required.

Division 8

Pledge of movable things and of rights

Title 1

Pledge of moveable things

Section 1204

Statutory content of the pledge of movable things

(1) A movable thing may be encumbered to secure a claim in such a manner that the creditor is entitled to seek satisfaction out of the thing (pledge).

(2) The pledge may also be created for a future or a conditional claim.

Section 1205

Creation

(1) To create a pledge, it is necessary that the owner delivers the thing to the creditor and that both agree that the creditor is to be entitled to the pledge. If the creditor is in possession of the thing, the agreement to create the pledge suffices.

(2) The delivery of a thing in the indirect possession of the owner may be replaced by the owner transferring the 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 dual control of the creditor or, if it is in the possession of a third person, it may be released 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 applicable to the acquisition of ownership apply with the necessary modifications to the pledging.

Section 1208

Obtaining priority of rank in good faith

If the thing is encumbered with the right of a third party, the pledge has priority over the right, unless the pledgee at the time of acquiring the pledge is not in good faith in respect of the right. The provisions of section 932 (1) sentence 2, section 935 and of section 936 (3) apply with the necessary modifications.

Section 1209

Ranking of the pledge

For the ranking of the pledge, the time of its creation is authoritative, even if it is created for a future or a conditional claim.

Section 1210

Extent of liability of the pledge

(1) The pledge is liable for the claim as it exists at any time, in particular also for interest and contractual penalties. If a personal debtor is not the owner of the pledge, the liability is not extended by a legal transaction entered into by the debtor after the pledging.

(2) The pledge is liable for the claims of the pledgee for compensation of expenses incurred, for the costs of notice and the pursuit of rights to be reimbursed to the pledgee as well as for the costs of the sale of the pledge.

Section 1211

Defences of the pledgor

(1) The pledgor may assert against the pledgee the defences to which a personal debtor is entitled against the claim, as well as those of a surety under section 770. If the personal debtor dies, the pledgor may not plead that the heir has only limited liability in respect of the debt.

(2) If the pledgor is not the personal debtor, he does not forfeit a defence by the latter waiving it.

Section 1212

Extension to separated products

The pledge extends to the products which become separated from the pledge.

Section 1213

Pledge of emoluments

(1) The pledge may be created in such a manner that the pledgee is entitled to receive the emoluments of the pledge.

(2) If a thing which by nature bears fruit is handed over to the pledgee for sole possession, it is, in case of doubt, to be presumed that the pledgee is entitled to take the fruit.

Section 1214

Duties of the pledgee entitled to emoluments

(1) If the pledgee is entitled to receive the emoluments, he is obliged to attend to the production of the emoluments and to render account.

(2) The net yield of the emoluments will be offset against the payment owed and, if costs and interest are payable, against these next.

(3) Diverging provisions are admissible.

Section 1215

Duty of safekeeping

The pledgee is obliged to keep the pledge in safe custody.

Section 1216

Reimbursement of expenses incurred

If the pledgee incurs expenses on the pledge, the duty of the pledgor to reimburse is determined in accordance with the provisions on management without authority. The pledgee is entitled to remove a piece of equipment which he provided for the pledge.

Section 1217

Violation of rights by the pledgee

(1) If the pledgee violates the rights of the pledgor to a considerable extent and he continues this injurious conduct irrespective of a warning given by the pledgor, the pledgor may demand that the pledge be deposited at the expense of the pledgee or, if it is not suitable for deposit, that it be delivered to a custodian 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 pledge against the satisfaction of the creditor. If the claim bears no interest and is not yet due, the pledgee is entitled only to the amount which, with the addition of the legal 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 case of imminent deterioration

(1) If the deterioration of the pledge or a substantial decrease of its value is feared, the pledgor may demand the return of the pledge against provision of some other security; the provision of security by sureties is excluded.

(2) The pledgee must notify the pledgor of the imminent deterioration without undue delay, unless notification is impractical.

Section 1219

Rights of the pledgee in case of imminent deterioration

(1) If the security of the pledgee is jeopardised by the imminent deterioration of the pledge or by a substantial decrease of its value, he may have the pledge sold by public auction.

(2) The proceeds take the place of the pledge. Upon demand by the pledgor, the proceeds are to be deposited.

Section 1220

Warning of auction

(1) The auction of the pledge is permitted only after the pledgor has been warned about it; the warning may be omitted, if the pledge is exposed to deterioration and a danger is entailed in the postponement of the auction. In the event of a decrease in value, it is necessary, apart from the warning, that the pledgee determines 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 his 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 impractical.

Section 1221

Sale by private agreement

If the pledge has a stock exchange or a 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 several things

If the pledge extends to several things, each is liable for the entire claim.

Section 1223

Duty to return the pledge; right to redeem the pledge

(1) The pledgee is obliged to return the pledge to the pledgor after the pledge is extinguished.

(2) The pledgor may demand the return of the pledge against satisfaction of the pledgee, as soon as the debtor is entitled to make payment.

Section 1224

Satisfaction by deposit or set-off

The satisfaction of the pledgee by the pledgor may also be effected by deposit or by set-off.

Section 1225

Passing of claim to the pledgor

(1) If the pledgor is not the personal debtor the claim passes to him insofar as he satisfies the pledgee. The provision of section 774, applicable to a surety, applies with the necessary modifications.

Section 1226

Limitation of claims for compensation

The claims of the pledgor for compensation as a result of alterations or deteriorations of the pledge as well as the claims of the pledgee for the repayment of expenses incurred or for leave to remove equipment become statute-barred in six months. 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 interfered with, the provisions applicable to claims arising under ownership apply with the necessary modifications to the claims of the pledgee.

Section 1228

Satisfaction by sale of the pledge

(1) The satisfaction of the pledgee out of the pledge is effected by sale.

(2) The pledgee is entitled to effect the sale as soon as the claim is wholly or partially due. If the item owed does not consist of money, the sale is permitted only if the claim has been converted into a monetary claim.

Section 1229

Prohibition of a forfeiture agreement

An agreement made prior to the existence of the right to sell, according to which the ownership of the thing is to fall or be transferred to the pledgee, if he is not satisfied or is not satisfied in due time, is void.

Section 1230

Selection of pledge from several pledges

The pledgee may, unless otherwise provided, select from several pledges those which are to be sold. He may only sell as many pledges as are required for his satisfaction.

Section 1231

Release of pledge for sale

If the pledgee is not in the sole possession of the pledge, he may, after the right to sell arises, demand the surrender of the pledge for the purpose of sale. Upon demand by the pledgor, delivery to a joint custodian is to be made instead of surrender; the custodian must, upon delivery, undertake to hold the pledge ready for sale.

Section 1232

Lower ranking pledgees

The pledgee is not obliged to surrender the pledge to a lower ranking pledgee for the purpose of sale. If he is not in possession of the pledge, he may not, unless he himself effects the sale, object to the sale by a lower ranking pledgee.

Section 1233

Execution of the sale

(1) The sale of the pledge is to be effected in accordance with the provisions of sections 1234 to 1240.

(2) If the pledgee has obtained an enforceable judgement against the owner for his right of sale, he may also have the sale effected in accordance with the provisions applicable to 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, state 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 arose.

Section 1235

Public auction

(1) The sale of the pledge is to be effected by public auction.

(2) If the pledge has a stock exchange or a market price, the provision of section 1221 applies.

Section 1236

Place of the auction

The auction is to be held at the place at which the pledge is kept. If adequate success is not expected from an auction at the place of custody, the pledge is to be sold by auction at another suitable place.

Section 1237

Public notice

The time and place of the auction, with a general description of the pledge, are to be publicly announced. The owner and the third persons who have rights to the pledge are to be notified separately; the notification may be omitted, if it is impracticable.

Section 1238

Conditions of sale

(1) The pledge 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 deemed to have been received by the pledgee; the rights of the pledgee against the auction buyer remain unaffected. The same applies, if the immediate payment of the sale price is not made, unless before the end of the auction session the reservation of the forfeiture of rights is invoked.

Section 1239

Bidding by creditor and owner

(1) The pledgee and the owner may bid at the auction. If the pledgee's bid is accepted, he is deemed to have obtained the sale price.

(2) The bid of the owner may be rejected, if the amount is not paid in cash. The same applies to the bid of the debtor, if the pledge is liable for the debt of another.

Section 1240

Articles made of gold or silver

(1) Articles made of gold or silver may not be awarded at less than the value of the gold or silver.

(2) If no adequate 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 value of the gold or silver.

Section 1241

Notification of the owner

The pledgee must notify the owner of the sale of the pledge and of the result without undue delay, unless the notification is impractical.

Section 1242

Effects of the legal sale

(1) Through the legal sale of the pledge the purchaser acquires the same rights as if he had purchased the thing from the owner. This also applies when it is awarded to the pledgee.

(2) Pledges of the thing are extinguished, even if the purchaser was aware of them. The same applies to a usufruct, unless it ranks in priority to all pledges.

Section 1243

Illegal sale

(1) The sale of the pledge is illegal, if the provisions of section 1228 (2), section 1230 sentence 2, section 1235, section 1237 sentence 1 or section 1240 are contravened.

(2) If the pledgee contravenes another provision applicable to the sale, he is obliged to pay damages, if guilty of fault.

Section 1244

Acquisition in good faith

If a thing is sold as a pledge, without the seller being entitled to a pledge or without compliance with the requirements upon which the lawfulness of the sale depends, 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

Diverging agreements

(1) The owner and the pledgee may agree on selling the pledge in a manner which deviates from the provisions of sections 1234 to 1240. If a third person has a right over the pledge which is extinguished by the sale, the approval of this third person is necessary. The approval is to be declared to the person in whose favour it is given; it is irrevocable.

(2) Compliance with the provisions of section 1235, section 1237 sentence 1 and section 1240 may not be waived before the right of sale arises.

Section 1246

Deviation for reasons of equity

(1) If a type of sale of pledge deviating from the provisions of sections 1235 to 1240 corresponds with the interests of the parties concerned according to their reasonably exercised discretion, each of them may demand that the sale is made in this manner.

(2) If an agreement is not reached, the court decides.

Section 1247

Proceeds of the pledge

To the extent that the pledgee is entitled to the proceeds from the pledge for his satisfaction, the claim is deemed as settled by the owner. In other respects, the proceeds take the place of the pledge.

Section 1248

Presumption of ownership

When the pledge 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 pledge would forfeit a right to the

pledge, may satisfy the pledgee, as soon as the debtor is entitled to make payment. The provisions of section 268 (2) and (3) apply with the necessary modifications.

Section 1250

Assignment of claim

(1) Upon the assignment of the claim the pledge passes to the new creditor. The pledge may not be assigned without the claim.

(2) If upon the assignment of the claim, 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 pledge.

(2) Upon obtaining possession, the new pledgee takes the place of the previous pledgee in respect of the duties connected with the pledge owed to the pledgor. If he fails to perform the duties, the previous pledgee is liable for the damage to be compensated in the same way as a surety who has waived the right to prior action against the principal debtor. The liability of the previous pledgee does not arise, 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 with the claim for which it exists.

Section 1253

Extinction by return

(1) The pledge is extinguished, if the pledgee returns the pledge to the pledgor or to the owner. Reservation of the continuation of the pledge is ineffective.

(2) If the pledge is in the possession of the pledgor or of the owner, it is presumed that the pledge has been returned to him by the pledgee. This presumption also applies if the pledge is in the possession of a third person who obtained possession from the pledgor or the owner after the creation of the pledge.

Section 1254

Claim for return

If there is a defence to the pledge, by which the enforcement of the pledge is permanently excluded, the pledgor may demand the return of the pledge. The owner has the same right.

Section 1255

Cancellation of the pledge

(1) For the cancellation of the pledge by legal transaction, the declaration of the pledgee to the pledgor or to the owner, that he relinquishes the pledge, is sufficient.

(2) If the pledge is encumbered with the right of a third person, the approval of the third person is required. The 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 the ownership in the same person. It is not extinguished as long as the claim, for which the pledge exists, is encumbered with the right of a third person.

(2) The pledge is not deemed extinguished, insofar as the owner has a legal interest in the continuation of the pledge.

Section 1257

Lien by operation of law

The provisions concerning the pledge created by legal transaction apply with the necessary modifications to a lien created by operation of law.

Section 1258

Pledge of the share of a joint owner

(1) If there is a pledge over the share of a joint owner, the pledgee exercises the rights resulting from the community of joint owners, taking into consideration the management of the thing and the manner of its use.

(2) The dissolution of the community may, before the pledgee's right of sale arises, be demanded only by the joint owner and the pledgee jointly. After the right of sale has arisen, the pledgee may demand the dissolution of the community, without this requiring the approval of the joint owner; he is not bound by an agreement by which the joint owners have permanently or temporarily excluded the right to demand the dissolution of the community, or determined a period for notice of termination.

(3) If the community is dissolved, the pledgee is entitled to the pledge over the items of property which take the place of the share.

(4) The right of the pledgee to sell the share remains unaffected.

Section 1259

Realisation of the commercial pledge

If the owner and pledgee are entrepreneurs, legal persons under public law or public-law separate funds, they may agree upon creation of the pledge for the realisation of the pledge which has a stock exchange or market price that the pledgee may effect the sale privately at its current price himself or through a third party 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 at 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 to 1272

(repealed)

Title 2

Pledge of rights

Section 1273

Statutory content of the pledge of rights

(1) A right may also be the object of a pledge.

(2) The provisions on the pledge of movable things apply with the necessary modifications to the pledge of rights, unless otherwise provided in sections 1274 to 1296. The application of the provisions of section 1208 and section 1213 (2) is excluded.

Section 1274

Creation

(1) A pledge over a right is created in accordance with the provisions applicable to the transfer of the right. If the delivery of the thing is required for the transfer of the right, the provisions of section 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, by virtue of which a performance may be demanded, is the object of a pledge, the provisions apply to the legal relationship between the pledgee and the person bound which apply to the legal relationship between the purchaser and the person bound in the event of the transfer of the right, and in the event of a judicial order made in accordance with section 1217 (1), 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. The approval is to be declared to the person in whose favour it is given; it is irrevocable. The provision of section 876 sentence 3 remains 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 out of the right only on the basis of an enforceable judgement in accordance with the provisions applicable to execution, unless otherwise provided. The provisions of section 1229 and section 1245 (2) remain unaffected.

Section 1278

Extinction by return

If a right, the pledging of which 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 section 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 under 1259 applies with the necessary modifications.

Section 1280

Notification of the debtor

The pledging of a claim, for the transfer of which 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 performance, 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 monetary 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 monetary claim is assigned to him instead of payment.

(2) The pledgee is not entitled to make other dispositions over the claim; the right to seek satisfaction out of the claim in accordance with section 1277 remains unaffected.

Section 1283

Notice of termination

(1) If the maturity of the pledged claim depends on a notice of termination, the creditor requires the approval of the pledgee to give notice only if the latter is entitled to receive the emoluments.

(2) The notice of the debtor is effective only if it is declared to the pledgee and the creditor.

(3) If the requirements of section 1228 (2) have been fulfilled, the pledgee is also entitled to give notice, for the notice of the debtor, a declaration made to the pledgee suffices.

Section 1284

Diverging 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 for collection

(1) If performance is to be made to the pledgee and the creditor jointly, both are reciprocally obliged to cooperate in the collection, when the claim is due.

(2) To the extent that 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 impractical.

Section 1286

Duty of termination in case of danger

If the maturity of the pledged claim depends on giving notice, the pledgee may, unless he is entitled to give notice, demand the notice from the creditor, if the collection of the claim, as a result of a danger to its safety according to the rules of proper management of assets, is necessary. Under the same condition, the creditor may demand from the pledgee his approval for the notice, to the extent that approval is required.

Section 1287

Effect of performance

If the debtor performs in compliance with sections 1281 and 1282, upon performance the creditor acquires the object provided and the pledgee a pledge over the object. If performance consists of the transfer of 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 ships mortgage.

Section 1288

Investment of collected money

(1) If a monetary claim is collected in compliance with section 1281, the pledgee and the creditor are reciprocally obliged to cooperate so that the collected amount, to the extent that it is practical without impairing the interests of the pledgee, is invested at interest in accordance with the provisions applicable to the investment of money held in trust for wards, and at the same time the pledge is created for the pledgee. The creditor determines the type of investment.

(2) If the collection is made in compliance with section 1282, the claim of the pledgee, to the extent that he is entitled to the collected amount for his satisfaction, is deemed as 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 of the debtor by the pledgee that he is availing himself of the right of collection.

Section 1290

Collection in case of multiple pledges

If there are several pledges of a claim, only the pledgee whose pledge has priority over the remaining pledges is entitled to collection.

Section 1291

Pledge of land charge or annuity charge

The provisions on the pledge of a claim also apply to the pledge of a land charge and of an annuity charge.

Section 1292

Pledging of instruments made out to order

For the pledging of a bill of exchange or any other instrument which can 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 securities

For the pledge of a bearer security, the provisions on the pledge of movable things apply.

Section 1294

Collection and notice of termination

If a bill of exchange, another instrument which can be transferred by endorsement, or a bearer security is the object of a pledge, the pledgee is, even if the requirements of section 1228 (2) have not yet been fulfilled, entitled to collection and, if notice is required, to give notice and the debtor may pay only to him.

Section 1295

Private sale of instruments made out to order

If a pledged instrument, transferable by endorsement, has a stock exchange or market price, the creditor is entitled, after the fulfilment of the requirements set out in section 1228 (2), to have the instrument sold in accordance with 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 security only if they have been handed over 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 statute-barred two years 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) If 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 civil partnership exists between one of the persons who intend to be married to each other and a third party.

Section 1307

Relationship

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, 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 registrar 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 or the family 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, entry

(1) 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.

(2) The registrar should enter the marriage in the marriage register.

Title 3

Annulment of marriage

Section 1313

Annulment by judgment

A marriage may be annulled only by court judgment on petition. The marriage is dissolved when the judgment 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 derangement 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 if 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, if 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) number 1, if the spouse, after the unconsciousness or the mental derangement ends, has indicated that he intends to continue the marriage (confirmation);
4. in the cases of section 1314 (2) numbers 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) number 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) number 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 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 dies 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. in the case of a breach of sections 1303, 1304, 1306, 1307 and 1311, and in the cases of section 1314 (2) numbers 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) numbers 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) numbers 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) numbers 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 begin to run, 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) number 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) number 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 sections 1587 to 1587p 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) number 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) If 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 had 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 to 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) By declaration to the registrar of births, deaths and marriages, the spouses may determine, as their family name, the birth name of the husband or the wife or the name he or she has at the time of the declaration on the determination of the family name.

(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 registrar, 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 registrar; 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 registrar, 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 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 registrar.

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 guardianship 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 matters.

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 are have a duty to each other to provide for an appropriate 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, to the extent that 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 numbers 2 to 7 on the reduction of the claim for maintenance for equitable reasons applies with the necessary modifications.

(4) Day-to-day maintenance is to be provided in the form of periodical payments. The periodical payments are to be paid monthly in advance. The person bound 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 items 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 items 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 items.

(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 permits 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 welfare of children living in the household is 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 out of 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 securities 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 bind himself to dispose of his property as a whole. If he has bound himself without the approval of the other spouse, he may perform the duty only if the other spouse consents.

(2) If the transaction complies with the principles of proper management, the guardianship 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. If 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) If 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 guardianship 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 items

(1) A spouse may dispose of items of the household of the spouses belonging to him and bind himself to such a disposition only if the other spouse consents.

(2) The guardianship 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 items

Household items that are acquired in place of items that are no longer in existence or have become valueless become the property of the spouse who owned the items 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 hereditary share 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 hereditary share on intestacy of the spouse before it is increased.

(3) If 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) If 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 an appropriate 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, as gifts 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 items 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 cooperates 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 assignable. 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 bind himself 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 is 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 is 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 which are customary in keeping with the standard of living of the spouses.

(2) When the equalisation claim is calculated, 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 items 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 items 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

If 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 to 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) In a marriage contract the spouses may also, by an express agreement, exclude the equalisation of pension rights. The exclusion is ineffective if within one year after the contract is entered into a petition for divorce is filed.

Section 1409

Restriction of freedom of contract

- (1) 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. If the legal representative is a guardian or custodian, then in addition to the approval of the legal representative the approval of the guardianship court is necessary if the equalisation of the accrued gains is excluded or restricted or if community of property is agreed or terminated. 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 or custodian, he may enter into the contract only with the approval of the guardianship court.

Section 1412

Effect as against third parties

(1) If the spouses have excluded or altered the statutory matrimonial property regime, they may derive from this, as against 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 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

Occurrence 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 or of the pension rights 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 items 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 items 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 items

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 will 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 item 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 items 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 bind himself only with the consent of the other spouse to dispose of the marital property as a whole. If he has bound himself 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 bind himself 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 bind himself 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

Gifts

(1) The spouse who manages the marital property may make gifts of items from the marital property only with the consent of the other spouse; if, without the approval of the other spouse, he has promised to make

gifts of items from the marital property, he may fulfil this promise only if the other spouse consents. The same applies to a promise to make a gift 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

If 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 guardianship 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. If 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

If 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 guardianship 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 gift

- (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 gift.
- (2) The spouse who does not manage the marital property may draw up 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. If 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, also the creditors of the other spouse 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 as against 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 out of 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 numbers 1 and 2.

Section 1442

Obligations of the separate property and of a trade or business

The provisions of section 1441 numbers 2 and 3 do not apply if the obligations are part of the burdens of the separate property which are customarily paid out of 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 number 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 make 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 judgment of termination

(1) When the judgment 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) If 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) If, 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 guardianship 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. If 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

If 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. draw up 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 gift 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 a judicial execution 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 responsibility 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 as against 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 out of 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 numbers 1 and 2.

Section 1464

Obligations of the separate property and of a trade or business

The provisions of section 1463 numbers 2 and 3 do not apply if the obligations are part of the burdens of the separate property which are customarily paid out of 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 that is part of such a trade or business 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 number 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 judgment of termination

(1) When the judgment 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 knows 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 item 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 is discharged out of 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 items 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, as a gift or as an advancement.

Section 1478

Partitioning after divorce

(1) If 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 items that belonged to one spouse when the community of property commenced,
2. the items which a spouse acquired as a result of death or with regard to a future right of succession, as a gift 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 judgment of termination

If the community of property is terminated by judgment on the basis of sections 1447 and 1448 or of section 1469, the spouse who obtained the judgment may require that the partitioning is 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 items 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) If, in addition to the descendants of the spouses, there are other descendants, their rights of succession and their hereditary shares 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 responsibility or under custodianship, the approval of the guardianship court is necessary for the refusal. This also applies to refusal by the custodian of the surviving spouse.

(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) numbers 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) Whatever 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

If a descendant entitled to a share dies, his share of the community property is not part of his estate. If 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 responsibility or under guardianship, the approval of the guardianship court is necessary for the waiver. This also applies to waiver by the custodian of the descendant.

(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 guardianship court of the declaration.

(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 responsibility or under guardianship, the approval of the guardianship court is necessary for the

termination. This also applies to termination by the custodian of the surviving spouse.

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 guardianship court of his intention to remarry, submit a list of the marital property, terminate the community of property and bring about the partitioning. This also applies if care for the property of a descendant entitled to a share is part of the area of responsibilities of a custodian. The guardianship court may permit the termination of the community of property not to take place until the marriage and the partitioning not to occur until later.

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, 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 surviving 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 responsibility for the descendant or, if he had been entitled to it, would have forfeited it.

Section 1496

Effect of the judgment of termination

The termination of the continued community of property takes effect in the cases of section 1495 when the judgment becomes final and absolute. It takes effect for all descendants, even if the judgment 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 as against 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 items 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 judgment, 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 items 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 community 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 community 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 community property creditors, they are liable as between each other in the proportion of their shares to the community property. The liability is restricted to the items 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 devolution of the inheritance is replaced by the termination of the continued community of property, the share of the descendant in the community property at the time of termination is deemed to be the hereditary share 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 community 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 community 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 community property or individual items that are part of it in return for the reimbursement of the value.

(2) If a farm is part of the community 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.

Sections 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 in whose district even only one of the spouses has his habitual residence.

(2) The *Land* governments are authorized to delegate by statutory order jurisdiction for maintaining the register to one local court for the districts of several local courts. The *Land* governments may delegate the authorization to the *Land* justice administration authorities by statutory order.

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 must publish the entry in the newspaper chosen for its 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, if 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 court decree

A marriage may be dissolved by divorce only by court decree on the petition of one or both spouses. The marriage is dissolved when the judgment 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) If 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

Final provision

If, after the divorce, a spouse cannot provide for his own maintenance, he has a claim for maintenance against the other spouse under the following provisions.

Chapter 2

Entitlement to maintenance

Section 1570

Maintenance to care for a child

A divorced spouse may demand maintenance from the other, as long as and to the extent that no gainful employment can be expected of him by reason of the care for or upbringing of a child of the spouses.

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) The maintenance claims under subsections 1 to 4 may be temporally limited, to the extent that, in particular taking into account the duration of the marriage and the arrangement of household management and gainful employment, a temporally unlimited maintenance claim would be inequitable; this does not in general apply if the person entitled to maintenance has cared for or is caring for a child of the spouses alone or predominantly alone for a not merely temporary period. The period of caring for the child is equivalent to the duration of the marriage.

Section 1574

Appropriate gainful employment

(1) The divorced spouse need only enter gainful employment that is appropriate for him.

(2) Gainful employment is appropriate if it suits the training, the skills, the age and the state of health of the divorced spouse and the standard of living in the marriage; with regard to the standard of living in the marriage, the duration of the marriage and the duration of care for or upbringing of a child of the spouses are to be taken into account.

(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 bound is not paying the full maintenance (section 1578). 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 out of 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 assessment of the maintenance claim in accordance with the marital standard of living may be restricted in time and thereafter adjusted to the appropriate necessities of life to the extent that, taking into account in particular the duration of the marriage and the arrangements for household management and gainful employment, temporally unlimited assessment under sentence 1 would be inequitable; this does not in general apply if the person entitled to maintenance has cared for or is caring for a child of the spouses for a not merely temporary period. The period of caring for the child is equivalent to the duration of the marriage. The maintenance comprises all the necessities of life.

(2) Necessities of life also include the costs of appropriate insurance in 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 1579

Restriction or end of duty

A maintenance claim is to be refused, reduced or restricted in time to the extent that it would be grossly inequitable for the person bound 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; the duration of the marriage is equivalent to the time in which the person entitled was able to demand maintenance for the care or upbringing of a child of the spouses under section 1570,
2. the person entitled has committed a major criminal offence or a serious intentional minor offence against the person bound or against a close relative of the person bound,
3. the person entitled frivolously induced his own indigence,
4. the person entitled frivolously disregarded serious property interests of the person bound,
5. the person entitled, before the parties lived apart, for a long period grossly violated his duty to contribute to the family maintenance,
6. the person entitled is clearly responsible for manifestly serious misconduct towards the person bound, or
7. there is another reason that is just as serious as the reasons set out in numbers 1 to 6.

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 bound, 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 more than one person needing maintenance

(1) In the assessment of the maintenance of the divorced spouse, in the case of section 1581, the divorced spouse takes precedence over a new spouse, if the latter would not be entitled to maintenance if sections 1569 to 1574, section 1576 and section 1577 (1) were applied with the necessary modifications. If the new spouse, under these provisions, would have a maintenance claim, the divorced spouse nevertheless takes precedence over the new spouse if he is entitled to maintenance under section 1570 or under section 1576 or the marriage with the divorced spouse was of longer duration. The duration of the marriage is equivalent to the time in which the spouse was able to demand maintenance for the care or upbringing of a child of the spouses under section 1570,

(2) section 1609 is unaffected in other respects.

Section 1583

Influence of the matrimonial property regime

If the person bound, 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 bound 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 bound 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 bound is not inequitably burdened by this.

Section 1585a

Provision of security

(1) On request, the person bound 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 bound 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) In other respects, the person entitled may claim performance or damages for non-performance for the past only from the time at which the person liable for maintenance was in default or the claim for maintenance was first pending at court.

(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 bound intentionally avoided performance.

Section 1585c

Agreements on maintenance

The spouses may make agreements on the obligation to maintain for the time after the divorce.

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) If a divorced spouse enters into a new marriage or civil partnership and if 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. If the care or upbringing of the child has come to an end, he may demand maintenance under sections 1571 to 1573 and 1575.

(2) The spouse in the marriage dissolved later is liable before the spouse of the marriage dissolved earlier. Sentence 1 shall apply to civil

partnerships *mutatis mutandis* .

Section 1586b

Obligation not extinguished on death of the person bound

(1) On the death of the person bound, 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

Pension expectancies to be equalised

(1) Between the divorced spouses, an equalisation of pension rights takes place to the extent that for them or one of them, during the period of the marriage, expectancies or prospects of a pension for old age or reduced earning capacity of the kind set out in section 1587a (2) were established or maintained. No account is taken of expectancies or prospects that were established or maintained with the help neither of the assets nor the work of the spouses.

(2) The period of the marriage in the meaning of the provisions on equalisation of pension rights means the time from the beginning of the month in which the marriage was entered into to the end of the month that precedes the date when the divorce petition was first pending at court.

(3) Expectancies or prospects with regard to which the equalisation of pension rights takes place are governed solely by the following provisions; the provisions on the matrimonial property regime do not apply.

Chapter 2

Equalisation of value of expectancies or prospects of a pension

Section 1587a

Claim for equalisation

(1) The spouse who is the person bound 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 not taken into account. 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; number 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 numbers 1 and 2, and in the cases of section 2 number 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 [Bundesrat].

(4) Payments of expectancies or prospects of payments of an occupational pension plan under subsection 2 number 3 are governed by subsection 3 number 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 as appears just.

(6) If a spouse is entitled to more than one pension expectancy in the meaning of subsection 2 number 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 number 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 out of 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) number 2 and if these exceed the expectancies in the meaning of section 1587a (2) number 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) number 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) number 2 exceeds the expectancies in the meaning of section 1587a (2) numbers 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 bound 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;^{*} 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 (German Federal Law Gazette I p. 375).

Section 1587c

Restriction or omission of equalisation

There is no equalisation of pension rights

1. to the extent that claiming on the person bound, 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 bound, the family court may order that the duty under section 1587b (3) is suspended as long as and to the extent that the person bound 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 bound is in the position to pay instalments, the court must also lay down the amount of the instalment payments for which the person bound 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 bound. 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 bound 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 obligor spouse 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 omission 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 bound, 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 bound assigns 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 assignability 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 bound.

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 bound 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 bound has not yet discharged

it.

Section 1587n

Set-off against maintenance claim

If the person entitled has been paid a lump sum under section 1587i, 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 pension obligor

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 obligor spouse which the payer of the pension makes to the obligor 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 640h (2) of the Code of Civil Procedure.

Section 1593

Paternity in the case of dissolution of the marriage by death

Section 1592 number 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 number 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 responsibility 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 guardianship court. 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 registrar 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) If, 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 1599

Non-existence of paternity

(1) Section 1592 numbers 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 number 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 persons are entitled to contest the paternity:

1. the man whose paternity exists under section 1592 numbers 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 and
4. the child.

(2) The contestation under subsection 1 number 2 requires that there is no social and family relationship between the child and its father in the meaning of subsection 1 number 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) A social and family relationship under subsection 2 exists if the father, in the meaning of subsection 1 number 1, has actual responsibility for the child or had actual responsibility at the date of his death. There is as a rule an assumption of actual responsibility if the father in the meaning of subsection 1 number 1 is married to the mother of the child or lived together with the child for a long period in domestic community.

(4) 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.

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) numbers 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 welfare 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 begins to run 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.

(2) The period does not begin to run 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) 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 begins to run again for the child on this date.

(6) The running of the period is suspended as long as the person entitled to contest is unlawfully prevented by duress from contestation. Apart from this, the provisions of sections 206 and 210 that apply to limitation apply with the necessary modifications.

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 numbers 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 numbers 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) Upon the action of the man against the child or in the case of contestation under section 1600 (1) number 2 against the child and the father in the meaning of section 1600 (1) number 1 or upon the action of the mother or the child against the man, the family court decides on the determination or contestation of paternity. If a person against whom the action would have to be directed in the case of contestation under section 1600 (1) number 2 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 who 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 out of its basic assets.

Section 1604

Influence of the matrimonial property regime

If the spouses live under the matrimonial property regime of community of property, the obligation to maintain of the man or the woman towards relatives is determined in the same way as if the marital property belonged to the spouse with an obligation to maintain. If indigent relatives of both spouses exist, the maintenance is to be paid from the marital property in such a way as if the indigent relatives had the relationship to both spouses on which the obligation to maintain of the obligor spouse 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 prima facie evidence is presented 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 bound

(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 in Germany 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 has no obligation to maintain, 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 detriment 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 one indigent person

(1) If there is more than one indigent person and if the person liable for maintenance is unable to pay maintenance to all, the children in the meaning of section 1603 (2) precede the other children, the children precede the other descendants, the descendants precede the ascendants and, among the ascendants, those more closely related precede those more distant.

(2) The spouse is equivalent to the children in the meaning of section 1603 (2); he precedes other children and the other relatives. If the marriage has been dissolved by divorce or annulled, the spouse entitled to maintenance precedes the other children in the meaning of sentence 1 and the other relatives of the person liable for maintenance.

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 is 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; here, the necessary account should be taken of the concerns of the child. For special reasons, the family court may, on the application of the child, alter the determination made by the parents. 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 parent's household.

(3) Periodical payments must be paid monthly in advance. The person bound owes the full monthly amount even if the person entitled dies in the course of the month.

Section 1612a

Nature of payment of maintenance in the case of minor children

(1) A minor child may demand from one parent, with whom it does not live together in one household, the maintenance as a percentage of the relevant regular amount under the Regular Amount Order [Regelbetrag-Verordnung].

(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 regular amounts are laid down in the Regular Amount Order according to the age of the child for the time until it reaches the age of six (first age bracket), for the time from the seventh year until it reaches the age of twelve (second age bracket) and for the time from the thirteenth year on (third age bracket). The regular amount of a higher age bracket applies from the beginning of the month in which the child reaches the relevant age.

(4) The regular amounts are altered according to the development of the average disposable earnings, for the first time on 1 July 1999 and thereafter on 1 July of every second year. The new regular amounts are arrived at by multiplying the last regular amounts in effect by the factors of the two calendar years in each case preceding the change for the development

1. of the gross wage and salary amounts of each average employee engaged and

2. of the burden on earnings;

the result is to be rounded up to whole euros. The Federal Ministry of Justice must in good time adjust the Regular Amounts Order by statutory order, which does not require the approval of the Bundesrat.

(5) The factors in the meaning of subsection 4 sentence 2 are arrived at by in each case dividing the conclusive value for the calendar years for which the development is to be established by the corresponding value for the calendar year preceding this. The calculation must be based on

1. for the calendar year preceding the change, the national accounts data available to the Federal Statistics Office at the beginning of the following calendar year,
2. for the calendar year in which in each case the last change was made, the national accounts data finally determined by the Federal Statistics Office, and
3. apart from this, the national accounts data on which the determination of the previous regular amounts was based;

this is to be calculated to two decimal places.

Section 1612b

Set-off of child benefit

(1) Half of the child benefit for the child is to be set off if child benefit is not paid to the parent liable for cash maintenance because another person has prior rights.

(2) If both parents are obliged to pay cash maintenance, the maintenance claim against the parent receiving child benefit is increased by half of the child benefit for the child.

(3) If only the parent liable for cash maintenance has a claim to child benefit, but it is not paid to him, it is to be set off in full.

(4) 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 set off.

(5) There is no set-off of the child benefit to the extent that the person liable for maintenance is unable to pay maintenance in the amount of 135 per cent of the regular amount under the Regular Amount Order.

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 bound, for the purpose of asserting the maintenance claim, was requested to provide information on his income and his assets, on which the person bound 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 bound 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 number 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 bound. This also applies to the extent that a third person demands compensation from the person bound because he has paid maintenance in place of the person bound.

Section 1614

Waiver of maintenance claim; advance performance

(1) Maintenance may not be waived for the future.

(2) Advance performance releases the person bound, 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 bound, to the extent that it is not directed at performance or damages for non-performance 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 bound.

(2) In the case of the death of the person entitled, the person bound 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 number 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; it ends three years after the birth, to the extent that it would not be grossly inequitable, in particular taking into account the concerns of the child, to deny a maintenance claim after the end of this period.

(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. The wife and minor unmarried children of the father take precedence over the mother when section 1609 is applied; the mother takes precedence over the other relatives of the father. 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

Interim injunction

(1) On the application of the child, it may be ordered by interim injunction that the man who has acknowledged paternity or who is presumed to be the father under section 1600d (2) must pay the maintenance due to the child for the first three months. The application may be made even before the birth of the child by the mother or by a curator appointed for the unborn child; in this case, it may be ordered that the necessary amount is to be deposited a reasonable time before the birth.

(2) On the application of the mother, it may be ordered by interim injunction that the man who has acknowledged paternity or who is presumed to be the father under section 1600d (2) must pay to the mother the amounts expected to be payable under section 1615l (1); the deposit of an appropriate amount may also be ordered.

(3) It is not necessary to submit prima facie evidence of an endangerment of the claim.

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 responsibility

(1) If the parents have no family name and if they have joint parental responsibility, then, by declaration to the registrar 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) If 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 register 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 responsibility

(1) If the parents have no family name and if only one of them has parental responsibility, 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 responsibility for an unmarried child may, by declaration to the registrar 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 responsibility or ostensible paternity

(1) If joint parental responsibility 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 responsibility. If one parent, at the date when the joint parental responsibility begins, does not have his habitual residence in domestic territory, the period does not end before the end of a one-month period after his return to domestic territory. If 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) If 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 registrar 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) If 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 registrar 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 responsibility 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 registrar 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 if he has parental responsibility 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 welfare 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 to 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 gift, 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 guarantee 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 gift, by the provisions applying to the guarantee 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 responsibility

Section 1626

Parental responsibility, principles

(1) The parents have the duty and the right to care for the minor child (parental responsibility). The parental responsibility 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 responsibility 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 welfare of the child as a general rule includes 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 responsibility of parents who are not married to each other; declarations of parental responsibility

(1) If the parents, at the date of the birth of the child, are not married to each other, they have joint parental responsibility if they

1. declare that they wish to take on parental responsibility jointly (declarations of parental responsibility), or
2. marry each other.

(2) Apart from this, the mother has the parental responsibility.

Section 1626b

Special requirements for the effectiveness of the declaration of parental responsibility

(1) A declaration of parental responsibility subject to a condition or a stipulation as to time is ineffective.

(2) The declaration of parental responsibility may be made even before the birth of the child.

(3) A declaration of parental responsibility is ineffective to the extent that a court decision on parental responsibility 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 responsibility only without a representative.

(2) The declaration of parental responsibility 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 responsibility does not conflict with the welfare of this parent.

Section 1626d

Form; duty of notification

(1) Declarations of parental responsibility and approvals must be notarially recorded.

(2) The reporting agency without unduereasonable delay notifies the making of declarations of parental responsibility 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 for the purpose of giving information under section 58a of Book Eight of the Social Security Code [Sozialgesetzbuch].

Section 1626e

Ineffectiveness

Declarations of parental responsibility are ineffective only if they do not

satisfy the requirements of the above provisions.

Section 1627

Exercise of parental responsibility

The parents must exercise the parental responsibility on their own responsibility and in mutual agreement for the welfare 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 responsibility 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 responsibility includes the representation of the child. The parents represent the child jointly; if 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 responsibility 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 welfare 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 responsibility 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.

(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 representation, or other persons entitled to represent, as part of their power of representation, 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 guardianship court. If the minor who is now of full age relies on the restriction of liability, the provisions of sections 1990 and 1991 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 responsibility in the case of appointment of a curator or of foster care

(1) The parental responsibility does not extend to matters of the child for which a curator has been appointed.

(2) If 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 responsibility 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

Content 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 is admissible only with the approval of the family court. Without the approval, the accommodation is admissible only if delay entails risk; the approval must thereafter be obtained without undue delay. The court must withdraw the approval if the welfare of the child no longer requires the accommodation.

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) If the child has lived in foster care for a long period of time, and if 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 welfare 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 to 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 it 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 item 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 items, 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 gifts

The parents may not, in representation of the child, make gifts. An exception applies to gifts 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 numbers 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. If 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 items 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, items 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 securities 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 to 1663

(repealed)

Section 1664

Limited liability of the parents

- (1) In exercising the parental responsibility, the parents are answerable to the child only for the care they customarily exercise in their own matters.
- (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 welfare of the child

- (1) If the physical, mental or psychological welfare of the child or its property is endangered by abusive exercise of parental responsibility, by neglect of the child, by failure of the parents for which they are not at fault or by the conduct of a third party, the family court, if the parents do not wish or are not able to avert the danger, 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 may substitute declarations of the person with parental responsibility.
- (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. If 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 to 1670

(repealed)

Section 1671

Living apart and joint parental responsibility

(1) If parents who have joint parental responsibility live apart for a period that is not merely temporary, each parent may apply for the family court to transfer parental responsibility or part of the parental responsibility 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 care and the transfer to the applicant is most conducive to the welfare of the child.

(3) The application is not to be granted to the extent that the parental responsibility must be organised differently on the basis of other provisions.

Section 1672

Living apart where the mother has parental responsibility

(1) If the parents live apart for a period that is not merely temporary and if, under section 1626a (2), the mother has parental responsibility, the father, with the approval of the mother, may apply for the family court to transfer to him alone the parental responsibility or part of the parental responsibility. The application is to be granted if the transfer serves the welfare 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 responsibility, if this is not inconsistent with the welfare of the child. This also applies to the extent that the transfer has later been cancelled under subsection 1.

Section 1673

Suspension of parental responsibility in the case of a legal obstacle

(1) The parental responsibility 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 responsibility in the case of a factual obstacle

(1) The parental responsibility of a parent is suspended if the family court establishes that he cannot in fact exercise the parental responsibility for a long period of time.

(2) The parental responsibility 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 responsibility by declaration of death

The parental responsibility 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, 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) If a parent is actually prevented from exercising parental responsibility, or if his parental responsibility is suspended, the other parent exercises the parental responsibility alone; this does not apply if the parental responsibility under section 1626a (2), section 1671 or section 1672 (1) was held by the parent alone.

(2) If the parental responsibility of the parent, which he had alone under section 1626a (2), is suspended, and if there is no prospect of the reason for the suspension ceasing to apply, the family court must transfer the parental responsibility to the other parent if this serves the welfare of the child.

Section 1679

(repealed)

Section 1680

Death of a parent or removal of the parental responsibility

(1) If the parental responsibility was held by the parents jointly and if one parent has died, the parental responsibility is held by the surviving spouse.

(2) If a parent who, under section 1671 or 1672 (1), had the parental responsibility alone has died, the family court must transfer the parental responsibility to the other parent, if this is not inconsistent with the welfare of the child. If the mother, under section 1626a (2), had sole parental responsibility, the family court must transfer the parental responsibility to the father if this serves the welfare 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 responsibility jointly with the other parent or, under section 1626a (2), alone, is deprived of the parental responsibility.

Section 1681

Declaration of death of a parent

(1) Section 1680 (1) and (2) applies with the necessary modifications if the parental responsibility 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.

(2) If this parent is still alive, the family court, on application, must transfer parental responsibility to him to the extent to which he held it before the conclusive date under section 1677, if this is not inconsistent with the welfare of the child.

Section 1682

Order that the child remains with persons to whom it relates

If the child has lived for a long period in a household with one parent and the parent's spouse, and if 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 welfare 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

Inventory of property on remarriage

(1) If the parents of the child are not or no longer married to each other and if the parent who has the care for the property of the child intends to enter into marriage with a third party, he must notify this to the family court, at his own cost submit an inventory of the property of the child and, to the extent that there is a community of property between him and the child, bring about partitioning.

(2) The family court may permit the partitioning to be deferred until after the marriage.

(3) The family court may further permit that the partitioning is omitted in whole or in part if this is not inconsistent with the property interests of the child.

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.

(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 welfare 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 welfare 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 welfare 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.

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 welfare of the child. Disputes are decided by the family court.

Section 1687

Exercise of joint parental responsibility when the parents live apart

(1) If parents who have joint parental responsibility 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 welfare of the child.

Section 1687a

Power to make decision of the parent without parental responsibility

For each parent who does not have parental responsibility and with whom the child resides with the consent of the other parent or of another person with parental responsibility 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 responsibility powers of the spouse

(1) The spouse of a parent with sole parental responsibility who is not a parent of the child has the power, in agreement with the parent with parental responsibility, 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 welfare of the child; the parent with parental responsibility 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 welfare 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 responsibility 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 numbers 3 and 4 of Book Eight of the Social Security Code has taken on the upbringing of and care for a child.

(3) Subsections 1 and 2 do not apply if the person with parental responsibility declares otherwise. The family court may restrict or exclude the powers under subsections 1 and 2 if this is necessary for the welfare 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 to 1692

(repealed)

Section 1693

Court measures where the parents are prevented

If the parents are prevented from exercising parental authority, the family court must take the measures necessary in the interest of the child.

Sections 1694 to 1695

(repealed)

Section 1696

Amendment and review of court orders

(1) The guardianship court and the family court must amend their orders if this is appropriate for sound reasons which affect the interests of the child in the long term.

(2) Measures under sections 1666 to 1667 are to be cancelled if there is no longer a danger to the welfare of the child.

(3) The court must review at appropriate intervals measures that last for a long period under sections 1666 to 1667.

Section 1697

Order by the family court of guardianship or curatorship

If, on the basis of a measure of the family court, a guardianship or curatorship is to be ordered, the family court may also make this order and select the guardian or curator.

Section 1697a

Principle of welfare 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 welfare of the child.

Section 1698

Surrender of the property of the child; rendering an account

(1) If the parental responsibility 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 responsibility 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 have notice of the termination of parental responsibility 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 responsibility is suspended.

Section 1698b

Continuation of urgent transactions after the death of the child

If the parental responsibility 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 to 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, including the claims to a lump sum payment to be made in place of maintenance 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 responsibility or would have it if the child had already been born. If the parental responsibility 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 responsibility. Apart from this, the provisions on curatorship, with the exception of those on the supervision of the guardianship 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 to 1740

(repealed)

Title 7

Adoption

Subtitle 1

Adoption of minors

Section 1741

Admissibility of the adoption

(1) Adoption is admissible if it serves the welfare 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 welfare 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 an appropriate 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, if the adoptive parent and the child are of different nationalities, is subject to the approval of the guardianship 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 guardianship 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 guardianship 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 guardianship 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 presents prima facie evidence of 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 responsibility,

1. the consent of the father may be given even before the birth;
2. if the father has applied for the transfer of parental responsibility 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 responsibility 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 guardianship court, on the application of the child, must substitute the consent of one parent if 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 if 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 pursuant to section 51 (2) of Book Eight of the Social Security Code 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 begins to run 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 if 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 if 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 guardianship 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 guardianship 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 guardianship court. The declaration must be notarially recorded. The consent becomes effective on the date when it is received by the guardianship 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 responsibility 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 responsibility alone or if a guardian has already been appointed. An existing curatorship is unaffected. The guardianship court must without undue delay issue to the youth welfare office a certificate on the beginning of the guardianship; section 1791 does not apply. 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) If the consent of one parent has lost its force, the guardianship court must transfer the parental responsibility to the parents if and to the extent that this does not conflict with the welfare 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 guardianship court, application

(1) The adoption is pronounced by the guardianship 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 guardianship court or at or after the notarial recording of the application

commissioned the notary to submit the application.

(3) If 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 responsibility 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) If 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 responsibility 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 guardianship court; section 1617 (1) applies with the necessary modifications. If 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 guardianship 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 guardianship court; the declaration must be notarially certified.

(4) The guardianship 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 welfare 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 welfare 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 guardianship 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 guardianship 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 derangement, 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 derangement, the position of constraint resulting from threat, 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) If, 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 provisions of section 1750 (3) sentences 1 and 2 apply 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 welfare 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 begins

- 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 guardianship court may cancel the adoption relationship of its own motion if this is necessary for serious reasons for the welfare 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 responsibility by that spouse would not be inconsistent with the welfare 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. If the guardianship 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 responsibility.

(4) The guardianship court must reassign the parental responsibility to the natural parents if and to the extent that this is not inconsistent with the welfare 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 guardianship 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 guardianship 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. The adoption of a person who has entered into a civil partnership requires the consent of the civil partner.

Section 1768

Application

(1) The adoption of a person of full age is pronounced by the guardianship 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 guardianship 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 consent of the child is replaced by the application of the person to be adopted.

Section 1772

Adoption with the effects of the adoption of a minor

(1) The guardianship 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 guardianship 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 consent of the child is replaced by the application of the person to be adopted.

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

responsibility 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 guardianship 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 guardianship court may appoint a married couple jointly as guardians. Apart from this, the guardianship 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 responsibility 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 if 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 welfare 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 guardianship 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 guardianship court

(1) If the guardianship is not to be transferred to a person designated under section 1776, the guardianship court must select the guardian after hearing the youth welfare office.

(2) The guardianship 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 persons, 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 guardianship 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 guardianship 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

Civil servant or official of a church as guardian

(1) A civil servant or official of a church, 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 guardianship 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 presents prima facie evidence 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 guardianship 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 guardianship 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 guardianship 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 guardianship court.

Section 1788

Coercive fine

(1) The guardianship 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 guardianship court

The guardian is appointed by the guardianship 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 a 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 a written disposition of the guardianship 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 guardianship 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 a written disposition of the guardianship 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 number 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 guardianship 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 representation 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 representation

(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 fulfilment of an

- obligation,
2. in a legal transaction the subject of which is the assignment or encumbrance of a claim of the ward against the guardian secured by pledge, mortgage, ship's mortgage or suretyship or the cancellation or reduction of this security or which creates an obligation of the ward to effect such an assignment, encumbrance, cancellation or reduction,
 3. in a legal dispute between the persons designated in number 1 and in a legal dispute on a matter of the kind designated in number 2.
- (2) The provision of section 181 is unaffected.

Section 1796

Withdrawal of power of representation

- (1) The guardianship court may withdraw from the guardian the power of representation for individual matters or for a specified group of matters.
- (2) The withdrawal should occur only if the interest of the ward is substantially 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 number 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 guardianship court decides, unless otherwise provided upon the appointment.
- (2) The guardianship 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 guardianship 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 guardianship 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 guardianship court without undue delay of breaches of duty by the guardian and of every case in which the guardianship 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 guardianship 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 guardianship 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 a civil servant, a notary or another expert.

(3) If the inventory submitted is inadequate, the guardianship court may order that the inventory is made by a competent public authority or by a competent civil servant or notary.

Section 1803

Management of assets in the case of inheritance or gift

(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 will or by the third party at the time of the disposition.

(2) With the approval of the guardianship 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 guardianship court if the third party is permanently unable to make a declaration or the abode of the third party is permanently unknown.

Section 1804

Gifts made by the guardian

The guardian may not, in representation of the ward, make gifts. An exception applies to gifts 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 domestic plot of land, or in secure land charges or annuity land charges on domestic plots of land;
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 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) number 5 only subject to the provision that the approval of the supervisory guardian or of the guardianship court is required for the collection of the money.

Section 1810

Cooperation of supervisory guardian or guardianship 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 guardianship court. If there is no supervisory guardian, the investment should be made only with the approval of the guardianship court, to the extent that the guardianship is not conducted by more than one guardian jointly.

Section 1811

Other investment

The guardianship 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 guardianship court is required under sections 1819 to 1822. The same applies to assuming the duty to make such a disposition.

(2) The approval of the supervisory guardian is substituted by the approval of the guardianship court.

(3) If there is no supervisory guardian, the approval of the supervisory guardian is replaced by the approval of the guardianship court, 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 numbers 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 number 3 apply to the collection of money which is invested under section 1807 (1) numbers 1 to 4.

Section 1814

Deposit of bearer securities

The guardian must deposit the bearer securities that are part of the property of the ward, together with the renewal certificates, with a depositary institution or with one of the credit institutions named in section 1807 (1) number 5, subject to the condition that the return of the

instruments may be demanded only with the approval of the guardianship court. The deposit of bearer securities that under section 92 are consumable things, and of interest, annuity or dividend coupons is not necessary. Instruments made out to order with a blank endorsement are equivalent to bearer securities.

Section 1815

Change of registration and conversion of bearer securities

(1) The guardian may, instead of depositing the bearer securities 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 guardianship court. If the instruments are issued by the Federal Government or by 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 securities that may be converted into Debt Register claims against the Federal Government or a *Land* are to be deposited, the guardianship 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 guardianship court.

Section 1817

Exemption

(1) The guardianship 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 number 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 guardianship 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 number 1 are not satisfied.

Section 1818

Order of deposit

The guardianship 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 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 guardianship court for a disposition of them and, if mortgage, land charge and 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 securities 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 guardianship 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 guardianship 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 assignment 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 numbers 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 guardianship 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 hereditary share 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 alienation 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 representation,
 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 guardianship 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 alienation of which the approval of the supervisory guardian or of the guardianship 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 guardianship 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 numbers 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 guardianship court should hear the supervisory guardian, if one exists and the hearing is convenient.

Section 1827

(repealed)

Section 1828

Pronouncement of approval

The guardianship 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 guardianship court, the effectiveness of the contract is subject to the subsequent approval of the guardianship 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) If 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 two 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 replaces the approval of the guardianship court.

Section 1830

Right of revocation of the other party

If the guardian has claimed to the other party, untruthfully, that the guardianship court has given its approval, the other party is entitled to revoke the contract until it is informed of the subsequent approval of the guardianship 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 guardianship court is ineffective. If 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 in writing 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.

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 guardianship court is also deemed to be an assertion vis-à-vis the ward.

(1a) The guardianship 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 guardianship 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 Act on the Compensation of Guardians and Custodians (*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 1a 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 (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 number 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 guardianship 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.

Section 1836

Payment of the guardian

(1) The guardianship is conducted gratuitously. It is, exceptionally, conducted nongratuitously if the court finds when the guardian is appointed that the guardian is conducting the guardianship as an occupation or profession. This is governed in more detail by the Act on the Compensation of Guardians and Custodians (*Vormünder- und Betreuervergütungsgesetz*).

(2) If 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.

Section 1836a

Repealed

Section 1836b

Repealed

Section 1836c

Funds to be provided by the ward

The ward must provide the following:

1. under section 84 of the Federal Social Security Act [Bundessozialhilfegesetz] 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 for help in particular situations under sections 76, 79 (1) and (3), 81 (1) and 82 of the Federal Social Security Act; if, in the individual case, the provision of part of the income to satisfy a particular need as part of the help in special situations under the Federal Social Security Act 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 88 of the Federal Social Security Act.

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 92c (3) and (4) of the Federal Social Security Act applies with the necessary modifications; section 1836c does not apply to the heir.

(2) To the extent that claims under section 1836c number 1 sentence 2 are to be applied, section 850b of the Code of Civil Procedure, for the benefit of the public treasury, does not apply.

Subtitle 3

Care and supervision of the guardianship court

Section 1837

Advice and supervision

(1) The guardianship court advises the guardians. It assists in introducing them to their tasks.

(2) The guardianship 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 guardianship 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 guardianship 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 guardianship court at least once a year on the personal circumstances of the ward.

(2) The guardian must render an account to the guardianship court of his

management of the assets.

(3) The account is to be rendered annually. The accounting year is laid down by the guardianship court.

(4) If the management is of a small extent, the guardianship 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 guardianship 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 guardianship court

(1) The guardianship 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

Marriage of the parent appointed guardian

If the father or mother of the ward appointed guardian wishes to enter into marriage, section 1683 applies with the necessary modifications.

Section 1846

Interim measures of the guardianship court

If a guardian has not yet been appointed or if the guardian is prevented from carrying out his duties, the guardianship court must take the measures that are necessary in the interest of the person affected.

Section 1847

Hearing of relatives

(1) In important matters, the guardianship court 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.

(2) (repealed)

Section 1848

(repealed)

Subtitle 4

Cooperation of the youth welfare office

Sections 1849 and 1850

(repealed)

Section 1851

Duties of notification

(1) The guardianship court 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 guardianship court 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 securities 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 guardianship court a summary of the amount of the assets subject to his management. The guardianship 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 named the same guardian but made directions that contradict each other, the directions of the parent who died later apply.

Section 1857

Cancellation of the exemption by the guardianship court

The directions of the father or the mother may be cancelled by the guardianship 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 to 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 guardianship court. The guardianship court 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, 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 guardianship court 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 guardianship court 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 guardianship court should, before its decision, also hear the youth welfare office or the association.

Section 1888

Removal of civil servants and officials of a church

If a civil servant or an official of a church is appointed guardian, the guardianship court 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 guardianship court 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) numbers 2 to 7 to refuse the assumption of the guardianship.

(2) The guardianship court 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 welfare 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 guardianship court, 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 guardianship court.

(2) The guardianship court 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 guardianship court 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 guardianship court. In the cases of sections 1791a and 1791b, the written order of the guardianship court 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 guardianship court 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 guardianship 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 cannot be appointed against the free will of a 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 guardianship 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 welfare 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 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 guardianship 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 pursuant to section 1 (1) sentence 1 second alternative of the Act on the Compensation of Guardians and Custodians (*Vormünder- und Betreuervergütungsgesetz*). The competent authority shall require the person to submit a certificate of conduct and an excerpt from the register of debtors.

(8) If a person is appointed under the conditions in subsection (6) sentence 1, the person must make a declaration regarding the number and scope of custody cases that he or she has in a professional capacity.

Section 1898

Duty to assume custodianship

(1) The person selected by the guardianship 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 guardianship 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. More than one custodian who receive compensation shall not be appointed except in cases governed by 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 natural persons, the guardianship 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 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 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 welfare 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 welfare 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 welfare 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 by a professional custodian, in suitable cases upon order of the court the custodian shall prepare a custodianship plan at the start of the custodianship. The goals of the custodianship and the measures to be undertaken to achieve this shall be set forth in the custodianship plan.

(5) If the custodian becomes aware of circumstances which enable the cancellation of the custodianship, he is to notify the guardianship 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 powers 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

guardianship court after he becomes aware that proceedings for the appointment of a custodian have been commenced. Likewise, the holder shall inform the guardianship court of documents in which the person concerned authorized another person to take care of his affairs. The guardianship court may request submission of a copy.

Section 1902

Representation of the person under custodianship

In his group of tasks, the custodian represents the person under custodianship in court and out of 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 guardianship 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 to 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) If 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 guardianship 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 guardianship 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) If 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 guardianship 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 guardianship 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 guardianship 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 welfare 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 guardianship court. Without the approval, the accommodation is admissible only if delay entails risk; the approval must thereafter be obtained without unreasonable delay.

(3) The custodian must terminate the accommodation if its requirements cease to be satisfied. He must notify the guardianship 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 is 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 guardianship court on abandonment of rented home

(1) The custodian requires the approval of the guardianship court for the termination of a lease of residential premises 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) If other circumstances occur by reason of which the termination of the lease is taken into consideration, the custodian must notify the guardianship 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 premises 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 guardianship 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 premises are to be leased by the custodian.

Section 1908

Approval of the guardianship 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 guardianship 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 guardianship 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 exists when the custodian intentionally provided an improper invoice that was required. The court should remove the custodian appointed under section 1897 (6) if the person under custodianship can be cared for by one or more 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 welfare of the person under custodianship, the guardianship 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 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 authorized 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) In individual cases the recognized custodianship association may advise persons in the establishment 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 numbers 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, 1845, 1846, 1857a, 1888, 1890 to 1895. Law of a *Land* may lay down that provisions that relate to the supervision of the guardianship 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 guardianship court does not direct otherwise.

Section 1908k

Repealed

Title 3

Curatorship

Section 1909

Supplementary curatorship

(1) A person who is subject to parental responsibility 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 which he acquires as a result of death or which 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 guardianship 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 responsibility 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

If, 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 not otherwise provided by law. In derogation from section 3 (1) to (3) of the Act on the Compensation of Guardians and Custodians (*Vormünder- und Betreuervergütungsgesetz*) the amount of compensation to be authorised pursuant to section 1836 (1) shall be determined in accordance with the expertise useful to the curator in conducting the curatorship duties as well as in accordance with the scope and difficulty of the curatorship duties to the extent the person under curatorship is not without means.

(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 guardianship 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 guardianship court may substitute the consent.

Section 1918

Termination of the curatorship by operation of law

(1) The curatorship for a person under parental responsibility or under guardianship ends on the termination of the parental responsibility 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 by the guardianship court 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 by the guardianship court 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 guardianship court. The guardianship 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, 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 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, his place is taken by the descendants related to the deceased through him (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 pair 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. If 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 pair 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 1928 (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 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 items 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 items to the extent that he needs them to maintain an appropriate 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] of which the deceased was a subject at the time of his death is the heir on intestacy. If the deceased was a subject of more than one [state], the treasuries of each of these [states] are entitled to inherit in equal shares.

(2) If the deceased was a German who was not a subject of any [state], 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 property 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 give 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 has notice 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 pronouncement of the disposition. The running of the period is governed by the provisions applying to limitation of sections 206 and 210 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.

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 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) If 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 at the time of 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 of the notification by every person who presents prima facie evidence of a legal interest.

Section 1954

Period for 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 threat, 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 heirs

Before the acceptance of the inheritance, a claim directed against the estate may not be judicially asserted against the heirs.

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) If the heir disposes of an item 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 such 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 guardianship court.

Section 1963

Maintenance for the mother-to-be of an heir

If 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 items. 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 items 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

Plea 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 inheritance 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; inheritance 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 inheritance insolvency proceedings are instituted.

Section 1976

Effect on legal relationships extinguished by merger

If administration of the estate has been ordered or inheritance 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 inheritance 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 inheritance 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 inheritance 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 inheritance insolvency proceedings

(1) If the heir has obtained knowledge of the illiquidity or overindebtedness of the estate, he must without undue delay apply for the institution of inheritance 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 illiquidity or overindebtedness. In particular, it is deemed to be negligence if the heir does not apply for public notice to 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) If the discharge of a liability is not possible at the time, or if 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 inheritance 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

Plea by the heir of exhaustion of assets

If the inheritance 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

Plea by the heir of insufficiency of assets

(1) If the order of administration of the estate or the institution of inheritance 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 estate, 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 plea 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 items 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 provide prima facie evidence of 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 was prevented through no fault of his own 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 adhering to the period of two weeks set forth 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 guardianship court

If the heir is subject to parental custody or to guardianship, the probate court should notify the guardianship court of the fixing of the inventory period. This also applies if the matter relating to the estate falls under the tasks of a custodian of the heir.

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 inheritance insolvency proceedings are instituted. During the period of the administration of the estate or of the inheritance insolvency proceedings, an inventory period may not be fixed. If the inheritance 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 items 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 items 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

If 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 items 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 in giving it.

(2) If the statement of the items 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 items 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 items 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 in the inheritance are differently encumbered.

Section 2008

Inventory for an inheritance that is part of community property

(1) If a spouse living under the regime of community of property is an heir and if the inheritance is part of the community 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 community 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 items 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 presents prima facie evidence of 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 curator 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 pleas

Section 2014

Plea 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

Plea of the public notice procedure

(1) If the heir has made the application for the issue of the public notice to 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) It is equivalent to the termination of the public notice procedure if the heir does not appear at the public notice hearing and does not within two weeks apply for a new date to be fixed or if he does not appear at the new hearing either.

(3) If the exclusory judgment is passed or the application for the judgment to be passed is rejected, the procedure is not to be deemed as terminated before the expiry of a two-week period beginning with the pronouncement of the judgment and not before an appeal filed in good time is dealt with.

Section 2016

Exclusion of the pleas 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) begin to run 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 items belonging to the inheritance in return for repayment 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 items 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 on. 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 item 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 items 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 items 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 items 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 determined 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 learnt 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 items of the estate.

Section 2034

Right of pre-emption as against seller

(1) If a co-heir sells his share to a third party, the other co-heirs have a right of pre-emption.

(2) The period for exercising the right of pre-emption is two months. The right of pre-emption is inheritable.

Section 2035

Right of pre-emption 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 pre-emption to which they are entitled under section 2034 against the seller. The right of pre-emption as against the seller expires on 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

On 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 deposits 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 items of the estate, set-off

(1) The heirs may dispose of an item 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 item 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 otherwise provided by sections 2043 to 2045.

The provisions of section 749 (2) and (3) and of sections 750 and 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 items 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 accrual 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 is 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. If the public notice has not yet been applied for 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

Arrangements 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 at the equitably exercised discretion of a third party. The decision made by the third party on the basis of the arrangement is not binding on the heirs if it is clearly inequitable; the decision is made by judgment 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 community property

(1) A gift that is made from the community property under the matrimonial regime of community of property is deemed to have been made in equal shares by 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 community 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 from the community 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

income from employment.

(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 for another legal reason. 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 out of 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 inheritance 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 as against 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. If the gift is made subject to a condition precedent or together with the specification of a date of commencement, and if 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 the place of him in intestate succession.

Section 2070

Descendants of a third party

If 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

If 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

If the testator has made a testamentary gift subject to the condition that the person provided for ceases 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 ceases 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 his fiancée 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 threat

(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 threat.

(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

Persons entitled to avoid

(1) The person who would be directly benefited by the cancellation of the testamentary disposition is entitled to avoid it.

(2) If, in the cases of section 2078, the mistake relates only to a particular person and if 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 presents prima facie evidence of 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 for 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 has notice 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 items

(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 items, 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

If 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 otherwise provided in sections 2066 to 2069.

Section 2092

Partial appointment to fractions

(1) If, of several heirs, 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 several heirs are 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 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

If 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 an heir on intestacy in 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 determined by an event that occurs only after the devolution of the inheritance or if the appointment of a person who is not yet 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 item 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 items belonging to the inheritance

except insofar as otherwise provided by the provisions in sections 2113 to 2115.

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 item 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 gifts that are made to comply with a moral duty or to show consideration to decency.

(3) The provisions in favour of the persons who derive rights from a person not entitled 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 is 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 item of the inheritance that is effected by way of execution of judgment or enforcement of seizure or arrest or by the insolvency administrator is, in the case where the subsequent succession occurs, ineffective to the extent that it would defeat or adversely effect 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 item 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 securities 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 securities that under section 92 are consumable things, and of interest, annuity or dividend coupons may not be demanded. Instruments made out to order with a blank endorsement are equivalent to bearer securities.

(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 securities 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 items of inheritance

(1) On request, the prior heir must give the subsequent heir a list of the items 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 is 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 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. 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 out of the inheritance other expenses that he is permitted to regard in the circumstances as necessary for the purpose of preserving items of the inheritance. If he pays them out of 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 incurs 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 items 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 items of the inheritance.

(2) The provisions in favour of the persons who derive rights from a person not entitled 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 has notice 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 shows 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 entitled to the value of the fruits only 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 item 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

If 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 items of the estate that he still has. He may not require reimbursement for outlays on items 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 item 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 circumstances giving rise to subsequent succession occur, 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 circumstances giving rise to subsequent succession occur, the prior heir is still entitled to dispose of items of the estate to the same extent as previously, until he receives 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

Revival 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 as against the prior heir even if he has unlimited liability towards the other creditors of the estate.

Section 2145

Liability of the prior heir for the obligations of the estate

- (1) The prior heir is still liable after the occurrence of subsequent succession 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 permit inspection of the notice by every person who presents prima facie evidence of a legal interest.

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

Several persons charged with a legacy

If several heirs or several legatees are charged with the same legacy, in case of doubt the heirs are charged in proportion to their shares in the inheritance, and the legatees are charged in proportion to the value of their legacies.

Section 2149

Legacy for heirs on intestacy

If the testator has provided that an item of the estate is not to pass to the appointed heir, the item is deemed to have been 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

The legacy given to an heir (preferential legacy) is also deemed to be a legacy to the extent that the heir is charged himself.

Section 2151

Right to decide of the person charged or of a third person in the event of several persons provided for

(1) The testator may give a legacy to several persons in such a manner that the person charged or a third person must decide which of the several 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 become 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 several persons in such a manner 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 several persons in such a manner that the person charged or a third person has to determine what each person is to receive out of 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, 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 given in such a manner that the person provided for is only to receive one or the other of a number of items. If in such a case the choice is given 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 set out in section 2151 (3) sentence 2 applies with the necessary modifications.

Section 2155

General legacy

(1) If the testator has designated 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 designation of the thing, the provisions set out in section 2154, applicable to the third party's choice, apply.

(3) If the designation 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 designation of the thing.

Section 2156

Legacy for a special purpose

In the directions concerning a legacy, the purpose of which the testator has determined, the testator can leave the determination of how to execute 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 item is left to several persons, the provisions of sections 2089 to 2093 apply with the necessary modifications.

Section 2158

Accrual

(1) If the same item is left to several persons, and 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, the right of accrual arises among such persons first.

(2) The testator may exclude the accrual.

Section 2159

Independence of the accrual

A share devolving on a legatee by accrual is, taking into consideration 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

Falling away of the person charged

Unless a contrary intention of the testator is to be presumed, a legacy remains effective even if the person charged does not become heir or legatee. In this case, the person is deemed to be charged who benefits directly from the falling away of the person originally charged.

Section 2162

Thirty-year period for a suspended legacy

(1) If a legacy is directed to be given subject to a condition precedent or to commence from a given date, it becomes ineffective upon the expiry of thirty years after the devolution of the inheritance, unless the condition has been fulfilled or the date has arrived before then.

(2) If the person provided for was not yet conceived at the time of the devolution of the inheritance, or if his identity is determined by an event occurring only after the devolution of the inheritance, the legacy becomes ineffective upon the expiry of thirty years after the devolution of the inheritance, unless before then the person provided for has been conceived or the event has occurred, through which his identity is determined.

Section 2163

Exceptions to the thirty-year period

(1) In the cases set out in 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 concerning whom the event is to occur is a legal person, the period of thirty years remains effective.

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, as a result of damage to the thing after directing that the legacy be given, the testator has a claim to compensation for the reduction in its value, the legacy extends, in case of doubt, to this claim.

Section 2165

Charges

(1) If an item belonging to the inheritance is bequeathed, the legatee may not, in case of doubt, demand the discharge of the rights with which the item is charged. If the testator is entitled to such discharge, the legacy extends, in case of doubt, to this claim.

(2) If a mortgage, land charge or annuity charge to which the testator himself is entitled exists over a plot of bequeathed land, it is to be inferred from the circumstances whether the mortgage, land charge or annuity charge is to be deemed to have been bequeathed with the land.

Section 2166

Charge with a mortgage

(1) If a plot of bequeathed land belonging to the inheritance is charged with a mortgage for a debt of the testator, or for a debt which the testator is bound to settle on behalf of the debtor, the beneficiary is, in case of doubt, bound as against the heir to satisfy the creditor in due time, insofar as the debt is covered by the value of the plot of land. The value is determined according to the time at which the ownership passes to the beneficiary; it is calculated by deducting the charges which have priority over the mortgage.

(2) If a third party is bound as against the testator to settle the debt, the obligation of the beneficiary exists, in case of doubt, only to the extent that the heir cannot require the third party to effect the discharge.

(3) These provisions do not apply to a mortgage of the kind described in section 1190.

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 beneficiary specified in section 2166 is, in case of doubt, restricted to the part of the debt which is proportional to the value of the bequeathed plot of land compared to the value of all the plots of land. The value is calculated in accordance with section 2166 (1) sentence 2.

Section 2168

Charge with a blanket land charge

(1) If a blanket land charge or a blanket annuity charge exists over several plots 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 as against the heir to satisfy the creditor to the amount of the share of the land charge or the annuity 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 in accordance with section 2166 (1) sentence 2.

(2) If, 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 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, as against the owner

of the other plot of land, or a legal predecessor of the owner, to satisfy the creditor.

Section 2168a

Application to ships, ships under construction and ships mortgages

Sections 2165 (2), and sections 2166 and 2167 apply analogously to registered ships, ships under construction and to ships mortgages.

Section 2169

Legacy of foreign items

(1) The legacy of a particular item is ineffective to the extent that the item, at the time of the devolution of the inheritance, does not belong to the inheritance, unless the item is to be bequeathed to the person provided for also 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 item or, if the item 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 item 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 item which does not belong to the inheritance at the time of its devolution is effective in accordance with section 2169 (1), the person charged must procure the item for the person provided for.

(2) If the person charged is unable to procure the item, 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, which at the time of the devolution of the inheritance is impossible of performance for anyone, 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) If 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 manner 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 under section 950 the person who produced the new thing has become the owner.

(2) If the combination, intermixture or mingling is carried out by a person other than the testator and if the testator has thus acquired co-ownership, 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

Where a testator has bequeathed a claim due to him which is settled before the devolution of the inheritance, and if the item delivered still exists as part of the inheritance, it is to be presumed, in case of doubt, that this item is to be bequeathed to the person provided for. Where the claim was for the payment of a sum of money, the respective amount of money is, in case of doubt, deemed to be bequeathed, even if this is not found in the inheritance.

Section 2174

Claim arising under a legacy

A legacy creates a right in favour of the person provided for to demand delivery of the bequeathed item from the person charged.

Section 2175

Revival of extinguished legal relationships

Where a testator has bequeathed a claim to which he is entitled against the heir, or where he has bequeathed a right with which a thing or a right of the heir is charged, the legal relationships extinguished by the consolidation of a right and an obligation or between a right and a charge as a result of the devolution of the inheritance are deemed not to have been extinguished in respect of 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 irrespective of the right to disclaim the legacy.

Section 2177

Devolution in the event of a condition or a time limit

If a legacy has been directed to be given subject to a condition precedent, or to commence from a given date, and if the condition is fulfilled or the date occurs only after the devolution of the inheritance, the devolution of the legacy occurs on the fulfilment 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 was not yet conceived at the time of the devolution of the inheritance, or if his identity is to be determined 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 provisions applicable to a case where a performance is owed subject to a condition precedent apply in the cases set out in sections 2177 and 2178.

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 is made by declaration to the person charged. The declaration may not be made until after the occurrence of the devolution of the inheritance; it is ineffective if it is made subject to any condition or stipulation as to time.

(3) The provisions of section 1950, section 1952 (1) and (3) and section 1953 (1) and (2), applicable to 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, the performance becomes due, in case of doubt, on the death of the person charged.

Section 2182

Warranty for defects of title

(1) If a thing designated 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 defects of title within the meaning of section 435. Section 444 applies with the necessary modifications.

(2) In case of doubt, the same applies if a particular item 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, the person charged therewith is not, in case of doubt, responsible for the freedom of the plot of land from easements, restricted personal easements and charges on land.

Section 2183

Warranty for defects of quality

If a thing designated only by class is bequeathed, and 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 defect of quality, the legatee may demand damages for non-performance in lieu of delivery of a thing free from defects. The provisions applicable to the warranty for defects in a thing sold apply with the necessary modifications to these claims.

Section 2184

Fruits and emoluments

If a particular item 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 compensate emoluments which are not part of the fruits.

Section 2185

Compensation for outlays and expenses

If a thing belonging to the inheritance is bequeathed, the person charged can demand compensation for the outlays incurred for the thing after the devolution of the inheritance and for expenses since the devolution of the inheritance to pay the charges of the thing in accordance with the provisions which are applicable to the relationship between the possessor and the owner.

Section 2186

Due date of sublegacy or testamentary burden

If a legatee is charged with a legacy or a testamentary burden, he is obliged to execute the legacy or testamentary burden only once he is entitled to demand the execution of the legacy bequeathed to him.

Section 2187

Liability of the main legatee

(1) A legatee who has been charged with a legacy or a testamentary burden may refuse to execute the legacy bequeathed to him even after its acceptance to the extent that whatever he has received out of the legacy is insufficient for execution.

(2) If another person takes the place of the charged legatee in accordance with section 2161, this person does not have greater liability than the legatee would have.

(3) The provisions of section 1992, applicable to 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 by reason of the heirs limitation of liability, or on the basis of a claim to a compulsory share, or pursuant to section 2187, the legatee may, unless a contrary intention of the testator is to be presumed, proportionately reduce the charges imposed on him.

Section 2189

Directions concerning priority

In case the legacies and testamentary burdens imposed on the heir or a legatee are reduced by reason of the heirs limitation of liability, as a result of a claim to a compulsory share or pursuant to sections 2187 and 2188, the testator may direct by disposition mortis causa that a legacy or a testamentary burden has priority over the other charges.

Section 2190

Substitute legatee

If the testator has bequeathed the object of the legacy to another in case the original person provided for does not acquire it, the provisions of section 2097 to 2099, applicable to 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 section 2102, of 2106 (1), of 2107 and of section 2110 (1), applicable to the appointment of a subsequent heir, apply to the legacy with the necessary modifications.

Title 5

Testamentary burden

Section 2192

Applicable provisions

The provisions set out in sections 2065, 2147, 2148, 2154 to 2156, 2161, 2171 and 2181 applicable to testamentary gifts apply with the necessary modifications to a testamentary burden.

Section 2193

Appointment of the beneficiary, period of execution

(1) The testator, upon making a testamentary burden, the purpose of which he has stated, can leave it to the person charged or to a third person to determine the person to whom performance is to be rendered.

(2) If the person charged has the right of determination, and if he has been ordered by a final judgment to execute the testamentary burden, the plaintiff may specify a reasonable period of time for him to execute the testamentary burden; after the expiry of the period of time the plaintiff is entitled to make the determination if the execution is not effected in due time.

(3) If a third party has the right of determination, it is exercised by declaration to the person charged. If the third person cannot 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; the person charged and those entitled to demand the execution of the testamentary burden belong to those concerned within the meaning of this provision.

Section 2194

Claim to execution

The execution of a testamentary burden may be demanded by the heir, the co-heir and any person who would directly benefit from the falling away of the person initially charged with the testamentary burden. If the execution is in the public interest, the public authority responsible may also demand the execution.

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 execution

(1) If the execution 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 from the lapse of the person initially charged may, in accordance with the provisions on the return of unjust enrichment, demand the delivery of the gift to the extent that this gift was to have been used to execute the testamentary burden.

(2) The same applies if the person charged has been ordered by a final and absolute judgment to execute a testamentary burden which may not be executed by a third person and the enforcement measures available 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 in 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 to a third person the determination of the person to act as executor. The determination is exercised by declaration to the probate court; the declaration must be submitted in an officially certified form.

(2) The right of determination of the third party is extinguished on the expiry of a period specified 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 has requested the probate court to appoint an executor in his will, 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 take office, he is incapable of contracting or has limited capacity to contract or has received 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 death of the testator; it is ineffective if it is made subject to a condition or stipulation as to time.

(3) The probate court may, on application by one of the persons concerned, specify a period the person appointed is 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 are several heirs, effect a partitioning of the estate between 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 items of the estate. He is entitled to make gratuitous dispositions only to the extent that they are made to discharge a moral obligation or out of consideration for common decency.

Section 2206

Incurring obligations

(1) An executor is entitled to incur obligations on account of the estate to the extent that this is necessary for the proper administration thereof. If the executor is entitled to dispose of an item 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, irrespective of 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 his right to incur obligations on account of the estate. Even in such a case, the executor is entitled to promise to make a gift only subject to 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 particular items 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 items.

(2) If the executor is not required to execute the dispositions of the testator himself, he may demand execution from the heir, unless a contrary intention of the testator is to be presumed.

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 the authorisation set out in section 2207 has been granted to such an executor.

Section 2210

Thirty-year period for permanent execution

Any direction given 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 any other event affecting one or other of them. The provision of section 2163 (2) applies with the necessary modifications.

Section 2211

Limitation of the heir in dispositions

(1) The heir may not dispose of any item of the estate subject to the administration of the executor.

(2) The provisions in favour of those who derive rights from a person without authorisation apply with the necessary modifications.

Section 2212

Enforcement in court of the rights subject to the execution of the will

A right subject to the administration of the executor may only be enforced in court by the executor.

Section 2213

Enforcement in court of claims against the estate

(1) A claim against the estate may be enforced in court both against the

heir and against the executor. If the executor is not entitled to administer the estate, the claim may be enforced 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 enforces his claim against the heir may enforce his claim also against the executor to the extent that the latter is required to permit execution on the items 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 items 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 items 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 called to take part in taking the inventory.

(4) The executor is entitled and, upon demand by 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 which the testator has given by testamentary disposition concerning the administration of the estate are to be followed by the executor. Upon the application by the executor or by any other party concerned, they may, however, be set aside by the probate court if to follow them would significantly endanger the estate. The court should, as far as possible, hear the persons concerned prior to making a decision.

Section 2217

Transfer of items of the estate

(1) The executor must, upon demand, transfer to the heir for his free disposal any items of the estate which the executor evidently does not require to perform his duties. His right to administer these items is extinguished upon such transfer.

(2) The executor may not refuse to transfer the items on account of any obligations of the estate which are not based on a legacy or a

testamentary burden, nor on account of any legacies or testamentary burdens made subject to a condition or limitation of time, if the heir provides security for the discharge of the obligations or for the execution of the legacies or testamentary burdens.

Section 2218

Legal relationship to the heir; rendering of accounts

(1) The provisions of section 664, 666 to 668, 670, of section 673 sentence 2 and section 674 applicable to the mandate apply with the necessary modifications to the legal relationship between the executor and the heir.

(2) Where the administration lasts for longer the heir may demand that an account is rendered every year.

Section 2219

Liability of the executor

(1) If the executor acts in 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 executed, also to the legatee for the damage arising therefrom.

(2) If there are several executors who are 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 appoint an executor also for the purpose of this person ensuring the execution of the charges imposed on a legatee.

Section 2224

Several executors

(1) Several executors perform the duties of the office jointly; in case of a difference in opinion, the probate court decides. If one of them falls away, 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 which are necessary for the preservation of any

item of the estate which 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. The notice is given by declaration to the probate court. The provision under section 671 (2) and (3) applies with the necessary modifications.

Section 2227

Dismissal of the executor

(1) The probate court may, upon the application of one of the persons concerned, dismiss the executor if a good cause exists; a good cause is particularly a gross breach of duty, or his incapacity to manage the affairs properly.

(2) The executor should, if practicable, be heard before his dismissal.

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), 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 require the consent of his legal representative in order to make a will.

(3) (repealed)

(4) A person who is incapable of realizing the importance of a declaration of intent made by him and of acting in accordance with this realisation on account of his unsound mind, mental deficiency or derangement of his senses, may not make a will.

Section 2230

(repealed)

Section 2231

Regular wills

A will may be made in a regular form

1. by being recorded by a notary,
2. by a declaration made by the testator in accordance with section 2247.

Section 2232

Public will

A will is made by being recorded by a notary whereby the testator makes an oral declaration of his last will to the notary or hands over to him a document with a declaration 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 either 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 written words, he may make the will only by oral declaration to the notary.

Section 2234 to 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 surname of the testator. If the testator signs in another manner and this signature suffices to determine the identity of the testator and the seriousness of his declaration, such a signature does not diminish the validity of the will.
- (4) A person who is a minor or is incapable of reading written words may not make a will in accordance with the provisions above.
- (5) If a will made under subsection (1) does not contain any statement about the time when it was made and if this causes doubts about its validity, the will is to be deemed to be valid only if the necessary determinations about the time when it was made can be established in some other manner. The same applies accordingly to a will that does not contain any statement about the place where it was made.

Section 2248

Custody of the holographic will

A will made in accordance with the provision under section 2247 is, upon demand by the testator, to be kept in special official custody (section 2258a and 2258b). The testator should be issued a deposit receipt for the will taken into custody.

Section 2249

Emergency will made before the mayor

- (1) If it is feared that the testator will die earlier 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 local community where he is residing. The mayor must call in two witnesses for the authentication. A person who is included in the will to be authenticated as person provided for or who is appointed as an executor may not be called as a witness; the provisions of section 7 and 27 of the Notarial Recording Act apply with the necessary modifications. For the making of the will, 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 apply; the mayor takes the place of the notary. The record must also be signed by the witnesses. If the testator is, according to his own statement or in the firm opinion of the mayor, incapable of signing his name, the signature of the testator is replaced by the establishment of this statement or firm opinion in the record.

(2) The fear that the making of a will before a notary will no longer be possible 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 was given.

(4) For the application of the provisions above the head of a very large estate has the same status as the mayor.

(5) The will may also be made before the person who is appointed under statutory provisions to represent the mayor or head of the estate. The representative should state in the record the grounds for his power of representation.

(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 reproduction of the testators declaration, then the procedural error does not detract from the effectiveness of the authentication.

Section 2250

Emergency will before three witnesses

(1) A person who is staying at a place which, as a result of extraordinary circumstances, is blocked off in such a manner that making a will before a notary is not possible or extremely difficult, may make the will in the manner 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 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. In respect of the witnesses, the provisions of section 6 (1) no.1 to 3, sections 7, 26 (2) no. 2 to 5, section 27 of the Notarial Recording Act, and in respect of the record, 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 as well as the provisions of section 2249 (1) sentences 5 and 6, (2) and (6) apply 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 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 embarks 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 begins to run from the start.

(4) If after the expiry of the period the testator is declared dead, or if the time of his death is established in accordance with the provisions of the Law on Missing Persons, the will remains in force if the period had not yet expired at the time when the testator was still alive according to the information available.

Section 2253

Revocation of the will

The testator may revoke a will as well as a particular 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 where the testator, with the intention of revoking it, destroys the testamentary document, or makes changes to it whereby the wish to revoke a written declaration of intent is customarily expressed. If the testator has destroyed the testamentary document or changed it in the manner described, it is to be 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 depositary returning the document should inform the testator of the consequence of the return provided for by sentence 1, and should note this on the document and place on record that both were made.

(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) apply also to 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) An earlier will is revoked by the making of a will to the extent that the later will is inconsistent with the former.
- (2) If the later will is revoked, the earlier will is, in case of doubt, effective in the same manner as if it had not been revoked.

Section 2258a

Jurisdiction for special official custody

- (1) The local courts are competent for the special official custody of wills.
- (2) The following are locally competent:
 1. if the will was made before a notary, the local court in the district of which the notary has his office,
 2. if the will was made before the mayor of a local community or the head of an estate district, the local court of the district to which the local community or the very large estate belongs,
 3. if the will was made in accordance with section 2247, every local court.
- (3) The testator may at any time request custody at another local court.

Section 2258b

Procedure in the event of special official custody

- (1) The acceptance of the will for custody and its surrender must be ordered by the judge and must be jointly effected by him and the clerk of the court.
- (2) Custody is effected under the joint seal of the judge and the clerk of the court.
- (3) The testator should receive a deposit receipt for the will taken into custody. The deposit receipt must be signed by the judge and the clerk of the court and must bear the seal of office.

Section 2259

Obligation to deliver

- (1) A person who is in possession of a will which has not been taken into special official custody is obliged to deliver it to the probate court without undue delay after he has gained 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 cause and procure its delivery once it has gained knowledge of the will.

Section 2260

Opening of the will by the probate court

(1) As soon as the probate court has gained knowledge of the death of the testator, it must fix a date for the opening of any will of his placed in its custody. The heirs on intestacy of the testator and the other parties concerned should, if practical, be summoned to be present on the date.

(2) On the date, the will must be opened, read out to the parties concerned, and on demand submitted to them. In the event that the will is submitted, the reading out thereof can be omitted. The reading out thereof will also be omitted if none of the parties concerned appears on the date.

(3) A record is to be made concerning the opening. If the will was sealed, the record is to state whether the seal was intact.

Section 2261

Opening by another court

If a court other than the probate court has the will in official custody, the duty of opening the will is incumbent on the other court. The will, together with a certified copy of the record concerning the opening of the will, is to be sent to the probate court; a certified copy of the will is to be retained.

Section 2262

Notification to the parties concerned by the probate court

The probate court must inform the parties concerned who were not present at the opening of the will, of the contents of the will which affects them.

Section 2263

Voidness of a prohibition to open the will

A direction given by the testator prohibiting his will to be 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 possible, officially make inquiries about whether the testator is still alive. If the inquiries do not establish 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

Inspection of the will and granting copies of the opened will

A person who can credibly establish a legal interest is entitled to inspect the will once it has been opened, and to demand a copy of the will or individual parts thereof; the copy is to be certified on demand.

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 described therein are satisfied by only one of the spouses.

Section 2267

Joint holographic will

For the making of a joint will in accordance with section 2247 it suffices if one of the spouses makes a will in the manner provided therein, and the other spouse co-signs the joint declaration in his or her own hand. The co-signing spouse should thereby state the time (day, month and year) and the place at which his or her signature was affixed.

Section 2268

Effect of nullity and 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 can 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, in which each appoints the other heir, that after the death of the surviving spouse the estate of both is to pass to a third person, it is to be assumed, in case of doubt, that the third person has been appointed heir of the spouse to pass away last for the whole estate.

(2) If in such a joint will the spouses have directed that a legacy be given which is to be carried out 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 from which it is to be assumed that the disposition of the one would not have been made without the disposition of the other, the voidness or the revocation of one of the dispositions results in the other becoming ineffective.

(2) Such a relationship of the dispositions to one another is, in case of doubt, to be presumed, if the spouses have mutually made provisions for each other in the will, or if a testamentary gift has been made by either spouse to the other, and in the event of the survival of the person provided for a disposition is made in favour of a person who is a relative, or who is on intimate terms with the other spouse.

(3) The provision set out in subsection (1) does not apply to dispositions other than those concerning the appointment of heirs, legacies or testamentary burdens.

Section 2271

Revocation of reciprocal dispositions

(1) The revocation of a disposition which is related to a disposition of the other spouse as described in section 2270 is to be effected during the lifetimes of the spouses in accordance with the provision of section 2296, applicable to rescission of a contract of inheritance. Neither spouse may, during the lifetime of the other, unilaterally make any new disposition mortis causa revoking his or her original disposition.

(2) The right of revocation is extinguished on the death of the other spouse; the survivor may, however, revoke his or her disposition, if he or she disclaims the testamentary gift. 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, entitled to compulsory share in the estate, of both spouses or of one of the spouses, the provision of section 2289 (2) applies with the necessary modifications.

Section 2272

Withdrawal from official custody

A joint will may be withdrawn only by both spouses in accordance with section 2256.

Section 2273

Opening

(1) Upon opening a joint will, the dispositions of the surviving spouse, to the extent that they can be separated from the others, may not be read out nor be brought to the knowledge of the parties concerned in any other manner.

(2) A certified copy of the dispositions of the deceased spouse is to be made. The will is to be re-sealed and put back into special official custody.

(3) The provisions of subsection (2) do not apply if the will only contains dispositions relating to a devolution of the inheritance which becomes effective on the death of the spouse who dies first, particularly if the will is limited to a declaration that both spouses mutually appoint each other heir.

Division 4

Contract of inheritance

Section 2274

Conclusion of contract in person

The testator can conclude a contract of inheritance only in person.

Section 2275

Requirements

(1) A person can only conclude a contract of inheritance as testator if he has unlimited capacity to contract.

(2) A spouse may conclude a contract of inheritance, as testator, with his or her spouse, even if he or she has limited capacity to contract. In such a case, he or she requires the approval of his or her legal representative; if the legal representative is a guardian, the ratification of the guardianship court is required.

(3) The provisions of subsection (2) apply *mutatis mutandis* to engaged persons, also within 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 these provisions provide for a testator also applies to each of the parties to the contract.

(2) For a contract of inheritance between spouses or between engaged persons which is recorded in the same document as a contract of marriage, the form prescribed for the contract of marriage suffices.

Section 2277

Special official custody

If a contract of inheritance is taken into special official custody, each of the parties to the contract should be given a deposit receipt.

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 those relating to the appointment of heirs, legacies and testamentary burdens may not be made in the contract.

Section 2279

Contractual gifts and burdens, application of section 2077

(1) The provisions applicable to testamentary gifts and testamentary burdens apply with the necessary modifications to contractual gifts and contractual burdens.

(2) The provision set out in section 2077 applies to a contract of inheritance between spouses, civil partners or engaged persons (also within the meaning of the Civil Partnership Act (*Lebenspartnerschaftsgesetz*)), also to the extent that a third party is a person provided for.

Section 2280

Application of section 2269

Where spouses or civil partners have provided in a contract of inheritance, in 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 directed that a legacy be executed 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 be avoided also 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 living at the time of avoidance.

(2) If a disposition made in favour of a third party is avoided by the testator after the death of the other party to the contract, 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 made 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 the avoidance.

(2) If a testator is incapable of contracting, his legal representative may, with the ratification of the guardianship court, avoid a contract of inheritance on his behalf.

(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 the period of one year.

(2) The period begins to run, in the case of avoidance on the ground of duress, from the time when the duress ceases, and in all other cases, from the time when the testator gains knowledge of the ground for avoidance. The provisions of sections 206 and 210, applicable to 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 due time, the testator himself may, after his incapacity to contract has ceased, avoid his contract of inheritance in the same manner as if he had been without a legal representative.

Section 2284

Confirmation

The confirmation of a voidable contract of inheritance may be made 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 testator's right of avoidance is extinguished at the time of the devolution of the inheritance.

Section 2286

Dispositions inter vivos

The right of the testator to dispose of his property by transaction inter vivos is not restricted by a contract of inheritance.

Section 2287

Gifts prejudicial to the contractual heir

(1) If the testator has made a gift with the intention of prejudicing his contractual heir, the contractual heir may, after the inheritance has devolved upon him, demand the recipient to return the gift in accordance with the provisions relating to the return of unjust enrichment.

(2) The claim becomes time-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 legacy given under a contract of inheritance with the intention of prejudicing the person provided for, the value of the object replaces the object to the extent that the heir is thereby rendered incapable of executing the legacy.

(2) If the testator has alienated or created a charge on the object with the intention of prejudicing 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 alienation 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 recipient of the gift.

Section 2289

Effect of the contract of inheritance on testamentary dispositions; application of section 2338

(1) A prior testamentary disposition made by the testator is cancelled by a contract of inheritance to the extent that it would be prejudicial to the right of a person provided for under the contract. A later disposition mortis causa is, notwithstanding the provision set out in 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 any of 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 or if the cancellation comes within the scope of duties of a custodian, ratification by the guardianship court is necessary. The same applies if he is under parental custody, unless the contract is entered into between spouses or engaged persons, also within the meaning of the Civil Partnership Act (*Lebenspartnerschaftsgesetz*).

(4) The contract is required to be in the form prescribed in section 2276 for the contract of inheritance.

Section 2291

Cancellation by will

(1) A contractual disposition, by which a legacy or a testamentary burden is directed to be given, may be cancelled by a will made by the testator. For the effectiveness of the cancellation, the approval of the other party to the contract is necessary; the provision of section 2290 (3) apply.

(2) The declaration of approval requires notarial recording; the approval is irrevocable.

Section 2292

Cancellation by joint will

A contract of inheritance concluded between spouses or civil partners may also be cancelled by a joint will of the spouses or of the civil partners; the provisions of section 2290 (3) apply.

Section 2293

Rescission in the event of reservation

The testator may rescind his contract of inheritance, if he has reserved the right to do so in the contract.

Section 2294

Rescission in the event of the misconduct of the person provided for

The testator may rescind a contractual disposition, if the person provided for is at fault for misconduct which entitles the testator to deprive him of his compulsory share, or, if 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

Rescission in the event of the extinction of a mutual obligation

The testator may rescind a contractual disposition, if the disposition is made in consideration of a legal obligation of the person provided for to make periodic payments to the testator during the latter's lifetime, in particular to grant support, and the obligation is extinguished before the death of the testator.

Section 2296

Representation, form of rescission

(1) The rescission may not be made through an agent. If the testator has limited capacity to contract, he does not require the approval of his legal representative.

(2) The rescission is effected by declaration to the other party to the contract. The declaration requires notarial recording.

Section 2297

Rescission by will

To the extent that the testator is entitled to rescind, he may, after the death of the other party to the contract, cancel the contractual disposition by will. In the cases set out in section 2294, the provision of section 2336 (2) to (4) apply 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 any one of these dispositions results in the ineffectiveness of the whole contract.

(2) If rescission is reserved in such a contract, the whole contract is cancelled through the rescission of one of the parties to the contract. The right of rescission is extinguished on the death of the other party to the contract. The surviving party may, however, revoke his disposition by will if he disclaims the gift conferred upon him by the contract.

(3) The provisions of subsection (1) and subsection (2) sentences 1 and 2 are not applicable if a contrary intention of the parties to the contract is to be assumed.

Section 2299

Unilateral dispositions

(1) Either of the contracting parties may, in the contract of inheritance, unilaterally make any disposition which 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 rescission or by contract, the disposition ceases to be effective, unless a contrary intention of the testator is to be assumed.

Section 2300

Official custody; opening

(1) The provisions set out in sections 2258a to 2263 and 2273, applicable to the official custody and the opening of a will, apply with the necessary modifications to a contract of inheritance, the provisions of section 2273 (2) and (3), however, only if the contract of inheritance is in special official custody.

(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) are applicable. 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 is in official custody for more than fifty years, section 2263a applies with the necessary modifications.

Section 2301

Promise of gifts mortis causa

(1) The provisions concerning dispositions mortis causa apply to a promise of a gift made subject to the condition that the recipient of the gift survives the giver. The same applies to a promise of debt or acknowledgement of debt of the kind described in sections 780 and 781, made by way of a gift subject to this condition.

(2) If the giver of the gift executes the gift by delivery of the object given,

the provisions concerning gifts inter vivos apply.

Section 2302

Unlimited testamentary freedom

A contract whereby a person binds himself 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 amount 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, granting the 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) If a person entitled to inherit a compulsory share as heir has been limited by the appointment of a subsequent heir, or of an executor, or by a direction concerning the partitioning of the estate, or if 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. If 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 begins to run only after the person entitled to a compulsory share has gained knowledge of the limitation or charge.

(2) If the person entitled to a compulsory share has been appointed subsequent heir, this counts as a limitation to the appointment of an heir.

Section 2307

Bequest of a legacy

(1) If 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; in calculating the value of the legacy, any 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 the acceptance thereof is declared before such time.

Section 2308

Avoidance of the disclaimer

(1) If a person entitled to a compulsory share, who as heir or 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 such cessation was unknown to him.

(2) The provisions applicable to the avoidance of a disclaimer of an inheritance apply with the necessary modifications to the avoidance of a disclaimer of a legacy. Avoidance is effected by declaration to the person charged with the legacy.

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 to calculate the compulsory share

In determining the share of the inheritance which is relevant for calculating the value of a compulsory share, those persons are to be counted who have been excluded from succession by testamentary disposition, or have disclaimed the inheritance, or have been declared unworthy to inherit. Anyone who has been excluded from intestate succession by renunciation of the inheritance is not counted.

Section 2311

Value of the estate

(1) The condition and value of the estate at the time of the devolution of the inheritance are taken as a basis for calculating the compulsory share. In calculating 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) As far as necessary, the value is to be determined by estimate. A valuation made by the testator is not authoritative.

Section 2312

Value of a farm

(1) If the testator has directed, or if it is to be assumed in accordance with section 2049, that one of several heirs should have the right to an appropriate farm forming part of the inheritance at the value of its

produce, and if such right is exercised, the value of the produce is also authoritative for calculating the compulsory share. If the testator has fixed a different price for the appropriation of the farm, this is authoritative if it is not less than the value of the produce nor more than the estimated value.

(2) If the testator leaves only one heir, he may direct that the value of the produce or another value determined as specified in subsection (1) sentence 2 should be taken as a basis for calculating the compulsory share.

(3) These provisions apply only where the heir who acquires the farm is one of the persons designated in section 2303 who are entitled to compulsory shares.

Section 2313

Consideration of conditional, uncertain or unsecured rights; heirs duty of determination

(1) In determining the value of the estate, rights and obligations which are contingent upon a condition precedent are not taken into consideration. Rights and obligations which are contingent upon a condition subsequent are taken into consideration as if they were unconditional. If the condition is fulfilled, an appropriate adjustment must be made to cater for the change in the legal situation.

(2) The same applies to uncertain or unsecured rights and to doubtful obligations as it does to rights and obligations which are contingent upon a condition precedent. The heir is bound as against the person entitled to a compulsory share to ascertain any uncertain rights, and to pursue any unsecured rights to the extent that this complies 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 to him, on demand, information concerning 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 items of the estate, in accordance with section 260, and that the value of the items 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 counted towards his compulsory share anything given to him as a gift by the testator by a legal transaction inter vivos, with the direction that it should be counted towards his compulsory share.

(2) The value of the gift is added to the estate when determining the compulsory share. The value is determined based on the time at which the gift was given.

(3) Where the person entitled to a compulsory share is a descendant of the testator, the provision set out in section 2051 (1) applies with the necessary modifications.

Section 2316

Duty to adjust advancements

(1) If there are several descendants and, in the event of intestate succession, a gift by the testator or services of the kind specified in section 2057a would be brought into account 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 duty 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 value of the compulsory share, calculated pursuant to subsection (1), is greater than the value of the share of the inheritance left to him, he may demand from the co-heirs the excess in value 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 detriment 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 pursuant to subsection (1) is at the same time to be counted towards 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 passes by inheritance and is transferable.

Section 2318

Burden of the compulsory share in the event of legacies and testamentary burdens

(1) The heir may refuse the execution of a legacy with which he is charged to the extent that the burden of the compulsory share is borne by him and the legatee proportionately. The same applies to a testamentary burden.

(2) This reduction is permissible as against a legatee who is also a person 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 burden of compulsory shares, reduce the legacy or testamentary burden so that he retains his own compulsory share.

Section 2319

Person entitled to a compulsory share as co-heir

If one of several 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 in so far that he retains his own compulsory share. The other heirs are liable for the shortfall.

Section 2320

Burden of compulsory shares 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 the co-heirs, bear the burden of the compulsory share, and must, if the person entitled to a compulsory share has accepted a legacy given to him, bear the burden of this legacy to 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

Burden of compulsory shares in the event of a disclaimer of legacy

If a person entitled to a compulsory share disclaims a legacy given to him, the person who benefits from the disclaimer must, to the amount of the benefit received, bear the burden of the compulsory share as between the heirs and the legatee.

Section 2322

Reduction of legacies and testamentary burdens

If an inheritance or a legacy disclaimed by one of the persons 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 may not refuse to execute a legacy or a testamentary burden under section 2318 (1), to the extent that he is not required to bear the burden for compulsory shares in accordance with sections 2320 to 2322.

Section 2324

Deviating directions by the testator concerning the burden of compulsory shares

The testator may, by disposition mortis causa, impose the burden of compulsory shares, as between the heirs themselves, 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) If the testator made a gift to a third party, a person entitled to a compulsory share may claim, as an augmentation to his compulsory share, the amount by which the compulsory share would be increased if the object given were added to the estate.

(2) A consumable thing is assessed at the value which it had on the date of the gift. 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 the gift was made, 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 delivery of the object given; if the gift was made by the testator to his spouse, the period does not begin to run 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 the 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 manner 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 himself entitled to a compulsory share, he may refuse the augmentation of his compulsory share to the extent that he would retain his own compulsory share, including what would accrue to him by way of an augmentation of his own compulsory share.

Section 2329

Claim against the recipient 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 recipient of a gift that he return it for the purpose of making up the shortfall. If the person entitled to a compulsory share is sole heir, he has the same right.

(2) The recipient may avoid the return of the gift through the payment of the shortfall.

(3) Among several recipients of gifts, a prior recipient is liable only to the extent that a subsequent recipient is not bound.

Section 2330

Gift arising from a moral duty

The provisions set out in sections 2325 to 2329 do not apply to gifts made to perform a moral duty or for the sake of common decency.

Section 2331

Gifts made out of community property

(1) A gift made out of community property under the community of property, is deemed to have been made in equal shares 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 community 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 out of community property under continued community of property.

Section 2331a

Additional time

(1) If 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 items of the estate, particularly if it would force him to give up his family home or to sell his business assets which form the economic basis for the every-day 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 time-barred three years after the time when the person entitled to a compulsory share gains knowledge of the occurrence of the devolution of the inheritance and of a disposition which prejudices him, or irrespective of such knowledge, thirty years after the occurrence of the devolution of the inheritance.

(2) Any claim which a person entitled to a compulsory share has against a recipient of a gift under section 2329 becomes time-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 a disclaimer of the inheritance or legacy.

Section 2333

Deprivation of a descendants compulsory share

A testator may deprive a descendant from 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 ill-treatment of the testator or the spouse of the testator, in the event of the ill-treatment of the spouse, however, only if the descendant also descends from this spouse,
3. if the descendant is guilty of any crime, or any serious offence committed intentionally against the testator or his spouse,
4. if the descendant maliciously commits a breach of the statutory duty incumbent upon him to provide maintenance to the testator,
5. if the descendant leads a disreputable or immoral life contrary to the wishes of the testator.

Section 2334

Deprivation of a parents compulsory share

The testator may deprive his father of his compulsory share, if the latter is guilty of any of the offences 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 offence.

Section 2335

Deprivation of a spouses compulsory share

The testator may deprive his or her 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 ill-treatment of the testator,
3. if the spouse is guilty of any crime, or any serious offence committed intentionally against the testator,
4. if the spouse maliciously commits a breach of the statutory duty incumbent upon him or her to provide maintenance to 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 therein.

(3) The burden of proving the reason is imposed on the person who asserts the deprivation.

(4) In the case set out in section 2333 no. 5, 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 is extinguished by forgiveness. A disposition by which the testator has directed the deprivation becomes ineffective by forgiveness.

Section 2338

Limitation of the compulsory share

(1) If a descendant devotes himself to such extravagance or is so heavily indebted that his future inheritance is seriously endangered, the testator may limit the descendants right to a compulsory share by directing that after the descendants death 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 accruing to him, in proportion to their share of the inheritance on intestacies. 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 such directions. 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 ground 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 any 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, the unworthiness to inherit does not occur if, before the occurrence of the devolution of the inheritance, the disposition which the testator has been induced to make or in respect of which the criminal offence was committed, has become ineffective, or the disposition which he has been induced to revoke would have become ineffective.

Section 2340

Enforcement of the unworthiness to inherit by avoidance

(1) The unworthiness to inherit is enforced by avoidance of the acquisition of the inheritance.

(2) Avoidance is permissible 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

Person entitled to avoid

Any person who benefits from the falling away of a person unworthy to inherit, even if it is only through the removal also of another person, is entitled to avoid.

Section 2342

Action for avoidance

(1) Avoidance is effected by bringing an action for avoidance. The purpose of the action is to have the heir declared unworthy to inherit.

(2) The avoidance does not enter into effect until the judgment becomes 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 have been entitled to inherit if the person unworthy to inherit were not alive at the time of the devolution of the inheritance; the devolution is deemed to have taken place upon the death of the deceased.

Section 2345

Unworthiness to receive a legacy; unworthiness to receive a compulsory share

(1) If a legatee is guilty of one of the offences 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 an offence.

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 were no longer 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 limited to the right to a compulsory share.

Section 2347

Personal requirements, representation

(1) If the person renouncing is under guardianship, the ratification of the guardianship court is required for the renunciation of the inheritance; if he is under parental custody, the same applies, unless the contract is concluded between spouses or engaged persons. The ratification of the guardianship court is also required for a renunciation by the custodian.

(2) The testator may conclude 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 concluded through the legal representative; the ratification by the guardianship court is required to the same extent as specified in subsection (1).

Section 2348

Form

The contract on the renunciation of the inheritance requires notarial recording.

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 be effective only in the event that the other becomes heir.

(2) If a descendant of the testator renounces his right of intestate succession, it is to be assumed, in case of doubt, that the renunciation is to be effective 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

Any person who has been appointed heir or has been left a legacy by will, may renounce the testamentary gift by contract with the testator. The same applies to a gift made to a third party in a contract of inheritance. 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) Any person who, as a 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 if so which, persons exist or existed, through whom he would be excluded from succession or his share of the inheritance would be reduced,
4. whether, and if so what, dispositions mortis causa of the deceased exist,
5. whether any legal dispute concerning his right of succession is pending.

(2) If a person ceases to be an heir who would exclude the applicant from succession, or would diminish the applicants share of the inheritance, the applicant must state the manner in which such person

has ceased to be an heir.

Section 2355

Statements of the testamentary heir in the application

A person who applies for the issuance of a certificate of inheritance on the ground of a disposition mortis causa must specify the disposition upon which his right of succession is based, and must state whether, and if so 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 accuracy of the information given in accordance with section 2354 (1) nos. 1, 2 (2) by public documents, and in the case provided for by section 2355, must present the document on which his right of succession is based. If 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, until the time of his death, lived subject to the matrimonial property regime, and in respect of the other information required under sections 2354 and 2355, the applicant must, before a court or notary, declare in lieu of an oath, that he is not aware of anything which is inconsistent with the statements he has made. The probate court may dispense with the declaration if it deems it to be unnecessary.

(3) These provisions do not apply to the extent that the facts are known to the probate court.

Section 2357

Joint certificate of inheritance

(1) If there are several heirs, 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 in the inheritance are to be stated.

(3) If the application is not made by all of the heirs, it must contain a statement that the other heirs have accepted the inheritance. The provisions under section 2356 apply also to any 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 the declaration by one or more of them is sufficient.

Section 2358

Investigations by the probate court

(1) The probate court must, of its own motion and with the aid of the evidence furnished by the applicant, make the investigations necessary to establish the facts of the case, and must admit any evidence which appears suitable.

(2) The probate court may issue a public request to be notified of the rights of succession belonging to other persons; the manner of publication and the period for notification are determined by the provisions applicable to the public notice procedure.

Section 2359

Requirements for the issuance of a certificate of inheritance

The certificate of inheritance may be issued only if the probate court considers the facts required to support the application to have been established.

Section 2360

Hearing of persons affected

(1) If a legal dispute concerning the right of succession is pending, the opponent of the applicant should be heard before the issuance of the certificate of inheritance.

(2) If a disposition, on which the right of succession is based, is not recorded in any public document at the probate court, the person who would be heir if the disposition were ineffective should be heard on its validity before the issuance of a certificate of inheritance.

(3) The hearing is not necessary if it is impractical.

Section 2361

Withdrawal or declaration of invalidity of an inaccurate certificate of inheritance

(1) If it comes about that a certificate of inheritance which has been issued is inaccurate, the probate court must withdraw it. The certificate of inheritance becomes invalid upon its withdrawal.

(2) If the certificate of inheritance cannot be obtained 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] applicable to 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 about the accuracy of a certificate of inheritance issued by it.

Section 2362

Claim for return and information by the true heir

(1) The true heir may demand from any person in possession of an inaccurate certificate of inheritance that he return it to the probate court.

(2) Any person to whom an inaccurate certificate of inheritance has been issued must provide the true heir with information concerning the condition of the inheritance and the location of the items of the deceaseds estate.

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 place and who the subsequent heir is. If the testator has appointed the subsequent heir for the residue of the inheritance remaining at the time of the occurrence of the subsequent succession, or if he has directed that the prior heir should be entitled 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 limited by any directions other than those stated.

Section 2366

Presumption of accuracy 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 item of the inheritance, a right over such item, or a release from the right belonging to the inheritance, the contents of the certificate of inheritance is deemed to be accurate in his favour to the extent of the presumption under section 2365, unless he knows of the inaccuracy, or knows that the probate court has demanded the return of the certificate of inheritance due to its inaccuracy.

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 a performance has been effected in favour of 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 over this right and not coming within the provision of section 2366, has been entered into between him and another in respect of such a right.

Section 2368

Executors certificate

- (1) Upon application, the probate court must issue to an executor a certificate of his appointment. If the executor is limited 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) If the appointment is not recorded in any of the public documents at the probate court, the heir should, if practicable, be heard on the validity of the appointment before the issuance of the certificate.
- (3) The provisions concerning a certificate of inheritance apply with the necessary modifications to this certificate; upon the conclusion of the executors office the certificate becomes invalid.

Section 2369

Certificate of inheritance limited to items

- (1) If items located within the country form part of an inheritance for which there is no German probate court competent to issue a certificate

of inheritance, the issuance of a certificate of inheritance for these items may be demanded.

(2) An item in respect of which a ledger or register is kept by a German public authority for the registration of any person entitled thereto, is deemed to be located within the country. A claim, in respect of which a German court is competent to hear an action, is deemed to be located within the country.

Section 2370

Presumption of accuracy of declaration of death

(1) If a person who was declared to be dead, or whose time of death was determined in accordance with the provisions of the Law on Missing Persons, survives the moment which was deemed to be his time of death, or if he died before this point in time, the person who would be the heir by reason of the declaration of death or the determination of the time of death is deemed, for the benefit of a third party, even without the issuance of a certificate of inheritance, to be the heir concerning the legal transactions specified in sections 2366 and 2367, unless the third party knows of the inaccuracy of the declaration of death or of the determination of the time of death or knows that they have been revoked.

(2) If 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 Law on Missing Persons, if he is still alive, has the rights specified in section 2362. A person whose death, or declaration of death or determination of the time of 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, requires notarial recording.

Section 2372

Advantages due to purchaser

The advantages which ensue from the lapse of a legacy or a testamentary burden, or from a co-heirs duty to adjust advancements, are due to the purchaser.

Section 2373

Parts remaining for the seller

A share of the inheritance which devolves upon the seller after the conclusion of the sale through subsequent succession, or as a result of a person ceasing to be co-heir, and any preferential legacy given to the seller are, in case of doubt, not deemed to have been included in the sale. The same applies to family papers and family pictures.

Section 2374

Duty to deliver

The seller is obliged to deliver to the purchaser the items 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 item of the inheritance, or by a legal transaction which related to the inheritance.

Section 2375

Duty to compensate

(1) If before the sale the seller has consumed, gratuitously alienated or gratuitously burdened with a charge, an item of the estate, he is obliged to compensate the purchaser for the value of the item consumed or alienated, or, in the event of a charge, for any reduction in its 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) In other respects, the purchaser may not claim compensation for any deterioration, destruction, or impossibility of delivery of an item 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 defect of title is limited to the liability that he has a right of succession, that it is not limited by the right of any subsequent heir or by the appointment of an executor, that there are no legacies, testamentary burdens, burdens of compulsory shares, duties to compensate benefits, or directions concerning the division of the inheritance and that there is no unlimited liability towards all or some of the creditors of the estate.

(2) The seller is not responsible for defects of quality 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 consolidation of a right with an obligation or of a right with a charge are, as between the purchaser and the seller, deemed not to have been extinguished. If necessary, such a legal relationship is to be restored.

Section 2378

Obligations of the estate

(1) The purchaser is bound as against the seller to perform the obligations of the estate, unless the seller is responsible that they do not exist in accordance with section 2376.

(2) If the seller discharged an obligation of the estate prior to the sale, he may demand reimbursement from the purchaser.

Section 2379

Emoluments and charges prior to the sale

Emoluments falling due for the period before the sale remain with the seller. He bears the charges during such time, including any interest on the obligations of the estate. However, all charges payable out of the inheritance and all extraordinary charges, which are to be regarded as having been imposed on the original value of the items of the inheritance, are borne by the purchaser.

Section 2380

Passing of the risk, emoluments and charges after the sale

The purchaser bears, as of the conclusion of the purchase, the risk of the accidental destruction and the accidental deterioration of the items of the estate. From this date emoluments are due to him, and he bears the charges.

Section 2381

Compensation of outlays and expenses

(1) The purchaser must reimburse to the seller the necessary outlays which the seller has incurred for the inheritance before the sale.

(2) For any other expenses incurred before the sale, the purchaser must effect reimbursement to the extent that the value of the inheritance is thereby increased at the time of the sale.

Section 2382

Liability of the purchaser as against the creditors of the estate

(1) As of the conclusion of the purchase, the purchaser is liable to the creditors of the estate, without prejudice to the continuation of the liability of the seller. The same also applies to any obligations for the discharge of which the purchaser is not bound as against the seller as provided for in sections 2378 and 2379.

(2) The liability of the purchaser as against the creditors may not be excluded or limited 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, was liable without limitation. If the liability of the purchaser is limited 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 is also effective in favour of the other party, unless the he has unlimited liability.

Section 2384

The sellers duty to notify as against the creditors of the estate, right of inspection

(1) The seller is bound as against 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 seller replaces notification by the purchaser.

(2) The probate court must allow any person who can credibly establish a legal interest the inspection of the notification.

Section 2385

Application to similar contracts

(1) The provisions concerning the purchase of an inheritance apply with the necessary modifications to the purchase of an inheritance acquired by the seller by contract, and to any other contracts, the purpose of which are the alienation of an inheritance which has devolved on the alienor or which has been acquired by him in some other manner.

(2) In the event of a gift, the giver is not bound to compensate any items

of the estate which have been consumed or alienated gratuitously before the gift was given, nor for any charge upon such items created gratuitously before giving the gift. The obligation specified in section 2376 concerning warranty for defects of title does not affect the giver; if the giver has fraudulently concealed a defect, he is bound to compensate the recipient of the gift for any damage arising therefrom.

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