

Übersetzung der Bücher 1 und 2 des Bürgerlichen Gesetzbuches durch ein Übersetzer-Team des Langenscheidt Übersetzungsservice.  
Die Bücher 3 bis 5 werden voraussichtlich im Februar 2008 ebenfalls in englischer Sprache an dieser Stelle eingestellt werden.

Translation of Books 1 and 2 provided by the Langenscheidt Translation Service.  
Books 3 to 5 will be available on this page probably in February 2008.

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## German Civil Code

### BGB

of 18 August 1896

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

Version: New version by promulgation of 2 January 2002 I 42, 2909; 2003, 738;

last amended by Article 2 (16) of the statute of 19 February 2007 I 122

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

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

9. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144 of 4 June 1997, p. 19),

10. Articles 3 to 5 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166 of 11 June 1998, p. 45),

11. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171 of 7 July 1999, p. 12),

12. Articles 10, 11 and 18 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce" OJ L 178 of 17 July 2000, p. 1),

13. Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200 of 8 August 2000, p. 35).

## **Book 1**

### **General Part**

#### **Division 1**

##### **Persons**

###### **Title 1**

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

###### **Section 1**

###### **Beginning of legal capacity**

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

###### **Section 2**

###### **Beginning of majority**

Majority begins at the age of eighteen.

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

(repealed)

###### **Section 7**

###### **Residence; establishment and termination**

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

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

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

## **Section 8**

### **Residence of persons who lack full capacity to contract**

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

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

## **Section 9**

### **Residence of a soldier**

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

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

## **Section 10**

(repealed)

## **Section 11**

### **Residence of a child**

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

## **Section 12**

### **Right to a name**

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

## **Section 13**

### **Consumer \*)**

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

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\*) 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.

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\*) Official note:

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

## Sections 15 - 20

(repealed)

## Title 2

### Legal persons

#### Subtitle 1

#### Associations

#### Chapter 1

#### General provisions

#### Section 21

##### Non-commercial association

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

#### Section 22

##### Commercial association

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

#### Section 23

##### Foreign association

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

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

## **Section 24**

### **Seat**

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

## **Section 25**

### **Constitution**

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

## **Section 26**

### **Board; representation**

- (1) An association must have a board. The board may consist of more than one person.
- (2) The board represents the association in court and out of court; it has the status of a legal representative. The extent of its power of agency may be restricted by the articles of association with effect against third parties.

## **Section 27**

### **Appointment of and management by the board**

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

## **Section 28**

### **Passing of resolutions and representation**

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

## **Section 29**

### **Emergency appointment by local court [*Amtsgericht*]**

To the extent that the board is lacking the necessary members, they are to be appointed, in urgent cases, for the period until the defect is corrected, on the application of a person concerned, by the

local court [*Amtsgericht*] that keeps the register of associations for the district in which the association has its seat.

## **Section 30**

### **Special representatives**

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

## **Section 31**

### **Liability of an association for organs**

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

## **Section 32**

### **General meeting; passing of resolutions**

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

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

## **Section 33**

### **Amendment of articles of association**

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

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

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

## **Section 34**

### **Exclusion from voting**

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

## **Section 35**

### **Special rights**

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

## **Section 36**

### **Convening of the general meeting**

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

## **Section 37**

### **Convening a meeting at the request of a minority**

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

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

## **Section 38**

### **Membership**

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

## **Section 39**

### **Leaving the association**

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

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

## **Section 40**

### **Flexible provisions**

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

## **Section 41**

### **Dissolution of the association**

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

## Section 42

### Insolvency

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

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

## Section 43

### Deprivation of legal personality

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

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

(3) (repealed)

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

## Section 44

### Jurisdiction and proceedings

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

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

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

## Section 45

### Devolution of the assets of the association

(1) On the dissolution of the association or its deprivation of legal personality, the assets devolve on the persons specified in the articles of association.

(2) The articles of association may provide that the persons entitled to receive the assets are specified by a resolution of the general meeting or by another organ of the association. If the objects of the association are not commercial business operations, the general meeting may, even without such a provision, allocate the assets to a public foundation or institution.

(3) If no persons entitled are specified, then if according to its articles the association exclusively served the interests of its members, the assets pass in equal shares to the members at the date of the

dissolution or the deprivation of legal personality, and failing this to the treasury of the *state* [*Bundesstaat*] in whose territory the association had its seat.

## **Section 46**

### **Devolution on the treasury**

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

## **Section 47**

### **Liquidation**

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

## **Section 48**

### **Liquidators**

(1) The liquidation is effected by the board. Other persons may also be appointed as liquidators; the appointment is governed by the provisions for the appointment of the board.

(2) The liquidators have the legal status of the board, unless the purpose of the liquidation leads to a different conclusion.

(3) If there is more than one liquidator, their resolutions require a unanimous vote unless otherwise provided.

## **Section 49**

### **Duties of the liquidators**

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

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

## **Section 50**

### **Public notice**

(1) The dissolution of the association or its deprivation of legal personality must be announced by the liquidators in a public notice. In the notice, the creditors must be requested to register their claims. The public notice is made through the newspaper specified in the articles of association for this purpose, and in the absence of such a newspaper in the newspaper that is specified for public notices of the local court [*Amtsgericht*] 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 announcement by public notice of the dissolution of the association or the deprivation of legal personality.

## **Section 52**

### **Security for creditors**

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

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

## **Section 53**

### **Liability in damages of the liquidators**

Liquidators who commit breaches of their duties under section 42 (2) and sections 50 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 more than one person acts, they are liable as joint and several debtors.

## **Chapter 2**

### **Registered associations**

## **Section 55**

### **Jurisdiction over entry in the register**

(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 [*Amtsgericht*] 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 [*Amtsgericht*] for the districts of more than one local court [*Amtsgericht*]. The Land governments may transfer 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 transfer the authorisation under sentence 1 to the Land justice administration authorities.

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

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

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

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

(6) 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 [*Amtsgericht*] on the computer systems of another state 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 [*Amtsgericht*] in electronic form are to be transmitted to other local courts [*Amtsgericht*] and there too kept ready for inspection and for the issue of 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 [*Bundesrat*], 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 municipality.

## **Section 58**

### **Recommended contents of the articles of association**

The articles of association should contain provisions:

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

## **Section 59**

### **Application for registration**

(1) The board must apply for the association to be registered.

(2) The following must be attached to the application:

1. the original articles of association and a copy,
2. copies of the documents on the appointment of the board.

(3) The articles of association should be signed by at least seven members and should state the date of their execution.

## **Section 60**

### **Rejection of the application**

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

(2) (repealed)

## **Sections 61 - 63**

(repealed)

## **Section 64**

### **Contents of the entry in the register of associations**

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

## **Section 65**

### **Addition to name**

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

## **Section 66**

### **Public notice**

(1) The local court [*Amtsgericht*] must publish the entry in the newspaper intended for its public notices.

(2) The original articles of association must be marked with the certification of entry in the register and be returned. The copy is certified by the local court [*Amtsgericht*] and kept together with the other documents.

## **Section 67**

### **Changes to the board**

(1) Every change to the board must be notified by the board for registration. A copy of the document about the change is to be attached to the notification.

(2) Board members appointed by the court are entered in the register by the court at its own motion.

## **Section 68**

### **Protection of public confidence by the register of associations**

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

## **Section 69**

### **Evidence of composition of the board**

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

## **Section 70**

### **Restriction of power of agency; passing resolutions**

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

## **Section 71**

### **Amendments of the articles of association**

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

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

## **Section 72**

### **Certificate on number of members**

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

## **Section 73**

### **Decrease in numbers of members**

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

(2) (repealed)

## **Section 74**

### **Dissolution**

(1) The dissolution of the association and the deprivation of legal personality must be entered in the register of associations. If insolvency proceedings are commenced, no entry is made in the register.

(2) If the association is dissolved by resolution of the general meeting or by the expiry of the time determined for the duration of the association, the board must notify the dissolution to be registered. In the former case, a copy of the resolution for dissolution must be attached to the notification.

(3) If the association is deprived of legal personality under section 43 above, the entry must be made on a notice from the competent authority.

## **Section 75**

### **Commencement of insolvency proceedings**

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

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

## **Section 76**

### **Entry of the liquidators in the register**

(1) The liquidators must be entered in the register of associations. The same applies to provisions that deviate from the provision in section 48 (3) in providing for the passing of resolutions by the liquidators.

(2) The notification for registration must be made by the board, and in the case of later amendments by the liquidators. The notification for registration must state the extent of the power of agency of the liquidators. The notification for registration of the liquidators appointed by resolution of the general meeting must have attached to it a copy of the resolution, and the notification for registration of a provision on the passing of resolutions by the liquidators must have attached to it a copy of the document containing the provision.

(3) Liquidators appointed by the court are entered in the register by the court of its own motion.

## **Section 77**

### **Form of notification**

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

## **Section 78**

### **Assessment of coercive fines**

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

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

## **Section 79**

### **Inspection of the register of associations**

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

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

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

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

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

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

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

## **Subtitle 2**

### **Foundations**

#### **Section 80**

##### **Formation of a foundation having legal personality**

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

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

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

#### **Section 81**

##### **Endowment transaction**

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

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

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

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

#### **Section 82**

##### **Duty of founder to make transfers**

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

## **Section 83**

### **Testamentary foundation**

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

## **Section 84**

### **Recognition after the death of the founder**

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

## **Section 85**

### **Constitution of foundation**

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

## **Section 86**

### **Application of law on associations**

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

## **Section 87**

### **Change of objects; termination**

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

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

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

## **Section 88**

### **Devolution of property**

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

## **Subtitle 3**

### **Legal persons under public law**

## **Section 89**

### **Liability for organs; insolvency**

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

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

## **Division 2**

### **Things and animals**

## **Section 90**

### **Concept of the thing**

Only corporeal objects are things as defined by law.

## **Section 90a**

### **Animals**

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

## **Section 91**

### **Fungible things**

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

## **Section 92**

### **Consumable things**

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

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

## **Section 93**

### **Essential parts of a thing**

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

## **Section 94**

### **Essential parts of a plot of land or a building**

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

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

## **Section 95**

### **Merely temporary purpose**

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

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

## **Section 96**

### **Rights as parts of a plot of land**

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

## **Section 97**

### **Accessories**

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

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

## **Section 98**

### **Commercial and agricultural inventory**

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

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

## **Section 99**

### **Fruits**

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

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

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

## **Section 100**

### **Emoluments**

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

## **Section 101**

### **Division of fruits**

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

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

## **Section 102**

### **Reimbursement of costs of production**

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

## **Section 103**

### **Allocation of charges**

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

## **Division 3**

### **Legal transactions**

#### **Title 1**

#### **Capacity to contract**

##### **Section 104**

##### **Incapacity to contract**

A person is incapable of contracting if

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

##### **Section 105**

##### **Voidness of declaration of intent**

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

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

##### **Section 105a**

##### **Everyday transactions**

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

##### **Section 106**

##### **Limited capacity for minors to contract**

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

##### **Section 107**

##### **Consent of legal representative**

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

##### **Section 108**

##### **Entry into a contract without consent**

(1) If the minor enters into a contract without the necessary consent of the legal representative, the effectiveness of the contract is subject to the ratification of the legal representative.

(2) If the other party requests the representative to declare his ratification, the declaration can only be made to the other party; a declaration or refusal of ratification made to the minor before the request of the other party is ineffective. The ratification may only be declared before the expiry of two weeks after receipt of the demand; if ratification is not declared, it is considered to have been refused.

(3) If the minor has become fully capable of contracting, the ratification of the minor takes the place of the ratification of the representative.

## **Section 109**

### **Right of revocation of the other party**

(1) Until the contract is ratified, the other party is entitled to revoke it. Declaration of revocation may also be made to the minor.

(2) If the other party realised that he was dealing with a minor, he may revoke the contract only if the minor untruthfully stated that the legal representative had given consent; he may not revoke in this case either if, when the contract was entered into, he had notice of the lack of consent.

## **Section 110**

### **Payment by minor with own means**

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

## **Section 111**

### **Unilateral legal transactions**

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

## **Section 112**

### **Independent operation of a trade or business**

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

(2) The authorisation may be withdrawn 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 give substitute authorisation if it is in the interest of the ward.

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

## **Sections 114, 115**

(repealed)

## **Title 2**

### **Declaration of intent**

#### **Section 116**

##### **Mental reservation**

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

#### **Section 117**

##### **Sham transaction**

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

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

#### **Section 118**

##### **Lack of seriousness**

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

#### **Section 119**

##### **Voidability for mistake**

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

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

## **Section 120**

### **Voidability for incorrect transmission**

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

## **Section 121**

### **Period for avoidance**

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

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

## **Section 122**

### **Liability in damages of the person declaring avoidance**

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

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

## **Section 123**

### **Voidability on the grounds of deceit or duress**

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

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

## **Section 124**

### **Period for avoidance**

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

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

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

## **Section 125**

### **Voidness resulting from a defect of form**

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

## **Section 126**

### **Written form**

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

(2) In the case of a contract, the signature of the parties must be made on the same document. If more than one counterpart of the contract is drawn up, it suffices if each party signs the document intended for the other party.

(3) Written form may be replaced by electronic form, unless the statute leads to a different conclusion.

(4) Notarial recording replaces the written form.

## **Section 126a**

### **Electronic form**

(1) If electronic form is to replace the written form prescribed by law, the issuer of the declaration must add his name to it and provide the electronic document with a qualified electronic signature in accordance with the Electronic Signature Act [*Signaturgesetz*].

(2) In the case of a contract, the parties must each provide a counterpart with an electronic signature as described in subsection (1).

## **Section 126b**

### **Text form**

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

## **Section 127**

### **Agreed form**

(1) The provisions under sections 126, 126a or 126b also apply, in case of doubt, to the form specified by legal transaction.

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

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

## **Section 127a**

### **Court settlement**

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

## **Section 128**

### **Notarial recording**

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

## **Section 129**

### **Official certification**

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

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

## **Section 130**

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

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

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

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

## **Section 131**

### **Effectiveness in relation to persons without full capacity to contract**

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

(2) The same applies if the declaration of intent is made to a person with limited capacity to contract. If, however, the declaration merely provides a legal advantage to the person with limited capacity to contract, or if the legal representative has given his consent, the declaration becomes effective at the time when it reaches the person with limited capacity.

## **Section 132**

### **Substitution of service for receipt**

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

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

## **Section 133**

### **Interpretation of a declaration of intent**

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

## **Section 134**

### **Statutory prohibition**

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

## **Section 135**

### **Statutory prohibition of disposal**

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

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

## **Section 136**

### **Official prohibition of disposal**

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

## **Section 137**

### **Prohibition of dispositions in a legal transaction**

The power to dispose of an alienable right may not be excluded or restricted by a legal transaction. This effectiveness of an obligation not to dispose of such a right is not affected by this provision.

## **Section 138**

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

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

(2) In particular, a legal transaction is void by which a person, by exploiting the predicament, inexperience, lack of sound judgement or considerable weakness of will of another, causes himself or

a third party, in exchange for an act of performance, to be promised or granted pecuniary advantages which are clearly disproportionate to the performance.

## **Section 139**

### **Partial invalidity**

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

## **Section 140**

### **Re-interpretation**

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

## **Section 141**

### **Confirmation of a void legal transaction**

(1) If a void legal transaction is confirmed by the person who undertook it, the confirmation is to be seen as a renewed undertaking.

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

## **Section 142**

### **Effect of avoidance**

(1) If a voidable legal transaction is avoided, it is to be regarded as having been void from the outset.

(2) A person who knew or ought to have known of the possibility of avoidance is treated, in case of avoidance, as if he had known or ought to have known of the invalidity of the legal transaction.

## **Section 143**

### **Declaration of avoidance**

(1) Avoidance is effected by declaration to the opponent.

(2) The opponent is, in the case of a contract, the other party to the contract and, in the case of section 123 (2) sentence 2, the person who has acquired a right directly under the contract.

(3) In the case of a unilateral legal transaction which was to be undertaken in relation to another person, the other person is the opponent. The same applies to a legal transaction that is required to be undertaken in relation to another person or to a public authority, even if the legal transaction has already been undertaken in relation to the authority.

(4) In the case of any other kind of unilateral legal transaction, the person who has received a legal advantage directly on the basis of the legal transaction is the opponent. The avoidance may, however, if the declaration of intent was to be made to a public authority, be made by declaration to the authority; the authority should inform the person who was directly affected by the legal transaction of the avoidance.

## **Section 144**

### **Confirmation of a voidable legal transaction**

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

## **Title 3**

### **Contract**

## **Section 145**

### **Binding effect of an offer**

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

## **Section 146**

### **Expiry of an offer**

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

## **Section 147**

### **Period for acceptance**

- (1) An offer made to a person who is present may only be accepted immediately. This also applies to an offer made by one person to another using a telephone or another technical facility.
- (2) An offer made to a person who is absent may be accepted only until the time when the offeror may expect to receive the answer under ordinary circumstances.

## **Section 148**

### **Fixing a period for acceptance**

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

## **Section 149**

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

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

## **Section 150**

### **Late and altered acceptance**

- (1) The late acceptance of an offer is considered to be a new offer.
- (2) An acceptance with expansions, restrictions or other alterations is deemed to be a rejection combined with a new offer.

## **Section 151**

### **Acceptance without declaration to the offeror**

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

## **Section 152**

### **Acceptance by notarial recording**

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

## **Section 153**

### **Death or incapacity to contract of the offeror**

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

## **Section 154**

### **Overt lack of agreement; lack of notarial recording**

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

## **Section 155**

### **Hidden lack of agreement**

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

## **Section 156**

### **Entry into contracts at auctions**

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

## **Section 157**

### **Interpretation of contracts**

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

## **Title 4**

### **Conditions and specification of time**

## **Section 158**

### **Conditions precedent and subsequent**

(1) If a legal transaction is entered into subject to a condition precedent, the legal transaction that is subject to the condition comes into effect when the condition is satisfied.

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

## **Section 159**

### **Retroactive effect**

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

## **Section 160**

### **Liability in the period of suspense**

(1) Any person who has a right subject to a condition precedent may, in the case of the satisfaction of the condition, demand damages from the other party if the latter, during the period of suspense, is at fault for defeating or adversely affecting the right dependent on the condition.

(2) In the case of a legal transaction entered into subject to a condition subsequent, the person to whose advantage the former legal situation is restored has the same claim on the same conditions.

## **Section 161**

### **Ineffectiveness of dispositions in the period of suspense**

(1) If a person has disposed of a thing, and the disposition is subject to a condition precedent, any further disposition which he makes as regards the thing in the period of suspense is ineffective on the satisfaction of the condition to the extent that it would defeat or adversely affect the effect subject to the condition. Such a disposition is equivalent to a disposition which is effected during the period of suspense by execution or attachment or by the administrator in insolvency proceedings.

(2) In the case of a condition subsequent, the same applies to the dispositions of a person whose right expires on the fulfilment of the condition.

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

## **Section 162**

### **Prevention of or bringing about the satisfaction of the condition**

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

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

## **Section 163**

### **Specification of time**

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

## **Title 5**

### **Agency and authority**

## **Section 164**

### **Effect of a declaration made by the agent**

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

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

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

## **Section 165**

### **Agent with limited capacity to contract**

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

## **Section 166**

### **Absence of intent; imputed knowledge**

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

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

## **Section 167**

### **Conferment of authority**

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

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

## **Section 168**

### **Expiry of authority**

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

## **Section 169**

### **Authority of the authorised representative and the managing partner**

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

## **Section 170**

### **Period of effectiveness of the authority**

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

## **Section 171**

### **Period of effectiveness in the case of announcement**

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

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

## **Section 172**

### **Letter of authorisation**

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

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

## **Section 173**

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

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

## **Section 174**

### **Unilateral legal transaction by an authorised representative**

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

## **Section 175**

### **Return of the letter of authorisation**

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

## **Section 176**

### **Declaration of invalidity of the letter of authorisation**

(1) The principal may, by public notice, declare the letter of authorisation; the declaration of invalidity must be published in compliance with the provisions of the Code of Civil Procedure [*Zivilprozessordnung*] that govern the service of a summons by publication. The declaration of invalidity becomes effective at the end of one month after its last appearance in the official newspapers.

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

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

## **Section 177**

### **Entry into contract by an unauthorised agent**

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

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

## **Section 178**

### **Right of revocation of the other party**

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

## **Section 179**

### **Liability of an unauthorised agent**

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

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

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

## **Section 180**

### **Unilateral legal transactions**

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

## **Section 181**

### **Contracting with oneself**

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

## **Title 6**

### **Consent and ratification**

## **Section 182**

### **Approval**

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

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

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

## **Section 183**

### **Revocability of consent**

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

## **Section 184**

### **Retroactive effect of ratification**

(1) Subsequent approval (ratification) operates retroactively from the point of time when the legal transaction was undertaken, unless otherwise provided.

(2) The retroactive effect does not cancel the effectiveness of dispositions made by the ratifying person before the ratification of the subject matter of the legal transaction, or made by execution or attachment or by the administrator in insolvency proceedings.

## **Section 185**

### **Disposition by an unauthorised person**

(1) A disposition of a thing made by a person without the authority to do so is effective if made with the consent of the person entitled.

(2) The disposition becomes effective if the person entitled ratifies it, or if the person disposing acquires the thing or if the person entitled has succeeded to the estate of the disposer and has unlimited liability for the obligations of the estate. In the last two cases, if more than one conflicting disposition has been made in respect of the thing, then only the first disposition is effective.

## **Division 4**

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

## **Section 186**

### **Scope of applicability**

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

## **Section 187**

### **Beginning of a period of time**

(1) If a period commences on the occurrence of an event or at a point of time falling in the course of a day, then the day on which the event or point of time occurs is not included in the calculation of the period.

(2) If the beginning of a day is the determining point of time for the commencement of a period, then this day is included in the calculation of the period. The same applies to the date of birth when the age of a person is calculated.

## **Section 188**

### **End of a period of time**

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

## **Section 189**

### **Calculation of individual periods of time**

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

## **Section 190**

### **Extension of period**

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

## **Section 191**

### **Calculation of periods of time**

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

## **Section 192**

### **Beginning, middle and end of a month**

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

## **Section 193**

### **Sundays and holidays; Saturdays**

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

## **Division 5**

### **Limitation**

#### **Title 1**

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

##### **Section 194**

##### **Subject-matter of limitation**

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

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

##### **Section 195**

##### **Standard limitation period**

The standard limitation period is three years.

##### **Section 196**

##### **Limitation period for rights to a plot of land**

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

##### **Section 197**

##### **Thirty-year limitation period**

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

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

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

## **Section 198**

### **Limitation in the case of a successor in title**

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

## **Section 199**

### **Commencement of the standard limitation period and maximum periods**

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

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

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

(3) Other claims for damages become statute-barred

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

The period that ends first is applicable.

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

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

## **Section 200**

### **Commencement of other limitation periods**

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

## **Section 201**

### **Commencement of the limitation period for recognised claims**

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

## **Section 202**

### **Inadmissibility of agreements on limitation**

(1) In the case of liability for intention, the limitation period may not be relaxed in advance by legal transaction.

(2) The limitation period may not be extended by legal transaction beyond a period of thirty years from the beginning of the statutory limitation period.

## **Title 2**

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

## **Section 203**

### **Suspension of limitation in the case of negotiations**

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

## **Section 204**

### **Suspension of limitation as a result of prosecution of rights**

(1) The limitation period is suspended by:

1. the bringing of an action for performance or for a declaration of the existence of a claim, for the grant of an execution clause or for the issue of an order for execution,
2. the service of an application in the simplified procedure for the maintenance of minors,
3. the service of a demand for payment in summary proceedings for recovery of debt,
4. arranging for notice to be given of an application for conciliation filed with a conciliation body established or recognised by the Land justice administration authority or, if the parties seek conciliation in mutual agreement, with any other conciliation body which settles disputes; if notice is arranged to be given shortly after the filing of the application, the limitation period is suspended immediately once the application is filed,
5. the assertion of a set-off of a claim in a legal action,
6. the service of a third-party notice,
7. the service of an application for evidence to be taken in independent proceedings,
8. the beginning of agreed expert opinion proceedings or the commissioning of an expert in the proceedings under 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 of the application if the order for attachment, the interim injunction or the interim order is served on the obligor within one month of its being pronounced or of its service on the obligee,
10. the filing of a claim in insolvency proceedings or in proceedings for the distribution of assets under maritime law,
11. the beginning of arbitration proceedings,

12. the filing of an application with a public authority, if the admissibility of the action depends on a preliminary decision by this authority and the action is brought within three months after the application has been disposed of; 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, whose admissibility is subject to a preliminary decision by an authority,
13. the filing of an application with the higher court, if the higher court must decide upon the court with jurisdiction over the claim and the action is brought within three months after the application has been disposed of, or the application for which a decision on jurisdiction is necessary is filed, and
14. arranging for notice to be given of the first application for the grant of legal aid; if notice is arranged shortly after the filing of the application, the suspension of the limitation period takes effect immediately when the application is filed.

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

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

## **Section 205**

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

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

## **Section 206**

### **Suspension of limitation in case of force majeure**

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

## **Section 207**

### **Suspension of limitation for family and other reasons**

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

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

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

(2) Section 208 remains unaffected.

## **Section 208**

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

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

## **Section 209**

### **Effect of suspension**

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

## **Section 210**

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

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

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

## **Section 211**

### **Suspension of expiry in matters relating to estates**

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

## **Section 212**

### **Recommencement of the limitation period**

(1) The limitation period recommences if

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

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

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

## **Section 213**

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

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

## **Title 3**

### **Legal consequences of limitation**

## **Section 214**

### **Effect of limitation**

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

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

## **Section 215**

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

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

## **Section 216**

### **Effect of limitation in the case of secured claims**

(1) The limitation of a claim for which a mortgage, ship mortgage or security right exists does not prevent the obligee from seeking satisfaction of his claim from the object encumbered.

(2) If a right has been procured for the purpose of securing a claim, the retransfer of the right may not be demanded on the basis of the limitation of the claim. If title has been retained, the right to withdraw from the contract may be exercised even if the secured claim is statute-barred.

(3) Subsections (1) and (2) above do not apply to the limitation of claims for interest and other recurring obligations.

## **Section 217**

### **Limitation of collateral performance**

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

## **Section 218**

### **Ineffectiveness of withdrawal**

(1) Withdrawal for non-performance or for the failure to perform in conformity with the contract is ineffective if the claim for performance or the claim for cure is now statute-barred and the obligor

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

(2) Section 214 (2) applies with the necessary modifications.

## **Sections 219 - 225**

(repealed)

## **Division 6**

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

#### **Section 226**

##### **Prohibition of chicanery**

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

#### **Section 227**

##### **Self-defence against persons**

(1) An act required for self-defence is not unlawful.

(2) Self-defence is the defence required to ward off a present unlawful assault on oneself or another.

#### **Section 228**

##### **Necessity**

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

#### **Section 229**

##### **Self-help**

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

#### **Section 230**

##### **Limits of self-help**

(1) Self-help may not extend further than is necessary to ward off the danger.

(2) In the case where things are removed, then, unless execution of judgment is being effected, a writ of attachment is to be sought.

(3) In the case of the arrest of the person obliged, unless he is set free again, an application for his preventive custody is to be filed with the local court [*Amtsgericht*] in whose district the arrest took place; the person obliged is to be presented to the court without undue delay.

(4) If the application for arrest is delayed or rejected, the things seized must be returned and the person arrested released without undue delay.

## **Section 231**

### **Self-help by mistake**

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

## **Division 7**

### **Provision of security**

## **Section 232**

### **Types**

(1) A person who is required to provide security may do so:

by the deposit of money or securities,

by the pledge of claims that are registered in the Federal Debt Register [*Bundesschuldbuch*] or the Land Debt Register [*Landesschuldbuch*] of a Land,

by the pledge of movable things,

by the creation of ship mortgages on ships or ships under construction which are recorded in a German ship register or a ship construction register,

by the creation of mortgages on land within the country,

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

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

## **Section 233**

### **Effect of deposit**

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

## **Section 234**

### **Suitable securities**

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

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

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

## **Section 235**

### **Right to exchange**

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

## **Section 236**

### **Registered claims**

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

## **Section 237**

### **Movable things**

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

## **Section 238**

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

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

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

## **Section 239**

### **Surety**

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

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

## **Section 240**

### **Duty to supplement security**

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

## **Book 2**

### **Law of Obligations**

#### **Division 1**

#### **Subject matter of obligations**

##### **Title 1**

##### **Duty of performance**

##### **Section 241**

##### **Duties arising from an obligation**

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

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

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

##### **Unsolicited performance \*)**

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

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

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

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\*) Official note:

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

##### **Section 242**

##### **Performance in good faith**

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

##### **Section 243**

##### **Obligation in kind**

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

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

## **Section 244**

### **Foreign currency obligation**

(1) If a money debt stated in a currency other than the euro is payable within the country, then payment may be made in euros unless payment in the other currency has been expressly agreed.

(2) Conversion occurs at the rate of exchange in effect in the place of payment at the time of payment.

## **Section 245**

### **Obligation payable in a specific denomination of money**

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

## **Section 246**

### **Statutory interest rate**

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

## **Section 247**

### **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 rate of interest for the most recent main refinancing operation of the European Central Bank before the first calendar day of the relevant six-month period.

(2) The Deutsche Bundesbank announces the effective basic rate of interest in the Federal Gazette without undue delay after the dates referred to in subsection (1) sentence 2 above.\*\*)

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\*) 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).

\*\*)

Since the following dates the basic rate of interest has been

1.1.2002 2.57% (public notice of 28.12.2001, Fed. Gazette 2002 no. 3 p. 98);  
1.7.2002 2.47% (public notice of 25.6.2002, Fed. Gazette no. 118 p. 14537);  
1.1.2003 1.97% (public notice of 30.12.2002, Fed. Gazette 2003 no. 2 p. 76);  
1.7.2003 1.22% (public notice of 24.6.2003, Fed. Gazette no. 117 p. 13744);  
1.1.2004 1.14% (public notice of 30.12.2003, Fed. Gazette 2004 no. 2 p. 69);  
1.7.2004 1.13% (public notice of 3.7.2004, Fed. Gazette no. 122 p. 14246);  
1.1.2005 1.21% (public notice of 30.12.2004, Fed. Gazette 2005 no. 1 p. 6);  
1.7.2005 1.17% (public notice of 28.6.2005, Fed. Gazette no. 122 p. 10042);  
1.1.2006 1.37% (public notice of 29.12.2005, Fed. Gazette 2006 no. 1 p. 2);

1.7.2006 1.95% (public notice of 27.6.2006, Fed. Gazette no. 119 p. 4754);  
1.1.2007 2.70% (public notice of 28.12.2006, Fed. Gazette no. 245 p. 7463).

## **Section 248**

### **Compound interest**

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

## **Section 249**

### **Nature and extent of damages**

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

## **Section 250**

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

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

## **Section 251**

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

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

## **Section 252**

### **Lost profits**

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

## **Section 253**

### **Intangible damage**

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

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

## **Section 254**

### **Contributory negligence**

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

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

## **Section 255**

### **Assignment of claims to compensation**

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

## **Section 256**

### **Payment of interest on expenses**

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

## **Section 257**

### **Claim for release**

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

## **Section 258**

### **Right of removal**

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

## **Section 259**

### **Extent of duty to render account**

- (1) A person who is obliged to render account for management related to earnings or expenses must provide the person entitled with an account containing an orderly compilation of earnings or expenses and, where receipts are customarily given, must submit receipts.
- (2) Where there is reason to assume that the information on earnings contained in the account has not been provided with the requisite care the person obliged must, upon demand, declare for the record in lieu of an oath that he has indicated the earnings as completely as he is able to.
- (3) In matters of minor importance there is no duty to make a declaration in lieu of an oath.

## **Section 260**

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

- (1) A person who is obliged to return an aggregate of objects or to provide information on the inventory of such an aggregate must submit to the person entitled a list of the inventory.
- (2) Where there is reason to assume that the list has not been prepared with the requisite care, the person obliged must upon demand declare for the record in lieu of an oath that to the best of his knowledge he has indicated the inventory as completely as he is able to.
- (3) The provision of section 259 (3) applies.

## **Section 261**

### **Making a declaration in lieu of an oath**

- (1) The declaration in lieu of an oath, except where it must be made before the court competent for the execution of civil judgments, must be made before the local court [*Amtsgericht*] of that place where the duty to render account or submit the list must be fulfilled. If the person obliged has his residence or abode within the country, he may provide the declaration before the local court [*Amtsgericht*] of his place of residence or abode.
- (2) The court may resolve to modify the declaration in lieu of an oath according to the circumstances.
- (3) The costs of making the declaration in lieu of an oath must be borne by the person demanding the making of the declaration.

## **Section 262**

### **Alternative obligation; right of choice**

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

## **Section 263**

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

- (1) The right of choice is exercised by declaration to the other party.
- (2) The performance chosen is deemed to have been the only performance owed from the beginning.

## **Section 264**

### **Default by the person entitled to the right of choice**

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

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

## **Section 265**

### **Impossibility in case of alternative obligations**

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

## **Section 266**

### **Part performance**

The obligor is not entitled to render part performance.

## **Section 267**

### **Performance by third parties**

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

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

## **Section 268**

### **Right of redemption of a third party**

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

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

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

## **Section 269**

### **Place of performance**

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

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

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

## **Section 270**

### **Place of payment**

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

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

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

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

## **Section 271**

### **Time of performance**

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

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

## **Section 272**

### **Interim interest**

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

## **Section 273**

### **Right of retention**

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

(2) A person who is obliged to return an object has the same right, if he is entitled to a claim that is due on account of outlays for the object or on account of damage caused to him by the object, unless he obtained the object by means of an intentionally committed tort.

(3) The obligee may avert the exercise of the right of retention by providing security. The providing of security by guarantors is excluded.

## **Section 274**

### **Effects of the right of retention**

(1) In comparison to a legal action by the obligee, assertion of the right of retention only has the effect that the obligor is to be ordered to render performance in return for receiving the performance owed to him (concurrent performance).

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

## **Section 275**

### **Exclusion of the duty of performance \*)**

(1) A claim for performance is excluded to the extent that performance is impossible for the obligor or for any other person.

(2) The obligor may refuse performance to the extent that performance requires expense and effort which, taking into account the subject matter of the obligation and the requirements of good faith, is grossly disproportionate to the interest in performance of the obligee. When it is determined what efforts may reasonably be required of the obligor, it must also be taken into account whether he is responsible for the obstacle to performance.

(3) In addition, the obligor may refuse performance if he is to render the performance in person and, when the obstacle to the performance of the obligor is weighed against the interest of the obligee in performance, performance cannot be reasonably required of the obligor.

(4) The rights of the obligee are governed by sections 280, 283 to 285, 311a and 326.

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\*) Official note:

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

## **Section 276**

### **Responsibility of the obligor**

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

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

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

## **Section 277**

### **Standard of care in one's own affairs**

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

## **Section 278**

### **Responsibility of the obligor for third parties**

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

## **Section 279**

(repealed)

## **Section 280**

### **Damages for breach of duty**

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

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

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

## **Section 281**

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

(1) To the extent that the obligor does not render performance when it is due or does not render performance as owed, the obligee may, subject to the requirements of section 280 (1), demand damages in lieu of performance, if he has without result set a reasonable period for the obligor for performance or cure. If the obligor has performed only in part, the obligee may demand damages in lieu of complete performance only if he has no interest in the part performance. If the obligor has not rendered performance as owed, the obligee may not demand damages in lieu of performance if the breach of duty is immaterial.

(2) Setting a period for performance may be dispensed with if the obligor seriously and definitively refuses performance or if there are special circumstances which, after the interests of both parties are weighed, justify the immediate assertion of a claim for damages.

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

(4) The claim for performance is excluded as soon as the obligee has demanded damages in lieu of performance.

(5) If the obligee demands damages in lieu of complete performance, the obligor is entitled to claim the return of his performance under sections 346 to 348.

## **Section 282**

### **Damages in lieu of performance for breach of a duty under section 241 (2)**

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

## **Section 283**

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

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

## **Section 284**

### **Reimbursement of futile expenses**

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

## **Section 285**

### **Return of reimbursement**

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

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

## **Section 286**

### **Default of the obligor \*)**

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

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

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

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

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

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\*) 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 287**

### **Liability during default**

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

## **Section 288**

### **Default interest \*)**

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

(2) In the case of legal transactions to which a consumer is not a party the rate of interest for claims for payment is eight percentage points above the basic rate of interest.

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

(4) The assertion of further damage is not excluded.

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\*) Official note:

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

## **Section 289**

### **Prohibition of compound interest**

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

## **Section 290**

### **Interest on compensation for value**

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

## **Section 291**

### **Interest during legal proceedings**

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

## **Section 292**

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

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

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

## **Title 2**

### **Default by the obligee**

## **Section 293**

### **Default in acceptance**

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

## **Section 294**

### **Actual offer**

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

## **Section 295**

### **Verbal offer**

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

## **Section 296**

### **Dispensability of the offer**

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

## **Section 297**

### **Inability of the obligor**

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

## **Section 298**

### **Concurrent performance**

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

## **Section 299**

### **Temporary prevention of acceptance**

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

## **Section 300**

### **Effects of default by the obligee**

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

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

## **Section 301**

### **Cessation of interest**

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

## **Section 302**

### **Emoluments**

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

## **Section 303**

### **Right to abandon possession**

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

## Section 304

### Compensation for extra expenses

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

## Division 2

### Drafting contractual obligations by means of standard business terms \*)

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\*) Official note:

This provision also serves to implement Directive 93/13/EEC of the Council of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, p. 29).

## Section 305

### Incorporation of standard business terms into the contract

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

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

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

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

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

## Section 305a

### Incorporation in special cases

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

1. the tariffs and regulations of the railways issued with the approval of the competent transport authority or on the basis of international conventions, and the terms of transport approved under the Passenger Transport Act [*Personenbeförderungsgesetz*], of trams, trolley buses and motor vehicles in regular public transport services,
2. the standard business terms published in the gazette of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway [*Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen*] and kept available on the business premises of the user,

- a) into transport contracts entered into off business premises by the posting of items in postboxes,
- b) into contracts on telecommunications, information services and other services that are provided direct by the use of distance communication and at one time and without interruption during the supply of a telecommunications service, if it is disproportionately difficult to make the standard business terms available to the other party before the contract is entered into.

## **Section 305b**

### **Priority of individually agreed terms**

Individually agreed terms take priority over standard business terms.

## **Section 305c**

### **Surprising and ambiguous clauses**

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

## **Section 306**

### **Legal consequences of non-incorporation and ineffectiveness**

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

## **Section 306a**

### **Prohibition of circumvention**

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

## **Section 307**

### **Test of reasonableness of contents**

- (1) Provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the other party to the contract with the user. An unreasonable disadvantage may also arise from the provision not being clear and comprehensible.
- (2) An unreasonable disadvantage is, in case of doubt, to be assumed to exist if a provision
  1. is not compatible with essential principles of the statutory provision from which it deviates, or
  2. limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised.

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

## Section 308

### Prohibited clauses with the possibility of evaluation

In standard business terms the following are in particular ineffective

1. (Period of time for acceptance and performance)  
a provision by which the user reserves to himself the right to unreasonably long or insufficiently specific periods of time for acceptance or rejection of an offer or for rendering performance; this does not include the reservation of the right not to perform until after the end of the period of time for revocation or return under sections 355 (1) and (2) and 356;
2. (Additional period of time)  
a provision by which the user, contrary to legal provisions, reserves to himself the right to an unreasonably long or insufficiently specific additional period of time for the performance he is to render;
3. (Reservation of the right to withdraw)  
the agreement of a right of the user to free himself from his obligation to perform without any objectively justified reason indicated in the contract; this does not apply to continuing obligations;
4. (Reservation of the right to modify)  
the agreement of a right of the user to modify the performance promised or deviate from it, unless the agreement of the modification or deviation can reasonably be expected of the other party to the contract when the interests of the user are taken into account;
5. (Fictitious declarations)  
a provision by which a declaration by the other party to the contract with the user, made when undertaking or omitting a specific act, is deemed to have been made or not made by the user unless
  - a) the other party to the contract is granted a reasonable period of time to make an express declaration, and
  - b) the user agrees to especially draw the attention of the other party to the contract to the intended significance of his behaviour at the beginning of the period of time;this does not apply to contracts in which the whole of Part B of the Award Rules for Building Works [*Verdingungsordnung für Bauleistungen*] are incorporated;
6. (Fictitious receipt)  
a provision providing that a declaration by the user that is of special importance is deemed to have been received by the other party to the contract;
7. (Reversal of contracts)  
a provision by which the user, to provide for the event that a party to the contract withdraws from the contract or gives notice of termination of the contract, may demand
  - a) unreasonably high remuneration for enjoyment or use of a thing or a right or for performance rendered, or
  - b) unreasonably high reimbursement of expenses;

8. (Unavailability of performance)

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

- a) inform the other party to the contract without undue delay, of the unavailability, and
- b) reimburse the other party to the contract for consideration, without undue delay.

## Section 309

### Prohibited clauses without the possibility of evaluation

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

1. (Price increases at short notice)

a provision providing for an increase in payment for goods or services that are to be delivered or rendered within four months of the entering into of the contract; this does not apply to goods or services delivered or rendered in connection with continuing obligations;

2. (Right to refuse performance)

a provision by which

- a) the right to refuse performance to which the other party to the contract with the user is entitled under section 320, is excluded or restricted, or
- b) a right of retention to which the other party to the contract with the user is entitled to the extent that it is based on the same contractual relationship, is excluded or restricted, in particular made dependent upon acknowledgement of defects by the user;

3. (Prohibition of set-off)

a provision by which the other party to the contract with the user is deprived of the right to set off a claim that is uncontested or has been finally and non-appealably established;

4. (Warning notice, setting of a period of time)

a provision by which the user is exempted from the statutory requirement of giving the other party to the contract a warning notice or setting a period of time for the latter to perform or cure;

5. (Lump-sum claims for damages)

the agreement of a lump-sum claim by the user for damages or for compensation of a decrease in value if

- a) the lump sum, in the cases covered, exceeds the damage expected under normal circumstances or the customarily occurring decrease in value, or
- b) the other party to the contract is not expressly permitted to show that damage or decrease in value has either not occurred or is substantially less than the lump sum;

6. (Contractual penalty)

a provision by which the user is promised the payment of a contractual penalty in the event of non-acceptance or late acceptance of the performance, payment default or in the event that the other party to the contract frees himself from the contract;

7. (Exclusion of liability for injury to life, body or health and in case of gross fault)

- a) (Injury to life, body or health)

any exclusion or limitation of liability for damage from injury to life, body or health due to negligent breach of duty by the user or intentional or negligent breach of duty by a legal representative or a person used to perform an obligation of the user;

b) (Gross fault)

any exclusion or limitation of liability for other damage arising from a grossly negligent breach of duty by the user or from an intentional or grossly negligent breach of duty by a legal representative of the user or a person used to perform an obligation of the user;

letters (a) and (b) do not apply to limitations of liability in terms of transport and tariff rules, authorised in accordance with the Passenger Transport Act [*Personenbeförderungsgesetz*], of trams, trolley buses and motor vehicles in regular public transport services, to the extent that they do not deviate to the disadvantage of the passenger from the Order on Standard Transport Terms for Tram and Trolley Bus Transport and Regular Public Transport Services with Motor Vehicles [*Verordnung über die Allgemeinen Beförderungsbedingungen für den Straßenbahn- und Obusverkehr sowie den Linienverkehr mit Kraftfahrzeugen*] of 27 February 1970; letter (b) does not apply to limitations on liability for state-approved lotteries and gaming contracts;

8. (Other exclusions of liability for breaches of duty)

a) (Exclusion of the right to free oneself from the contract)

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

b) (Defects)

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

aa) (Exclusion and referral to third parties)

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

bb) (Limitation to cure)

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

cc) (Expenses for cure)

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

dd) (Withholding cure)

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

ee) (Cut-off period for notice of defects)

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

ff) (Making limitation easier)

the limitation of claims against the user due to defects in the cases cited in section 438 (1) no. 2 and section 634a (1) no. 2 is made easier, or in other cases a limitation period of less than one year reckoned from the beginning of the statutory limitation period is attained; this does not apply to contracts to which the whole of Part B of the Award Rules for Building Works [*Verdingungsordnung für Bauleistungen*] is incorporated;

9. (Duration of continuing obligations)

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

- a) a duration of the contract binding the other party to the contract for more than two years,
- b) a tacit extension of the contractual relationship by more than one year in each case that is binding on the other party to the contract, or
- c) a notice period longer than three months prior to the expiry of the duration of the contract as originally agreed or tacitly extended at the expense of the other party to the contract;

this does not apply to contracts relating to the supply of things sold as belonging together, to insurance contracts or to contracts between the holders of copyright rights and claims and copyright collecting societies within the meaning of the Act on the Administration of Copyright and Neighbouring Rights [*Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten*];

10. (Change of other party to contract)

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

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

11. (Liability of an agent with power to enter into a contract)

a provision by which the user imposes on an agent who enters into a contract for the other party to the contract

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

12. (Burden of proof)

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

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

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

13. (Form of notices and declarations)

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

## **Section 310**

### **Scope of application**

(1) Section 305 (2) and (3) and sections 308 and 309 do not apply to standard business terms which are used in contracts with an entrepreneur, a legal person under public law or a special fund under public law. Section 307 (1) and (2) nevertheless apply to these cases in sentence 1 to the extent that this leads to the ineffectiveness of the contract provisions set out in sections 308 and 309; reasonable account must be taken of the practices and customs that apply in business dealings.

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

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

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

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

## **Division 3**

### **Contractual obligations**

#### **Title 1**

#### **Creation, subject matter and termination**

##### **Subtitle 1**

##### **Creation**

## **Section 311**

### **Obligations created by legal transaction and obligations similar to legal transactions**

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

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

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

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

### **Section 311a**

#### **Obstacle to performance when contract is entered into**

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

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

### **Section 311b**

#### **Contracts on plots of land, assets and an estate**

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

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

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

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

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

### **Section 311c**

#### **Application to accessories**

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

### **Subtitle 2**

#### **Particular types of sale \*)**

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\*) Official note:

This subtitle serves to implement

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

## **Section 312**

### **Right of revocation in the case of doorstep transactions**

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

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

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

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

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

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

## **Section 312a**

### **Relationship to other provisions**

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

## **Section 312b**

### **Distance contracts**

(1) Distance contracts are contracts for the supply of goods or the rendering of services, including financial services, which are entered into between an entrepreneur and a consumer solely by the use of means of distance communication, except where the entering into of the contract does not take

place in the context of a sales or service system organised for distance sales. Financial services in the meaning of sentence 1 are banking services and services in connection with the granting of a credit, insurance, provision for old age for individuals, investment or payment.

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

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

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

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

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

## Section 312c

### Giving information to a consumer in distance contracts

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

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

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

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

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

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

## Section 312d

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

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

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

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

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

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

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

in connection with shares, dividend coupons which are issued by an investment management company or a foreign investment company, and other tradeable securities, foreign currency, derivatives or money market instruments.

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

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

## **Section 312e**

### **Duties in electronic business dealings**

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

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

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

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

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

## **Section 312f**

### **Deviating agreements**

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

### **Subtitle 3**

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

##### **Section 313**

###### **Interference with the basis of the transaction**

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

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

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

##### **Section 314**

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

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

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

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

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

### **Subtitle 4**

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

##### **Section 315**

###### **Specification of performance by one party**

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

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

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

## **Section 316**

### **Specification of consideration**

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

## **Section 317**

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

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

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

## **Section 318**

### **Avoidance of specification**

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

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

## **Section 319**

### **Ineffectiveness of the specification; substitution**

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

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

## **Title 2**

### **Reciprocal contracts**

## **Section 320**

### **Defence of unperformed contract**

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

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

## **Section 321**

### **Defence of uncertainty**

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

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

## **Section 322**

### **Order to perform reciprocally and simultaneously**

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

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

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

## **Section 323**

### **Withdrawal for nonperformance or for performance not in conformity with the contract \*)**

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

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

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

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

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

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

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

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\*) Official note:

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

## **Section 324**

### **Withdrawal for breach of a duty under section 241 (2)**

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

## **Section 325**

### **Damages and withdrawal**

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

## **Section 326**

### **Release from consideration and withdrawal where the duty of performance is excluded \*)**

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

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

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

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

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

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\*) Official note:

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

## **Section 327**

(repealed)

## **Title 3**

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

#### **Section 328**

##### **Contract for the benefit of third parties**

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

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

#### **Section 329**

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

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

#### **Section 330**

##### **Interpretation rule in the case of life insurance and life annuity contracts**

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

#### **Section 331**

##### **Performance after death**

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

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

#### **Section 332**

##### **Modification by disposition mortis causa in case of reservation**

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

### **Section 333**

#### **Rejection of the right by the third party**

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

### **Section 334**

#### **Objections of the obligor in relation to the third party**

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

### **Section 335**

#### **Right of the promisee to make demands**

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

## **Title 4**

### **Earnest, contractual penalty**

### **Section 336**

#### **Interpretation of earnest**

- (1) Where something is given as an earnest when a contract is entered into, this is deemed to be a sign that the contract has been entered into.
- (2) The earnest is not deemed, in case of doubt, to be forfeit money.

### **Section 337**

#### **Crediting or return of the earnest**

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

### **Section 338**

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

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

## **Section 339**

### **Payability of contractual penalty**

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

## **Section 340**

### **Promise to pay a penalty for nonperformance**

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

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

## **Section 341**

### **Promise of a penalty for improper performance**

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

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

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

## **Section 342**

### **Alternatives to monetary penalty**

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

## **Section 343**

### **Reduction of the penalty**

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

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

## **Section 344**

### **Ineffective promise of a penalty**

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

## **Section 345**

### **Burden of proof**

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

## **Title 5**

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

#### **Subtitle 1**

##### **Withdrawal \*)**

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\*) Official note:

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

## **Section 346**

### **Effects of withdrawal**

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

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

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

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

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

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

Any remaining enrichment must be returned.

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

## **Section 347**

### **Emoluments and outlays after withdrawal**

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

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

## **Section 348**

### **Reciprocal and simultaneous performance**

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

## **Section 349**

### **Declaration of withdrawal**

Withdrawal is effected by declaration to the other party.

## **Section 350**

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

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

## **Section 351**

### **Indivisibility of the right of withdrawal**

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

## **Section 352**

### **Set-off after nonperformance**

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

## **Section 353**

### **Withdrawal in return for forfeit money**

If the right of withdrawal in return for payment of forfeit money has been reserved, the withdrawal is ineffective if the forfeit money is not paid before the declaration or when the declaration is made and

the other party, for this reason, rejects the declaration without undue delay. However, the declaration is effective if the forfeit money is paid without undue delay after the rejection.

## **Section 354**

### **Forfeiture of rights**

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

## **Subtitle 2**

### **Right of revocation and right of return in consumer contracts \*)**

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\*) Official note:

This subtitle serves to implement

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

## **Section 355**

### **Right of revocation in consumer contracts**

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

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

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

## **Section 356**

### **Right of return in consumer contracts**

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

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

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

## **Section 357**

### **Legal consequences of revocation and return**

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

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

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

(4) There are no more extensive claims.

## **Section 358**

### **Connected contracts**

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

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

the case of sentence 2 nevertheless declares revocation of the consumer loan contract, this is treated as revocation in relation to the entrepreneur of the connected contract under subsection (1).

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

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

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

## **Section 359**

### **Objections in the case of connected contracts**

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

## **Sections 360, 361**

(repealed)

## **Division 4**

### **Extinction of obligations**

#### **Title 1**

#### **Performance**

### **Section 362**

#### **Extinction by performance**

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

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

## **Section 363**

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

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

## **Section 364**

### **Acceptance in lieu of performance of contract**

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

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

## **Section 365**

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

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

## **Section 366**

### **Crediting of performance to more than one claim**

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

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

## **Section 367**

### **Crediting to interest and costs**

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

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

## **Section 368**

### **Receipt**

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

## **Section 369**

### **Costs of the receipt**

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

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

## **Section 370**

### **Performance to the bringer of the receipt**

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

## **Section 371**

### **Return of the certificate of indebtedness**

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

## **Title 2**

### **Deposit**

## **Section 372**

### **Requirements**

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

## **Section 373**

### **Reciprocal and simultaneous performance**

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

## **Section 374**

### **Place of deposit; duty to notify**

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

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

## **Section 375**

### **Retroactive effect with dispatch by mail**

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

## **Section 376**

### **Right to take back**

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

## **Section 377**

### **Unpledgeability of the right to take back**

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

## **Section 378**

### **Effect of deposit where taking back is excluded**

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

## **Section 379**

### **Effect of deposit where taking back is not excluded**

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

## **Section 380**

### **Proof of entitlement to receive**

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

## **Section 381**

### **Costs of deposit**

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

## **Section 382**

### **Extinction of the right of the obligee**

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

## **Section 383**

### **Auction of things not capable of deposit**

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

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

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

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

## **Section 384**

### **Warning of auction**

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

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

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

## **Section 385**

### **Sale by private agreement**

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

## **Section 386**

### **Costs of the auction**

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

## **Title 3**

### **Set-off**

#### **Section 387**

##### **Requirements**

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

#### **Section 388**

##### **Declaration of set-off**

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

#### **Section 389**

##### **Effect of set-off**

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

#### **Section 390**

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

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

#### **Section 391**

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

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

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

#### **Section 392**

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

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

#### **Section 393**

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

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

## **Section 394**

### **No set-off against an unpledgeable claim**

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

## **Section 395**

### **Set-off against claims of public-law corporations**

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

## **Section 396**

### **More than one claim**

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

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

## **Title 4**

### **Forgiveness**

## **Section 397**

### **Contract of forgiveness, acknowledgement of non-indebtedness**

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

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

## **Division 5**

### **Transfer of a claim**

## **Section 398**

### **Assignment**

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

## **Section 399**

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

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

## **Section 400**

### **Exclusion in case of unpledgeable claims**

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

## **Section 401**

### **Passing of accessory rights and preferential rights**

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

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

## **Section 402**

### **Duty of information; provision of documents**

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

## **Section 403**

### **Duty of notarial recording**

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

## **Section 404**

### **Objections of the obligor**

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

## **Section 405**

### **Assignment with presentation of documents**

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

## **Section 406**

### **Set-off in relation to the new obligee**

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

## **Section 407**

### **Legal acts in relation to the previous obligee**

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

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

## **Section 408**

### **Multiple assignment**

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

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

## **Section 409**

### **Notice of assignment**

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

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

## **Section 410**

### **Delivery of the assignment document**

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

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

## **Section 411**

### **Assignment of salary**

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

## **Section 412**

### **Statutory passing of claims**

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

## **Section 413**

### **Transfer of other rights**

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

## **Division 6**

### **Assumption of debt**

## **Section 414**

### **Contract between obligee and transferee**

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

## **Section 415**

### **Contract between obligor and transferee**

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

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

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

## **Section 416**

### **Assumption of a mortgage debt**

(1) If the acquirer of a plot of land assumes a debt of the alienor for which there is a mortgage on the land, by contract with the latter, the obligee may only ratify the assumption of the debt if the alienor notifies him of it. If six months have passed since receipt of the notice, the ratification is deemed to

have been granted unless the obligee has previously refused it to the alienor; the provision of section 415 (2) sentence 2 does not apply.

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

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

## **Section 417**

### **Objections of the transferee**

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

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

## **Section 418**

### **Extinction of security rights and preferential rights**

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

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

## **Section 419**

(repealed)

## **Division 7**

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

## **Section 420**

### **Divisible performance**

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

## **Section 421**

### **Joint and several debtors**

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

## **Section 422**

### **Effect of performance**

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

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

## **Section 423**

### **Effect of forgiveness**

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

## **Section 424**

### **Effect of default by the obligee**

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

## **Section 425**

### **Effect of other facts**

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

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

## **Section 426**

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

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

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

## **Section 427**

### **Joint contractual duty**

If more than one person jointly binds himself by contract to render divisible performance then, in case of doubt, they are liable as joint and several debtors.

## **Section 428**

### **Joint and several creditors**

If more than one person is entitled to demand performance in such a way that each may demand the entire performance but the obligor is only obliged to effect the performance once (joint and several creditors), the obligor may at his discretion effect performance to each of the obligees. This also applies if one of the obligees has already sued for performance.

## **Section 429**

### **Effect of changes**

- (1) The default of a joint and several creditor is also effective against the other obligees.
- (2) If claim and debt are combined in the person of a joint and several creditor, the rights of the other obligees against the obligor expire.
- (3) Apart from this, the provisions of sections 422, 423 and 425 apply with the necessary modifications. In particular, without limitation, if a joint and several creditor transfers his claim to another party, the rights of the other obligees are unaffected.

## **Section 430**

### **Duty of the joint and several creditors to adjust advancements**

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

## **Section 431**

### **More than one obligor of indivisible performance**

If more than one person owes indivisible performance, they are liable as joint and several debtors.

## **Section 432**

### **More than one obligee of indivisible performance**

- (1) If more than one person is to demand indivisible performance, then to the extent that they are not joint and several creditors, the obligor may only effect performance to all of them jointly and each obligee may only demand performance for all of them. Each obligee may demand that the obligor deposit the thing owed for all obligees or, if it is not suitable for deposit, that it be surrendered to a court-appointed depository.
- (2) Apart from this, a fact only relating to the person of one of the obligees has no effect for and against the other obligees.

## **Division 8**

### **Particular types of obligations**

#### **Title 1**

#### **Purchase, exchange \*)**

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\*) Official note:

This title serves to implement Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 171, p. 12).

## **Subtitle 1**

### **General provisions**

#### **Section 433**

##### **Typical contractual duties in a purchase agreement**

(1) By a purchase agreement, the seller of a thing is obliged to deliver the thing to the buyer and to procure ownership of the thing for the buyer. The seller must procure the thing for the buyer free from material and legal defects.

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

#### **Section 434**

##### **Material defects**

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

1. if it is suitable for the use intended under the contract,
2. if it is suitable for the customary use and its quality is usual in things of the same kind and the buyer may expect this quality in view of the type of the thing.

Quality under sentence 2 no. 2 above includes characteristics which the buyer can expect from the public statements on specific characteristics of the thing that are made by the seller, the producer (section 4 (1) and (2) of the Product Liability Act [*Produkthaftungsgesetz*]) or his assistant, including without limitation in advertising or in identification, unless the seller was not aware of the statement and also had no duty to be aware of it, or at the time when the contract was entered into it had been corrected in a manner of equal value, or it did not influence the decision to purchase the thing.

(2) It is also a material defect if the agreed assembly by the seller or persons whom he used to perform his obligation has been carried out improperly. In addition, there is a material defect in a thing intended for assembly if the assembly instructions are defective, unless the thing has been assembled without any error.

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

#### **Section 435**

##### **Legal defects**

The thing is free of legal defects if third parties, in relation to the thing, can assert either no rights, or only the rights taken over in the purchase agreement, against the buyer. It is equivalent to a legal defect if a right that does not exist is registered in the Land Register.

## **Section 436**

### **Public charges on plots of land**

(1) Unless otherwise agreed, the seller of a plot of land is obliged to bear public services development charges and other municipal development charges for measures the construction of which began before the contract was entered into, irrespective of the point of time when they became payable.

(2) The seller of a plot of land is not liable for the land being free from other public levies and other public charges that are not suitable to be entered in the Land Register.

## **Section 437**

### **Rights of buyer in the case of defects**

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

1. under section 439, demand cure,
2. withdraw from the agreement under sections 440, 323 and 326 (5) or reduce the purchase price under section 441, and
3. under sections 440, 280, 281, 283 and 311a, demand damages, or under section 284, demand reimbursement of futile expenditure.

## **Section 438**

### **Limitation of claims for defects**

(1) The claims cited in section 437 nos. 1 and 3 become statute-barred

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

(2) In the case of a plot of land the limitation period commences upon the delivery of possession, in other cases upon delivery of the thing.

(3) Notwithstanding subsection (1) nos. 2 and 3 and subsection (2), claims become statute-barred in the standard limitation period if the seller fraudulently concealed the defect. In the case of subsection (1) no. 2, however, claims are not statute-barred before the end of the period there specified.

(4) The right of withdrawal referred to in section 437 is subject to section 218. Notwithstanding the fact that a withdrawal is ineffective under section 218 (1), the buyer may refuse to pay the purchase price to the extent he would be so entitled on the basis of withdrawal. If he makes use of this right, the seller may withdraw from the agreement.

(5) Section 218 and subsection (4) sentence 2 above apply with the necessary modifications to the right to reduce the price set out in section 437.

## **Section 439**

### **Cure**

- (1) As cure the buyer may, at his choice, demand that the defect is remedied or a thing free of defects is supplied.
- (2) The seller must bear all expenses required for the purpose of cure, in particular transport, workmen's travel, work and materials costs.
- (3) Without prejudice to section 275 (2) and (3), the seller may refuse to provide the kind of cure chosen by the buyer, if this cure is possible only at disproportionate expense. In this connection, account must be taken in particular, without limitation, of the value of the thing when free of defects, the importance of the defect and the question as to whether recourse could be had to the alternative kind of cure without substantial detriment to the buyer. The claim of the buyer is restricted in this case to the alternative kind of cure; the right of the seller to refuse the alternative kind of cure too, subject to the requirements of sentence 1 above, is unaffected.
- (4) If the seller supplies a thing free of defects for the purpose of cure, he may demand the return of the defective thing in accordance with sections 346 to 348.

## **Section 440**

### **Special provisions on withdrawal and damages**

Except in the cases set out in section 281 (2) and section 323 (2), it is also not necessary to specify a period of time if the seller has refused to carry out both kinds of cure under section 439 (3) or if the kind of cure that the buyer is entitled to receive has failed or cannot reasonably be expected of him. A repair is deemed to have failed after the second unsuccessful attempt, unless in particular the nature of the thing or of the defect or the other circumstances leads to a different conclusion.

## **Section 441**

### **Reduction of price**

- (1) Instead of withdrawing from the agreement, the buyer may, by declaration to the seller, reduce the purchase price. The ground for exclusion under section 323 (5) sentence 2 does not apply.
- (2) If more than one person comprises either the buyer or the seller, price reduction may be declared only by all or to all of them.
- (3) In the case of a price reduction, the purchase price is to be reduced in the proportion in which the value of the thing free of defects would, at the time when the contract was entered into, have had to the actual value. To the extent necessary, the price reduction is to be established by appraisal.
- (4) If the buyer has paid more than the reduced purchase price, the excess amount is to be reimbursed by the seller. Section 346 (1) and section 347 (1) apply with the necessary modifications.

## **Section 442**

### **Knowledge of the buyer**

- (1) The rights of the buyer due to a defect are excluded if he has knowledge of the defect at the time when the contract is entered into. If the buyer has no knowledge of a defect due to gross negligence, the buyer may assert rights in relation to this defect only if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.
- (2) A right registered in the Land Register must be removed by the seller even if the buyer is aware of it.

## **Section 443**

### **Guarantee of quality and durability**

(1) If the seller or a third party gives a guarantee for the quality of the thing or that the thing will have a specified quality for a specified period (guarantee of durability), then, if there is a claim under the guarantee, the buyer, notwithstanding his statutory claims, has the rights given by the guarantee upon the terms set out in the declaration of guarantee and in the relevant advertising in relation to the person who granted the guarantee.

(2) To the extent that a guarantee of durability has been given, there is a presumption that a material defect which appears during the guarantee period triggers the rights under the guarantee.

## **Section 444**

### **Exclusion of liability**

The seller may not invoke an agreement that excludes or restricts the rights of the buyer with regard to a defect insofar as the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

## **Section 445**

### **Limitation of liability in the case of public auctions**

If a thing is sold in exercise of a security right at a public auction in which it is described as a pledge, the buyer only has rights in respect of a defect if the seller fraudulently concealed the defect or gave a guarantee of the quality of the thing.

## **Section 446**

### **Passing of risk and of charges**

The risk of accidental destruction and accidental deterioration passes to the buyer upon delivery of the thing sold. From the time of delivery the emoluments of the thing accrue to the buyer and he bears the charges on it. If the buyer is in default of acceptance of delivery, this is equivalent to delivery.

## **Section 447**

### **Passing of risk in the case of sales shipment**

(1) If the seller, at the request of the buyer, ships the thing sold to another place than the place of performance, the risk passes to the buyer as soon as the seller has handed the thing over to the forwarder, carrier or other person or body specified to carry out the shipment.

(2) If the buyer has given a particular instruction on the method of shipping the thing and the seller, without a strong reason, does not adhere to this instruction, the seller is liable to the buyer for the damage arising from this.

## **Section 448**

### **Costs of delivery and comparable costs**

(1) The seller bears the costs of delivery of the thing, the buyer the costs of acceptance and of shipping the thing to a place other than the place of performance.

(2) The buyer of a plot of land bears the costs of the notarial recording of the purchase agreement and of the declaration of conveyance, the registration in the Land Register and the declarations necessary for registration.

## **Section 449**

### **Retention of title**

(1) If the seller of a movable thing has retained title until payment of the purchase price, then in case of doubt it is to be assumed that ownership is transferred subject to the condition precedent that the purchase price is paid in full (retention of title).

(2) Retention of title entitles the seller to demand the return of the thing only if he has withdrawn from the agreement.

(3) An agreement on retention of title is void to the extent that the passing of ownership is made subject to the satisfaction by the buyer of third-party claims, including, without limitation, those of an enterprise associated with the seller.

## **Section 450**

### **Excluded buyers in the case of certain sales**

(1) When an object is sold by way of execution of judgment, the person instructed to carry out or manage the sale and the assistants used by him, including the recording clerk, may not purchase the object to be sold either for themselves in person or through another person or as the agents of another person.

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

## **Section 451**

### **Purchase by excluded buyer**

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

(2) If, as a result of refusal of ratification, a new sale is undertaken, the earlier buyer is liable for the costs of the new sale and for an amount by which the proceeds of sale are reduced.

## **Section 452**

### **Purchase of a ship**

The provisions in this subtitle on the sale of plots of land apply with the necessary modifications to the sale of registered ships and ships under construction.

## **Section 453**

### **Purchase of rights**

(1) The provisions on the purchase of things apply with the necessary modifications to the purchase of rights and other objects.

(2) The seller bears the costs of creation and transfer of the right.

(3) If a right comprising the right to possession of a thing is sold, the seller is obliged to deliver the thing to the buyer free of material and legal defects.

## **Subtitle 2**

### **Special types of purchase**

#### **Chapter 1**

##### **Purchase on approval**

###### **Section 454**

###### **Coming into existence of the purchase agreement**

(1) In a purchase on approval or on examination, approval of the object purchased is at the discretion of the buyer. In case of doubt, the purchase agreement is entered into subject to the condition precedent of approval.

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

###### **Section 455**

###### **Approval period**

An object purchased on approval or on examination may be approved only within the agreed period or, if no period has been agreed, only before the end of a reasonable period specified by the seller for the buyer. If the thing was delivered to the buyer for the purpose of approval or examination, his silence is deemed to be approval.

#### **Chapter 2**

##### **Repurchase**

###### **Section 456**

###### **Coming into existence of the repurchase agreement**

(1) If the seller has, in the purchase agreement, reserved the right of repurchase, the repurchase agreement comes into existence when the seller declares to the buyer that he is exercising the right of repurchase. The declaration is not subject to the formal requirements laid down for the purchase agreement.

(2) In case of doubt, the price at which the object was sold also applies to the repurchase.

###### **Section 457**

###### **Liability of the reseller**

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

(2) If the reseller, before exercising the right of repurchase, was at fault for the deterioration or destruction of the purchased object or an impossibility of returning it that resulted in another way, or if he materially altered the purchased object, he is liable for the damage resulting from this. If the object deteriorated without the fault of the reseller or if it is only trivially altered, the reseller may not require the purchase price to be reduced.

## **Section 458**

### **Removal of third-party rights**

If the original purchaser disposed of the purchased object before exercising the right of repurchase, he is obliged to remove the third-party rights created by this. A disposition that is made by execution of judgment or attachment or by the administrator in insolvency proceedings is equivalent to a disposition by the reseller.

## **Section 459**

### **Reimbursement of outlays**

The reseller may demand reimbursement for outlays that he made on the purchased object before the resale to the extent that the value of the object is enhanced by the expenses. He may remove an installation which he has attached to the returnable thing.

## **Section 460**

### **Repurchase at estimated value**

If the estimated value of the object purchased at the time of repurchase is agreed as the repurchase price, the reseller is not responsible for the deterioration or destruction of the purchased object or an impossibility of returning it that resulted in another way, and the repurchaser is not obliged to reimburse the outlays made.

## **Section 461**

### **More than one person entitled to repurchase**

If more than one person is jointly entitled to the right to repurchase, the right may only be exercised in its entirety. If it has expired for one of the persons entitled or if one of them does not exercise his right, then the others are entitled to exercise the right of repurchase in its entirety.

## **Section 462**

### **Cut-off period**

The right of repurchase may be exercised, in the case of plots of land, only before the end of thirty years from the date of the agreement of the reservation, and in the case of other objects, only before the end of three years from that date. If a period of time is specified for exercise of the right, this period replaces the statutory period.

## **Chapter 3**

### **Preemption**

## **Section 463**

### **Requirements for exercise**

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

## **Section 464**

### **Exercise of the right of preemption**

(1) Exercise of the right of preemption occurs by declaration to the person obliged. The declaration is not subject to the formal requirements laid down for the purchase agreement.

(2) When the right of preemption is exercised, the purchase takes effect between the person entitled and the person obliged, subject to the terms that the person obliged agreed with the third party.

## **Section 465**

### **Ineffective agreements**

An agreement made by the person obliged with the third party which provides that the purchase is subject to the non-exercise of the right of preemption or which reserves for the person obliged the right to withdraw from the agreement in the event that the right of preemption is exercised is ineffective in relation to the person entitled to preemption.

## **Section 466**

### **Collateral performance**

If the third party has agreed in the contract to render an act of collateral performance which the person entitled to preemption is unable to perform, the person entitled to preemption must pay the value of the collateral performance instead of rendering it. If the collateral performance cannot be assessed in money, the exercise of the right of preemption is excluded; the agreement to render collateral performance is, however, not performed if the contract with the third party would have been entered into even without it.

## **Section 467**

### **Total price**

If the third party purchased the object which is subject to the right of preemption together with other objects at a total price, then the person entitled to preemption must pay a proportionate part of the total price. The person obliged may demand that the preemption is extended to all things that cannot be separated without disadvantage to him.

## **Section 468**

### **Deferral of the purchase price**

(1) If the third party is granted deferral of payment of the purchase price in the contract, the person entitled to preemption may claim the deferral only if he gives security for the amount deferred.

(2) If a plot of land is the subject matter of the preemption, there is no need to provide security to the extent that there has been an agreement to create a mortgage on the plot of land for the deferred purchase price, or a debt for which a mortgage on the land exists has been assumed and credited towards the purchase price. This applies with the necessary modifications if a registered ship or ship under construction is the object of the right of preemption.

## **Section 469**

### **Duty to notify, exercise period**

(1) The person obliged must inform the person entitled to preemption without undue delay of the contents of the contract entered into with the third party. Notice by the third party replaces notice by the person obliged.

(2) The right of preemption for plots of land may be exercised only before the end of a period of two months after notice is received, and the right of preemption for other objects only before the end of a period of one week after notice is received. If a period of time is specified for exercise of the right, this period replaces the statutory period.

## **Section 470**

### **Sale to heir on intestacy**

The right of preemption, in case of doubt, does not apply to a sale that is made to an heir on intestacy with a view to a future right of succession.

## **Section 471**

### **Sale in case of execution of judgment or insolvency**

The right of preemption is excluded if the sale occurs by way of execution of judgment or from an insolvency estate.

## **Section 472**

### **More than one person with a right of preemption**

If the right of preemption is held by more than one person jointly, it may be exercised only in its entirety. If it has expired with regard to one of the entitled persons or if one of them does not exercise his right, then the others are entitled to exercise the right of preemption in its entirety.

## **Section 473**

### **Non-transferability**

The right of preemption is not transferable and does not pass to the heirs of the person entitled to it unless otherwise provided. If the right is limited to a specific period, then, in case of doubt, it is inheritable.

## **Subtitle 3**

### **Purchase of consumer goods**

## **Section 474**

### **The concept of purchase of consumer goods**

(1) Where a consumer buys a movable thing from an entrepreneur (purchase of consumer goods), the following rules apply in addition. This does not apply to second-hand things that are sold at a public auction which the consumer may attend in person.

(2) Sections 445 and 447 do not apply to the contracts of purchase dealt with in this subtitle.

## **Section 475**

### **Deviating agreements**

(1) If an agreement is entered into before a defect is notified to the entrepreneur and deviates, to the disadvantage of the consumer, from sections 433 to 435, 437, 439 to 443 and from the provisions of this subtitle, the entrepreneur may not invoke it. The provisions referred to in sentence 1 apply even if circumvented by other constructions.

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

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

## **Section 476**

### **Shifting the burden of proof**

If, within six months after the date of the passing of the risk, a material defect manifests itself, it is presumed that the thing was already defective when risk passed, unless this presumption is incompatible with the nature of the thing or of the defect.

## **Section 477**

### **Special provisions for guarantees**

(1) A declaration of guarantee (section 443) must be expressed simply and comprehensibly. It must contain

1. a reference to the statutory rights of the consumer and a statement that they are not restricted by the guarantee, and
2. the contents of the guarantee and all essential information required for asserting rights under the guarantee, including, without limitation, the duration and the area of territorial application of the guarantee protection as well as the name and address of the guarantor.

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

(3) The effectiveness of the duty under the guarantee is not affected by the fact that one of the above requirements is not satisfied.

## **Section 478**

### **Recourse of the entrepreneur**

(1) If an entrepreneur has been obliged to take back a newly manufactured thing sold by him because it is defective, or if the consumer has reduced the purchase price, it is not necessary for the entrepreneur to fix the period of time which would otherwise be necessary in order to enforce the rights set out in section 437 with regard to the defect asserted by the consumer against the entrepreneur who sold the thing to him (supplier).

(2) Where a newly manufactured thing is sold, the entrepreneur may demand of his supplier reimbursement of the expenses which the entrepreneur had to bear in relation to the consumer under section 439 (2), if the defect asserted by the consumer already existed upon the passing of the risk to the entrepreneur.

(3) In the case of subsections (1) and (2) above, section 476 applies, subject to the proviso that the period begins when the risk passes to the consumer.

(4) The supplier may not rely on an agreement made before the defect was notified to the supplier which, to the disadvantage of the entrepreneur, deviates from sections 433 to 435, 437, 439 to 443 or from subsections (1) and (3) above or from section 479, if the obligee with the right of recourse is not given another form of compensation of equal value. Sentence 1, notwithstanding section 307, does not apply to an exclusion or restriction of the claim to damages. The provisions referred to in sentence 1 apply even if circumvented by other constructions.

(5) Subsections (1) to (4) above apply with the necessary modifications to claims of the supplier and of the other buyers in the supply chain against their sellers if the obligors are entrepreneurs.

(6) Section 377 of the Commercial Code [*Handelsgesetzbuch*] is unaffected.

## **Section 479**

### **Limitation of recourse claims**

(1) The claims to reimbursement of expenses specified in section 478 (2) are subject to a two-year limitation period after delivery of the thing.

(2) The claims specified in sections 437 and 478 (2) of the entrepreneur against his supplier for a defect in a newly manufactured thing sold to a consumer become statute-barred at the earliest two months after the date on which the entrepreneur satisfies the claims of the consumer. This suspension of expiry of limitation ends at the latest five years after the time when the supplier delivers the thing to the entrepreneur.

(3) The above subsections apply with the necessary modifications to claims of the supplier and the other buyers in the supply chain against their sellers if the obligors are entrepreneurs.

## **Subtitle 4**

### **Exchange**

#### **Section 480**

##### **Exchange**

The provisions relating to purchase apply with the necessary modifications to exchange.

## **Title 2**

### **Time-share agreements \*)**

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\*) Official note:

This title serves to implement Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a time-share basis (OJ L 280, p. 82).

#### **Section 481**

##### **The concept of time-share agreement**

(1) Time-share agreements are contracts by which an entrepreneur procures or promises to procure for a consumer the right, in return for the payment of a total price, to use a building for a period of the year that is specified or to be specified, for recreation or residential purposes, for the duration of at least three years. The right may be a real right or another right and may also in particular, without limitation, be granted through membership of an association or a share in a company or partnership.

(2) The right may also consist in opting to use one of a group of residential buildings.

(3) A part of a residential building is equivalent to a residential building.

## **Section 482**

### **Duty to provide a prospectus with regard to time-share agreements**

- (1) A person who, as an entrepreneur, offers time-share agreements to be entered into, must supply each consumer who indicates interest with a prospectus.
- (2) The prospectus designated in subsection (1) must contain a general description of the residential building or the group of residential buildings as well as the information specified in the statutory order made under Article 242 of the Introductory Act to the Civil Code [*Einführungsgesetz zum Bürgerlichen Gesetzbuch*].
- (3) The entrepreneur may, before entering into the agreement, make an alteration to the information contained in the prospectus to the extent that this becomes necessary due to circumstances which he was unable to influence.
- (4) Every advertisement for entering into time-share agreements must state that the prospectus is available and where it may be obtained.

## **Section 483**

### **Language of the contract and prospectus with regard to time-share agreements**

- (1) The agreement is to be drafted in the official language, or, where there is more than one official language, in the official language, selected by the consumer, of the Member State of the European Union or of the state which is a contracting party to the Agreement on the European Economic Area in which the consumer has his residence. If the consumer is a national of another Member State, then instead of the language of the state in which he has his residence he may alternatively choose the official language or one of the official languages of the state of which he is a national. Sentences 1 and 2 also apply to the prospectus.
- (2) If the agreement must be notarially recorded before a German notary, sections 5 and 16 of the Notarial Recording Act [*Beurkundungsgesetz*] apply with the proviso that the consumer must be provided with a certified translation of the agreement in the language chosen by him under subsection (1).
- (3) Time-share agreements that do not comply with subsections (1) sentences 1 and 2, or (2) above are void.

## **Section 484**

### **Written form with regard to time-share agreements**

- (1) The time-share agreement must be in writing, except to the extent that other provisions contain more stringent formal requirements. Entering into the agreement in electronic form is excluded. The information in the prospectus designated in section 482 that is supplied to the consumer is incorporated into the agreement except to the extent that the parties, expressly and indicating the deviation from the prospectus, agree otherwise. Such alterations must be notified to the consumer before the agreement is entered into. Notwithstanding the validity of the prospectus information under sentence 3, the contract document must contain the information specified in the statutory order designated in section 482 (2).
- (2) The entrepreneur must provide the consumer with a contract document or a copy thereof. In addition, if the language of the agreement and the language of the state in which the residential building is situated are different, he must provide him with a certified translation of the agreement in the official language or one of the official languages of the European Union or of the Agreement on the European Economic Area of the state in which the residential building is situated. The duty to supply a certified translation does not apply if the right of use relates to a group of residential buildings which are situated in different states.

## **Section 485**

### **Right of revocation with regard to time-share agreements**

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

(2) The required instruction on the right of revocation must also state the costs which the consumer must reimburse if the contract is revoked under subsection (5) sentence 2.

(3) If, before the agreement was entered into, the consumer was not supplied with the prospectus described in section 482, or it was not in the language stipulated in section 483 (1), then the period for exercising the right of revocation is one month, notwithstanding section 355 (1) sentence 2.

(4) If one of the items of information stipulated by the statutory order designated in section 482 (2) is missing from the contract, the period for exercising the right of revocation does not commence until the consumer is notified in writing of this information.

(5) Notwithstanding section 357 (1) and (3), remuneration for services rendered and for permitting the use of residential buildings is excluded. If the contract was required to be notarially recorded, then the consumer must pay the entrepreneur the costs of the notarial recording if this is expressly stipulated in the agreement. In the cases set out in subsections (3) and (4), there is no duty of reimbursement of costs; the consumer may demand that the entrepreneur reimburses the costs of the agreement.

## **Section 486**

### **Prohibition of down payment with regard to time-share agreements**

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

## **Section 487**

### **Deviating agreements**

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

## **Title 3**

### **Loan contract; financing assistance and contracts for delivery by instalments between an entrepreneur and a consumer \*)**

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\*) Official note:

This title serves to implement Directive 87/102/EEC of the Council for approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, p. 48) most recently amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 to amend Directive 87/102/EEC for approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 101, p. 17).

## **Subtitle 1**

### **Loan contract**

#### **Section 488**

##### **Typical contractual duties in a loan contract**

(1) The loan contract obliges the lender to make available to the borrower a sum of money in the agreed amount. The borrower is obliged to pay interest owed and, at the due date, to repay the loan made available to him.

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

(3) If a time is not specified for repayment of the loan, its due date is subject to the lender or the borrower giving notice of termination. The notice period is three months. If interest is not owed, the borrower is also entitled to repay without giving notice of termination.

#### **Section 489**

##### **Right of the borrower to give notice of termination**

(1) The borrower may terminate a loan contract, in whole or in part, where for a specific period of time a fixed rate of interest has been agreed

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

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

(3) Termination by the borrower under subsections (1) or (2) is deemed not to have been given if the borrower does not repay the sum owed within two weeks after the notice of termination takes effect.

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

#### **Section 490**

##### **Right to terminate for cause**

(1) If there is or threatens to be a substantial deterioration in the financial circumstances of the borrower or in the value of a security given for the loan as a result of which the repayment of the loan is jeopardised even if the security is realised, the lender may give notice of termination of the loan agreement with immediate effect; in case of doubt, extraordinary notice of termination is available before the loan is paid out, under all circumstances, but, after the loan has been paid out, only as a general rule.

(2) The borrower may give early notice of termination of a loan contract where for a specified period of time a fixed rate of interest is agreed and the loan is secured by a security right in land or a maritime lien, complying with the notice periods in section 489 (1) no. 2, if his justified interests require this. There is such an interest in particular, without limitation, if the borrower has the need to otherwise realise the thing pledged to secure the loan. The borrower must compensate the lender for the damage incurred by the lender as a result of this early termination (compensation for early termination).

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

## **Section 491**

### **Consumer loan contract**

(1) The following provisions apply as supplementary provisions, subject to subsections (2) and (3) below, to nongratuitous loan contracts between an entrepreneur as lender and a consumer as borrower (consumer loan contract).

(2) The following provisions do not apply to consumer loan contracts

1. in which the disbursable loan (net loan amount) does not exceed 200 euros,
2. which are entered into between an employer and an employee at rates of interest lying below the going market rates,
3. which, in connection with the subsidisation of housing and urban development, are entered into on the basis of public-law approvals or on the basis of grants from public authorities directly between the public law institution awarding the subsidies and the borrower at rates of interest lying below the going market rates.

(3) In addition, the following do not apply:

1. section 358 (2), (4) and (5) and sections 492 to 495 to consumer loan contracts incorporated in a court record drawn up in compliance with the provisions of the Code of Civil Procedure [*Zivilprozessordnung*] or notarially recorded, if the record or the notarial instrument contains the annual rate of interest, the costs invoiced when the contract was entered into, and the conditions under which the annual rate of interest or the costs may be changed;
2. section 358 (2), (4) and (5) and section 359 to consumer loan contracts serving the purpose of financing the purchase of securities, foreign currency, derivatives or precious metals.

## **Section 492**

### **Written form, contents of the contract**

(1) Consumer loan contracts are to be entered into in writing unless a more stringent form is provided for. Entering into the agreement in electronic form is excluded. The requirement of written form is satisfied if the offer and acceptance by the parties to the contract are declared in writing in separate documents. The statement of the lender need not be signed if it is made with the help of automatic equipment. The contract declaration must be signed by the borrower and must indicate:

1. the net loan amount, and where applicable the maximum limit of the loan,
2. the total amount of all instalments to be paid by the borrower in redemption of the loan as well as for payment of interest and other costs, if, at the date when the consumer loan contract is entered into, the total amount is certain for the entire duration of the loan; for loans with variable conditions that are redeemed in instalments, a total amount on the basis of the loan terms that apply at the time the contract is entered into,
3. the manner of repayment of the loan or, if an agreement on this is not envisaged, the arrangements for the termination of the contract,

4. the rate of interest and all other loan costs which, where their amount is known, are to be specified in detail, or else whose basis is to be indicated, including any brokerage fees to be borne by the borrower,
5. the effective annual rate of interest or, if the right is reserved to modify the rate of interest or other factors that determine the price, the initial effective annual rate of interest; together with the initial effective annual rate of interest there must also be information on the conditions under which the factors that determine the price can be modified and the periods of time to which charges resulting from an incomplete disbursement or from a loan surcharge are to be allocated when calculating the effective annual rate of interest,
6. the costs of any residual debt insurance or other insurance taken out in connection with the consumer loan contract,
7. security to be provided.

(1a) Notwithstanding subsection (1) sentence 5 no. 2, no total amount is to be indicated with regard to loans where drawing on the loan is left to the discretion of the borrower up to a maximum limit, or with regard to real estate loan contracts. Real estate loan contracts are consumer loan contracts in which placing the loan at the borrower's disposal is made dependent upon security by a security right in land and occurs on terms customary with regard to loan contracts secured by security rights in land and their interim financing; a waiver of a security under section 7 (3) to (5) of the Act on Building Societies [*Gesetz über Bausparkassen*] is equivalent to security by means of a security right in land.

(2) The effective annual rate of interest is the total charge per annum, to be expressed as a percentage of the net loan amount. The effective and the initial effective annual rate of interest are calculated in compliance with section 6 of the Statutory Order on Price Quotation [*Verordnung zur Regelung der Preisangaben*].

(3) The lender must supply to the borrower a copy of the contract declarations.

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

## **Section 493**

### **Overdraft credit**

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

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

The contract terms referred to in sentence 2 nos. 1 to 4 must be confirmed in writing to the borrower at the latest after the borrower has drawn on the loan for the first time. During the period in which he is drawing on the loan the borrower must also be given notice of any change in the annual rate of interest. The confirmation under sentence 3 and the notice under sentence 4 must be made in text form; it is sufficient if they are given on a bank statement.

(2) If the banking institution allows a current account to be overdrawn and if the account is overdrawn for more than three months, then the banking institution must inform the borrower of the annual rate of interest, the charges and any changes in this connection; this may be in the form of a printout on a bank statement.

## **Section 494**

### **Legal consequences of defects of form**

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

(2) Irrespective of a defect under subsection (1), the consumer loan contract is valid to the extent that the borrower receives the loan or draws on it. However, the rate of interest agreed for the consumer loan contract (section 492 (1) sentence 5 no. 4) is reduced to the statutory rate of interest if there is no information on the rate of interest itself, on the effective annual rate of interest or on the initial effective annual rate of interest (section 492 (1) sentence 5 no. 5), or if there is no information on the total amount (section 492 (1) sentence 5 no. 2, (1a)). The borrower has no liability to pay any charges not stated. Agreed instalments must be recalculated, taking account of the reduced rate of interest or charges. If there is no information on the conditions under which the factors that determine the price may be changed, they may not be changed to the disadvantage of the borrower. If there is no information on security, it may not be called for; this does not apply if the net loan amount exceeds 50,000 euros.

(3) If the effective or the initial effective rate of interest is stated at a rate that is too low, the rate of interest on which the consumer loan contract is based is reduced by the percentage by which the effective or initial effective rate of interest is too low.

## **Section 495**

### **Right of revocation**

(1) In the case of a consumer loan contract, the borrower has a right of revocation under section 355.

(2) Subsection (1) does not apply to the consumer loan contracts referred to in section 493 (1) sentence 1 if, under the contract, the borrower may repay the loan at any time without complying with a notice period and without additional charges.

## **Section 496**

### **Waiver of objections, prohibition of bills of exchange and cheques**

(1) An agreement by which the borrower waives his right under section 404 to make against an assignee of the obligation objections to which he is entitled against the lender, or his right under section 406 to set off against an assignee of the obligation too a claim he has against the lender, is ineffective.

(2) The borrower may not be obliged to incur a bill of exchange commitment for the claims of the lender under the consumer loan contract. The lender may not accept a cheque from the borrower to secure his claims under the consumer loan contract. The borrower may require the lender at any time to return a bill of exchange or cheque that has been issued in violation of sentence 1 or 2 above. The lender is liable for all damage incurred by the borrower as a result of the issue of such a bill of exchange or cheque.

## **Section 497**

### **Treatment of default interest, crediting part performance**

(1) To the extent that the borrower is in default in making payments owed on the basis of the consumer loan contract he must pay interest under section 288 (1) on the amount owed; this does not apply to real estate loan contracts. With regard to these contracts, the default rate of interest per year amounts to two and a half percentage points above the base rate of interest. In an individual case, the lender may prove that the damage was greater or the borrower may prove that the damage was less.

(2) Interest incurred after default has occurred must be booked to a separate account and may not be paid into a current account together with the amount owed or other claims of the lender. In regard to such interest, section 289 sentence 2 applies, with the proviso that the lender may only demand damages up to the amount of the statutory rate of interest (section 246).

(3) Payments by the borrower which are insufficient to repay the entire debt due are credited, notwithstanding section 367 (1), first, towards costs of litigation, then towards the remainder of the amount owed (subsection 1) and finally towards interest (subsection 2). The lender may not reject instalments. Limitation of the claims for repayment of the loan and interest is suspended from the date when default begins under subsection (1) until they are determined in a manner described in section 197 (1) nos. 3 to 5, but not for more than ten years from the date when they come into existence. Section 197 (2) does not apply to claims for interest. Sentences 1 to 4 do not apply to the extent that payments are made in response to judicially enforceable instruments whose main claim is for interest.

(4) Subsections (2) and (3) sentences 1, 2, 4 and 5 do not apply to real estate loan contracts.

## **Section 498**

### **Calling in entire loan in the case of loans repayable in instalments**

(1) With regard to a loan that is to be repaid in instalments, the lender may only give notice of termination on account of the default in payment of the borrower if

1. the borrower is in default in the payment of at least two consecutive instalments in whole or in part and by at least ten per cent, in the case of a consumer loan contract running for more than three years by five per cent, of the nominal amount of the loan or of the instalment price, and
2. the lender has without result given the borrower a period of two weeks for payment of the amount in arrears and has declared that in the case of failure to pay within the period, the lender will demand the entire residual debt.

At the latest when the lender specifies a period of time, the lender is to offer to the borrower to discuss the possibility of an arrangement by mutual consent.

(2) If the lender terminates the consumer loan contract, the residual debt is reduced by the interest and other charges dependent on the duration of the loan which, if graduated calculation is used, apply to the period after the termination becomes effective.

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

## **Subtitle 2**

### **Financing assistance between an entrepreneur and a consumer**

## **Section 499**

### **Postponement of payment, other financing assistance**

(1) Subject to subsections (2) and (3), the provisions of sections 358, 359, and 492 (1) to (3) and sections 494 to 498 apply with the necessary modifications to contracts by which an entrepreneur grants a consumer a nongratuitous postponement of payment of more than three months or grants him other nongratuitous financing assistance.

(2) Finance leasing contracts and contracts for the supply of a specified thing or the provision of a specified service in return for instalment payments (instalment payment transactions) are governed, subject to subsection (3), by the special provisions contained in sections 500 to 504.

(3) To the extent laid down in section 491 (2) and (3), the provisions of this subtitle do not apply. With regard to an instalment payment transaction, the cash payment price takes the place of the net loan amount referred to in section 491 (2) no. 1.

## **Section 500**

### **Finance leasing contracts**

Finance leasing contracts between an entrepreneur and a consumer are governed only by the provisions of sections 358, 359, 492 (1) sentences 1 to 4, section 492 (2) and (3) and section 495 (1) and sections 496 to 498, with the necessary modifications.

## **Section 501**

### **Instalment payment transactions**

Instalment payment transactions between an entrepreneur and a consumer are governed only by the provisions of sections 358, 359, 492 (1) sentences 1 to 4, section 492 (2) and (3), section 495 (1) and sections 496 to 498, with the necessary modifications. Apart from this, the following provisions apply.

## **Section 502**

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

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

1. the cash payment price,
2. the instalment payment price (total amount of down payment and all instalments to be paid by the consumer including interest and other costs),
3. amount, number and due date of the individual instalments,
4. the effective annual rate of interest,
5. the costs of an insurance policy taken out in connection with the instalment payment transaction,
6. the agreement of a retention of title or another form of security to be given.

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

(2) The requirements of subsection (1), of section 492 (1) sentences 1 to 4, and of section 492 (3) do not apply to instalment payment transactions in distance sales if the information described in subsection (1) sentence 1 nos. 1 to 5, with the exception of the amount of the individual instalments, is provided to the consumer in text form in such good time that he is in a position to obtain full knowledge of the information before the contract is entered into.

(3) An instalment payment transaction is void if the requirement of written form in section 492 (1) sentences 1 to 4 is not observed or if one of the items of information required by subsection (1) sentence 1 nos. 1 to 5 is omitted. Notwithstanding a defect under sentence 1, the instalment payment transaction is valid if the thing is delivered to the consumer or the service performed for him. However, the maximum rate of interest on the cash payment price is the statutory rate of interest if the information on the instalment payment price or the effective annual rate of interest is missing. If a cash payment price is not stated, then in case of doubt the market price is deemed to be the cash payment price. The provision of security may not be required if no information has been given in that regard. If information on the effective or initial effective annual rate of interest states a rate that is too low, the instalment payment price is reduced by the percentage by which the effective or initial effective annual rate of interest is too low.

## **Section 503**

### **Right of return, withdrawal with regard to instalment payment transactions**

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

(2) The entrepreneur may only withdraw from an instalment payment transaction by reason of default in payment by the consumer if the requirements described in section 498 (1) are satisfied. The consumer must also compensate the entrepreneur for the expenses incurred as a result of the contract. In the calculation of remuneration for the emoluments of a thing to be returned, the decrease in value that has since occurred must be taken into account. If the entrepreneur takes back the thing supplied under the instalment payment transaction, he is deemed to be exercising the right of withdrawal, unless the entrepreneur agrees with the consumer to pay the latter the usual market value of the thing at the time of its removal. Sentence 4 applies with the necessary modifications if a contract for the supply of a thing is connected to a consumer loan contract (section 358 (2)) and if the lender takes the thing for himself; in the case of withdrawal, the legal relationship between the lender and the consumer is determined under sentences 2 and 3.

## **Section 504**

### **Advance payment with regard to instalment payment transactions**

If the consumer performs his obligations under the instalment payment transaction in advance, the instalment price is reduced by the interest and other duration-related costs which, if a graduated method of calculation is applied, are attributable to the period after the date of advance performance. If a cash price as referred to in section 502 (1) sentence 2 does not have to be stated, the statutory rate of interest (section 246) is to be used as the basis. However, the entrepreneur may demand interest and other duration-related costs for the first nine months of the duration originally envisaged, even if the consumer fulfils his obligations before the end of this period.

## **Subtitle 3**

### **Instalment supply contracts between an entrepreneur and a consumer**

## **Section 505**

### **Contracts for delivery by instalments**

(1) Subject to sentence 2, in contracts with an entrepreneur in which the declaration of intent of the consumer is directed to entering into a contract which

1. relates to the supply of more than one thing sold as belonging together by way of instalments and for which remuneration is to be paid for the totality of the things in instalments, or
2. relates to the periodic supply of things of the same kind, or
3. relates to the duty of recurrent acquisition or procurement of things,

the consumer has a right of revocation under section 355. This does not apply to the extent specified in section 491 (2) and (3). The net loan amount referred to in section 491 (2) no. 1 is equal to the sum of all instalments to be paid by the consumer before the earliest possible date for giving notice of termination.

(2) The contract for delivery by instalments under subsection (1) must be in writing. Sentence 1 does not apply if the consumer is given the possibility of retrieving the terms of the contract, including the standard business terms, when he enters into the contract and of storing them in a reproducible form. The entrepreneur must provide the consumer with the contents of the contract in text form.

## **Subtitle 4**

### **Mandatory nature, application to founders of new businesses**

#### **Section 506**

##### **Deviating agreements**

The provisions of sections 491 to 505 may not be deviated from to the disadvantage of the consumer. These provisions apply even if they are circumvented by other constructions.

#### **Section 507**

##### **Application to founders of new businesses**

Sections 491 to 506 also apply to natural persons who are granted a loan, postponement of payment or other financing assistance to take up a trade or self-employed occupation or who enter into a contract for delivery by instalments for this purpose, unless the net loan amount or the cash price exceeds 50,000 euros.

#### **Sections 508 - 515**

(repealed)

## **Title 4**

### **Donation**

#### **Section 516**

##### **Concept of donation**

(1) A disposition by means of which someone enriches another person from his own assets is a donation if both parties are in agreement that the disposition occurs gratuitously.

(2) If the disposition occurs without the intention of the other party, the donor may, specifying a reasonable period of time, request him to make a declaration as to acceptance. Upon expiry of the period of time, the donation is deemed to be accepted if the other party has not previously rejected it. In the case of rejection, return of what has been bestowed may be demanded under the provisions on the return of unjust enrichment.

#### **Section 517**

##### **Failure to acquire assets**

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

#### **Section 518**

##### **Form of promise of donation**

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

(2) A defect of form is cured by rendering the performance promised.

## **Section 519**

### **Defence of paying for necessities**

(1) The donor is entitled to refuse to fulfil his promise given as a donation to the extent that he, taking account of his other duties, is not in a position to fulfil the promise without jeopardising his reasonable maintenance or the performance of duties of maintenance incumbent upon him by operation of law.

(2) If the claims of more than one donee coincide, the earlier claim takes precedence.

## **Section 520**

### **Expiry of the promise of an annuity**

If the donor promises maintenance consisting of recurrent performance, the obligation expires with his death unless the promise leads to a different conclusion.

## **Section 521**

### **Liability of the donor**

The donor is responsible only for intent and gross negligence.

## **Section 522**

### **No default interest**

The donor is not obliged to pay default interest.

## **Section 523**

### **Liability for legal defects**

(1) If the donor fraudulently conceals a legal defect, he is obliged to compensate the donee for the resulting damage.

(2) If the donor promised to provide an object that he had to acquire first, the donee may demand damages for non-performance for a legal defect if the defect was known to the donor upon acquisition of the thing or remained unknown as a result of gross negligence. The provisions of section 433 (1) and sections 435, 436, 444, 452 and 453 on the liability of the seller for legal defects apply with the necessary modifications.

## **Section 524**

### **Liability for material defects**

(1) If the donor fraudulently conceals a defect in the donated thing, he is obliged to compensate the donee for the resulting damage.

(2) If the donor promised to provide a thing designated only by class that he had to acquire first, the donee may, if the thing provided is defective and the donor was aware of the defect when the thing was acquired or remained unaware of it due to gross negligence, demand that in place of the defective thing a thing free of defects is supplied. If the donor fraudulently concealed the defect, the donee may demand damages for non-performance in place of supply of a thing free of defects. The provisions applicable to a warranty for defects in a thing sold apply to these claims with the necessary modifications.

## **Section 525**

### **Donation subject to conditions**

- (1) Anyone who makes a donation subject to a condition may demand that the condition is fulfilled if he himself has performed.
- (2) If fulfilment of the condition is in the public interest, then the competent public authority may also demand fulfilment after the death of the donor.

## **Section 526**

### **Refusal to fulfil the condition**

Insofar as due to a legal defect or a defect in the donated thing the value of the disposition does not reach the amount of the expenses required to fulfil the condition, the donee is entitled to refuse to fulfil the condition until the deficit caused by the defect is made up for. If the donee fulfils the condition without knowledge of the defect, then he may demand from the donor reimbursement of the expenses caused by fulfilment to the extent that, as a result of the defect, they exceed the value of the disposition.

## **Section 527**

### **Non-fulfilment of the condition**

- (1) If fulfilment of the condition fails to occur, the donor may demand the return of the gift under the conditions determined for the right of withdrawal from reciprocal contracts under the provisions on return of unjust enrichment to the extent that the gift would have had to be used to fulfil the condition.
- (2) The claim is excluded if a third party is entitled to demand fulfilment of the condition.

## **Section 528**

### **Claim for return due to impoverishment of the donor**

- (1) To the extent that the donor, after fulfilment of the condition, is not in a position to maintain himself reasonably and to meet the maintenance obligation incumbent upon him by law in relation to his relatives, his spouse, his civil partner or his previous spouse or civil partner, he may demand return of the gift from the donee under the provisions on the return of unjust enrichment. The donee may avoid return by paying the amount required for maintenance. The provision of section 760 and the provision applicable to the maintenance obligation of relatives under section 1613, and in the case of the death of the donor also the provision of section 1615, apply to the duty of the donee with the necessary modifications.
- (2) Among more than one donee, the earlier donee is liable only to the extent that the later donee is not obliged.

## **Section 529**

### **Exclusion of claim for return**

- (1) The claim to return of the gift is excluded if the donor has caused his indigence by intent or gross negligence or if at the time of onset of his indigence ten years have passed since the donated object was provided.
- (2) The same applies to the extent that the donee, taking into account his other duties, is not in a position to return the gift without the maintenance suitable to his station in life or the discharging of the duties of maintenance incumbent upon him by operation of law being jeopardised.

## **Section 530**

### **Revocation of donation**

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

(2) The heir of the donor only has the right of revocation if the donee has intentionally and unlawfully killed the donor or prevented him from revoking.

## **Section 531**

### **Declaration of revocation**

(1) Revocation is effected by declaration to the donee.

(2) If the donation is revoked, return of the gift may be demanded under the provisions on the return of unjust enrichment.

## **Section 532**

### **Exclusion of revocation**

Revocation is excluded if the donor has forgiven the donee or if one year has passed since the time when the person entitled to revoke obtained knowledge that the requirements for him to have the right had been satisfied. Revocation is no longer permissible after the death of the donor.

## **Section 533**

### **Waiver of the right of revocation**

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

## **Section 534**

### **Donations for duty and decency**

Donations to meet a moral duty or made from considerations of decency are not subject to a claim for return or to revocation.

## **Title 5**

### **Lease, usufructuary lease**

#### **Subtitle 1**

### **General provisions for leases**

## **Section 535**

### **Contents and primary duties of the lease agreement**

(1) A lease agreement imposes on the lessor a duty to grant the lessee use of the leased property for the lease period. The lessor must surrender the leased property to the lessee in a condition suitable for use in conformity with the contract and maintain it in this condition for the lease period. He must bear all costs to which the leased property is subject.

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

## **Section 536**

### **Rent reduction for material and legal defects**

(1) If the leased property at the time of surrender to the lessee has a defect which removes its suitability for the contractually agreed use, or if such a defect arises during the lease period, then the lessee is exempted for the period when suitability is removed from paying the rent. For the period of time when suitability is reduced, he need only pay reasonably reduced rent. A trivial reduction of suitability is not taken into account.

(2) Subsection (1) sentences 1 and 2 also apply if a warranted characteristic is lacking or later ceases.

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

(4) With regard to a lease for residential space, a deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 536a**

### **Claim of lessee for damages and reimbursement of expenses due to a defect**

(1) If a defect within the meaning of section 536 exists when the lease agreement is entered into, or if such a defect arises subsequently due to a circumstance that the lessor is responsible for, or if the lessor is in default in remedying a defect, then the lessee may, notwithstanding the rights under section 536, demand damages.

(2) The lessee may remedy the defect himself and demand reimbursement of the necessary expenses if

1. the lessor is in default in remedying the defect, or
2. immediate remedy of the defect is necessary to preserve or restore the state of the leased property.

## **Section 536b**

### **Lessee knows of the defect upon entering into the agreement or upon acceptance**

If the lessee knows of the defect when entering into the agreement, then he does not have the rights under sections 536 and 536a. If he remains unaware of the defect due to gross negligence, then he has these rights only if the lessor fraudulently concealed the defect. If the lessee accepts a defective thing although he is aware of the defect, then he may only assert the rights under sections 536 and 536a if he reserved his rights at the time of acceptance.

## **Section 536c**

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

(1) If a defect in the leased property comes to light during the lease period or if action to protect the leased property from an unforeseen hazard becomes necessary, then the lessee must without undue delay report this to the lessor. The same applies if a third party arrogates to himself a right to the thing.

(2) If the lessee fails to report this, then he is liable to the lessor for damage incurred thereby. To the extent that the lessor was prevented from providing relief due to the failure of the lessee to report it, the lessee is not entitled

1. to assert the rights specified in section 536,

2. to demand damages under section 536a (1), or
3. to give notice without specifying a reasonable period for relief under section 543 (3) sentence 1.

### **Section 536d**

#### **Contractual exclusion of rights of lessee with regard to defects**

The lessor may not invoke an agreement by which the rights of the lessee are excluded or restricted with regard to a defect in the leased property if he fraudulently concealed the defect.

### **Section 537**

#### **Payment of rent when the lessee is unable to be present in person**

(1) The lessee is not released from his obligation to pay rent due to the fact that, for a reason relating to his person, he is unable to exercise his right of use. However, the lessor must allow to be credited against him the value of the expenses saved and of the advantages he enjoys from exploiting the use in another way.

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

### **Section 538**

#### **Wear and tear on the leased property from use in conformity with the contract**

The lessee is not responsible for modifications to or deterioration of the leased property brought about by use in conformity with the contract.

### **Section 539**

#### **Reimbursement of other expenses and right of removal of the lessee**

(1) The lessee may, under the provisions on agency without specific authorisation, demand reimbursement from the lessor for outlays on the leased property that the lessor need not compensate him for under section 536a (2).

(2) The lessee is entitled to remove an installation that he has provided the leased property with.

### **Section 540**

#### **Permitting use by third parties**

(1) Without the permission of the lessor, the lessee is not entitled to permit a third party to use the leased property, in particular not to sublet it. If the lessor refuses permission, then the lessee may terminate the lease for cause with the statutory notice period unless the person of the third party constitutes cause.

(2) If the lessee permits a third party to use the property, then he is responsible for the culpability in the use of the property attributable to that third party even if the lessor has given permission for this.

### **Section 541**

#### **Application for injunction for use in breach of contract**

If the lessee persists with use of the leased property in breach of contract despite a warning by the lessor, then the latter may seek a prohibitory injunction.

## **Section 542**

### **End of the lease**

(1) If the lease period is indefinite, then each of the parties to the contract may give notice of termination in accordance with the statutory provisions.

(2) A lease entered into for a definite period of time ends at the end of that period unless it

1. has been terminated for cause in legally permissible cases, or
2. is extended.

## **Section 543**

### **Termination for cause without notice for a compelling reason**

(1) Each party to the contract may terminate the lease for cause without notice for a compelling reason. A compelling reason is deemed to obtain if the party giving notice, with all circumstances of the individual case taken into account, including without limitation fault of the parties to the contract, and after weighing the interests of the parties, cannot be reasonably expected to continue the lease until the end of the notice period or until the lease ends in another way.

(2) A compelling reason is deemed to obtain in cases including without limitation where

1. the lessee is not permitted the use of the leased property in conformity with contract, in whole or in part, in good time, or is deprived of this use,
2. the lessee violates the rights of the lessor to a substantial degree by substantially endangering the leased property by neglecting to exercise the care incumbent upon him or by allowing a third party to use it without authorisation, or
3. the lessee
  - a) is in default, on two successive dates, of payment of the rent or of a portion of the rent that is not insignificant, or
  - b) in a period of time spanning more than two dates is in default of payment of the rent in an amount that is as much as the amount of rent for two months.

In the case of sentence 1 no. 3, termination is excluded if the lessor has by then obtained satisfaction. It becomes ineffective if the lessee has succeeded in discharging his debt by set-off and declares set-off without undue delay after notice of termination is given.

(3) If the compelling reason consists in the violation of an obligation under the lease, then the notice of termination is only permitted after the expiry without result of a reasonable period specified for the purpose of obtaining relief or after an unheeded warning notice. This does not apply if

1. a notice period or a warning notice obviously shows no chance of succeeding,
2. immediate termination for special reasons is justified, weighing the interests of both parties, or
3. the lessee is in default of payment of rent within the meaning of subsection (2) no. 3.

(4) Sections 536b and 536d are to be applied with the necessary modifications to the right to notice of termination to which the lessee is entitled under subsection (2) no. 1. If it is in dispute whether the lessor granted use of the leased property in good time or provided relief prior to expiry of the period specified for this purpose, then he bears the burden of proof.

## **Section 544**

### **Lease for more than thirty years**

If a lease agreement is signed for a period of more than thirty years, then each of the parties to the contract, after thirty years have passed, may after surrender of the leased property terminate the lease for cause with the statutory notice period. Termination is not permissible if the agreement has been signed for the duration of the life of the lessor or lessee.

## **Section 545**

### **Tacit extension of the lease**

If the lessor continues to use the leased property after the end of the lease period, then the lease is extended for an indefinite period of time, unless one of the parties to the contract has declared his intention to the contrary to the other party within two weeks. The period commences

1. for the lessee upon continuation of use,
2. for the lessor at the point of time when he receives knowledge of the continuation.

## **Section 546**

### **Duty of lessee to return**

- (1) The lessee is obliged to return the leased property after termination of the lease.
- (2) If the lessee has permitted a third party to use the leased property, the lessor may also demand return of the leased property from the third party after termination of the lease.

## **Section 546a**

### **Compensation of the lessor in the case of late return**

- (1) If the lessee fails to return the leased property after termination of the lease, the lessor may for the duration of retention demand as compensation the agreed rent or the rent that is customarily paid for comparable items in the locality.
- (2) The assertion of further damage is not excluded.

## **Section 547**

### **Reimbursement of rent paid in advance**

- (1) Where rent has been paid in advance for the period after termination of the lease, the lessor must reimburse it with interest accrued since receiving it. If the lessor is not responsible for termination of the lease, then he must reimburse his gains under the provisions on the return of unjust enrichment.
- (2) In the case of a lease for residential space, any deviating agreement to the disadvantage of the lessee is ineffective.

## **Section 548**

### **Limitation of compensation claims and right of removal**

- (1) The compensation claims of the lessor for modifications to or deterioration of the leased property are subject to a six-month limitation period. The limitation period commences at the time when the leased property is returned to him. When the claim of the lessor to return of the leased property is statute-barred, the compensation claims of the lessor are likewise statute-barred.

(2) The claims of the lessee to reimbursement of expenses or to permission to remove an installation are subject to a six-month limitation period after the termination of the lease.

(3) (repealed)

## **Subtitle 2**

### **Leases for residential space**

#### **Chapter 1**

##### **General provisions**

##### **Section 549**

###### **Provisions applicable to leases of residential space**

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

(2) The provisions relating to rent increases (sections 557 to 561) and to lessee protection upon termination of the lease as well as when residential property is created (section 568 (2), sections 573, 573a and 573 d (1), sections 574 to 575, 575a (1) and sections 577 and 577a) do not apply to leases of

1. residential space that is leased only for temporary use,
2. residential space that is part of the dwelling inhabited by the lessor himself and has largely to be furnished with furniture and fixtures by the lessor himself, provided that permission to use the residential space has not been given for permanent use to the lessee with his family or with persons with whom he maintains a joint household set up permanently,
3. residential space that a legal person under public law or a recognised private welfare work organisation has leased to permit use by persons in urgent need of accommodation if, when the lease was entered into, it drew the attention of the lessee to the intended purpose of the residential space and to its exemption from the provisions referred to above.

(3) Sections 557 to 561 and sections 573, 573a and 573d (1) and sections 575, 575a (1) and sections 577 and 577a do not apply to residential space in a student hostel or a hostel for young people.

##### **Section 550**

###### **Form of the lease agreement**

If a lease agreement for a longer period of time than one year is not entered into in written form, then it applies for an indefinite period of time. However, termination is only allowed at the earliest at the end of one year after use of the residential space has been permitted.

##### **Section 551**

###### **Restriction and investment of rent security deposits**

(1) If the lessee must give the lessor a security deposit for the performance of his duties, then this security deposit, subject to subsection (3) sentence 4, may amount at most to three times the rent for one month, exclusive of the operating costs shown as a lump sum or as an advance payment.

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

(3) The lessor must invest a sum of money transferred to him as a deposit with a banking institution at the usual rate of interest for savings deposits with withdrawal notice of three months. The parties to the contract may agree on another form of investment. In either case the investment must be made separately from the assets of the lessor and the lessee is entitled to the income. It accrues to the security deposit. For residential space in a student hostel or a hostel for young people, there is no duty for the lessor to pay interest on the security deposit.

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

## **Section 552**

### **Warding off the right of removal of the lessee**

(1) The lessor may ward off exercise of the right of removal (section 539 (2)) by payment of appropriate compensation unless the lessee has a justified interest in removal.

(2) An agreement excluding the right of removal is only effective if reasonable compensation is provided for.

## **Section 553**

### **Permitting use by third parties**

(1) If the lessee, after entering into the lease agreement, acquires a justified interest in permitting a third party to use part of the residential space, then he may demand permission to do so from the lessor. This does not apply if there is a compelling reason in the person of the third party, if the residential space would be overcrowded or if the lessor cannot for other reasons reasonably be expected to permit third-party use.

(2) If the lessor can only be expected to permit third-party use on a reasonable increase of the rent, then he may make permission dependent upon the lessee agreeing to such an increase in rent.

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

## **Section 554**

### **Toleration of conservation and modernisation measures**

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

(2) The lessee must tolerate measures taken to improve the leased property, to save energy or water or to create new residential space. This does not apply if the measure would be, for him, his family or another member of his household, a hardship that is not justifiable even considering the justified interests of the lessor and other lessees in the building. In this context, including, without limitation, the work to be undertaken, the structural consequences, prior outlays by the lessee and the increase to be expected in the rent are to be taken into account. The increase to be expected in the rent is not to be deemed a hardship if the leased property is merely restored to a generally customary condition.

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

(4) Outlays which the lessee had to make as a result of a measure under subsections (1) or (2) sentence 1 must be reimbursed to a reasonable extent by the lessor. Upon demand he must make an advance payment.

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

## **Section 554a**

### **Accessibility**

(1) The lessee may demand the approval of the lessor to structural changes or other installations required to make the use of the leased property or access to it fit for the needs of the disabled, if he has a justified interest in this. The lessor may refuse approval if his interest in maintaining the leased property or building unchanged outweighs the interest of the lessee in making use of the leased property fit for the needs of the disabled. When this is done, the justified interests of the other lessees in the building are to be taken into account.

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

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

## **Section 555**

### **Ineffectiveness of contractual penalty**

An agreement by which the lessor binds the lessee to promise a contractual penalty is ineffective.

## **Chapter 2**

### **Rent**

#### **Subchapter 1**

##### **Agreements on rent**

## **Section 556**

### **Agreements on operating costs**

(1) The parties to the contract may agree that the lessee is to bear operating costs. Operating costs are the costs that are incurred from day to day by the owner or the holder of the heritable building right as a result of the ownership of or the heritable building right to the plot of land or as a result of the intended use of the building, the outbuildings, facilities, installations and the land. The drawing up of the statement of operating costs continues to be governed by the Operating Costs Order [*Betriebskostenverordnung*] of 25 November 2003 (Federal Law Gazette I pp. 2346, 2347). The Federal Government is authorised to pass provisions on the drawing up of the statement of operating costs by statutory order without the approval of the Federal Council [*Bundesrat*].

(2) The parties to the contract may agree, subject to other provisions, that operating costs may be reported as a lump sum or as an advance payment. Advance payments for operating costs may only be agreed in a reasonable amount.

(3) Advance payments for operating costs are to be invoiced once per year, and when this is done the principle of economic efficiency is to be observed. The lessee is to be notified of the statement of operating costs at the latest by the end of the twelfth month subsequent to the accounting period. After this period, assertion of a subsequent demand by the lessor is excluded unless the lessor is not responsible for the lateness of the assertion. The lessor is not obliged to provide interim invoicing. The lessor must be informed by the lessee of any objections to invoicing at the latest by the end of the twelfth month after receipt of the invoice. After expiry of this period, objections may no longer be asserted unless the lessee is not responsible for the lateness of the assertion.

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

## **Section 556a**

### **Accounting criterion for operating costs**

(1) If the parties to the contract have not agreed otherwise and subject to other provisions, operating costs are to be apportioned in proportion to the floor space. Operating costs depending on recorded consumption or causation by the lessees are to be apportioned according to criteria that take into account the differing consumption or causation.

(2) If the parties to the contract have agreed otherwise, the lessor may by declaration in text form specify that the operating costs may in future, contrary to the agreement reached, be apportioned in whole or in part according to a criterion that takes into account the recorded differing consumption or the recorded differing causation. The declaration may only be made prior to commencement of an accounting period. If the costs have previously been included in the rent, the rent is to be reduced accordingly.

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

## **Section 556b**

### **Due date of rent, right to set-off and right of retention**

(1) Rent is to be paid at the commencement of the periods of time according to which it is computed but at the latest by the third working day of each such period.

(2) The lessee may, notwithstanding a contract provision to the contrary, set off a claim based on sections 536a and 539 or a claim for unjust enrichment for excess payment of rent against a claim for rent, or may exercise a right of retention in relation to such a claim if he has notified the lessor in text form of his intention to do so at least one month prior to the due date of the rent. A deviating agreement to the disadvantage of the lessee is ineffective.

## **Subchapter 2**

### **Provisions on the rent amount**

## **Section 557**

### **Increases in rent by agreement or law**

(1) During the lease, the parties may agree an increase in rent.

(2) Future changes in the amount of rent may be agreed by the parties to the contract as stepped rent under section 557a or as indexed rent under section 557b.

(3) Apart from this, the lessor may only demand rent increases under the provisions of sections 558 to 560 to the extent that an increase is not excluded by agreement or the exclusion emerges from the circumstances.

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

## **Section 557a**

### **Stepped rent**

(1) The rent may be agreed in writing in varying amounts for specific periods of time; in the agreement, each rent amount or each increase must be indicated as a monetary amount (stepped rent).

(2) The rent must remain unchanged on each occasion for at least one year. During the period of stepped rent, an increase under sections 558 to 559b is excluded.

(3) The right of the lessee to give notice may be excluded for a maximum of four years after the stepped rent agreement is entered into. Notice of termination is allowed to the end of this period at the earliest.

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

## **Section 557b**

### **Indexed rent**

(1) The parties to the contract may agree in writing that the rent is to be determined by means of the price index for the cost of living of all private households in Germany computed by the Federal Statistics Office [*Statistisches Bundesamt*] (indexed rent).

(2) While an indexed rent is applicable, the rent, except for increases under sections 559 to 560, must remain unchanged for at least one year at a time. An increase under section 559 may only be demanded to the extent that the lessor has carried out structural measures due to circumstances for which he is not responsible. An increase under section 558 is excluded.

(3) A change in rent under subsection (1) must be made by declaration in text form. In this declaration, the change in the price index that has occurred as well as the rent in the individual case or the increase must be indicated as a monetary amount. The revised rent must be paid at the commencement of the second month beginning after receipt of the declaration.

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

## **Section 558**

### **Increase in rent up to the reference rent customary in the locality**

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

(2) The reference rent customary in the locality is formed from the usual payments that have been agreed or, with the exception of increases under section 560, that have been changed in the last four years in the municipality or in a comparable municipality for residential space that is comparable in type, size, furnishings, quality and location. Exempted from this is residential space where the amount of rent has been stipulated by law or in connection with a promise of sponsorship.

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

(4) The capping limit does not apply

1. if a duty of the lessee to make compensation payments under the provisions on the reduction of improper subsidisation in housing has lapsed because the public-sector connection has ceased, and
2. to the extent that the increase does not exceed the amount of the most recently payable compensation payment.

The lessor may at the earliest four months prior to the cessation of the public-sector connection demand that the lessee inform him within one month of the duty to pay compensation and of its amount. Sentence 1 applies with the necessary modifications if the duty of the lessee to make a compensation payment under sections 34 to 37 of the Residential Housing Subsidisation Act [*Wohnraumförderungsgesetz*] and provisions of Land law issued thereunder has lapsed due to the repeal of rent control.

(5) From the annual amount that would result in the case of an increase to the reference rent customary in the locality, third-party funds within the meaning of section 559a are to be deducted, in the case of section 559a (1) in the amount of eleven per cent of the subsidy.

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

## **Section 558a**

### **Form and justification of the rent increase**

(1) A rent increase demand under section 558 must be declared and justified to the lessee in text form.

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

1. a list of representative rents (sections 558c and 558d),
2. information from a rent database (section 558e),
3. an opinion, provided with supporting grounds, by an officially appointed and sworn expert,
4. examples of equivalent payment for individual comparable dwellings; in this case, it is sufficient to name three dwellings.

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

(4) When making reference to a list of representative rents containing spans, it is sufficient if the rent demanded lies within the span. If, at the time when the lessor makes his declaration, no list of representative rents in which sections 558c (3) or 558d (2) have been complied with is available, then another list of representative rents, in particular an outdated one, or a list of representative rents from a comparable municipality may be used.

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

## **Section 558b**

### **Approval of a rent increase**

(1) To the extent that the lessee approves the rent increase, he owes the increased rent from the beginning of the third calendar month after receipt of the demand for an increase.

(2) To the extent that the lessee does not approve of the rent increase by the end of the second calendar month after receipt of the demand, the lessor may sue for grant of approval. An action must be brought within three additional months.

(3) If the action is preceded by a demand for increase that does not comply with the requirements of section 558a, then the lessor may correct this in the legal dispute or remedy the defects in the demand for increase. In this case too, the lessee is entitled to the approval period under subsection (2) sentence 1.

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

## **Section 558c**

### **List of representative rents**

(1) A list of representative rents is a table showing the reference rent customary in the locality, if the table has been jointly produced or recognised by the municipality or by representatives of lessors and lessees.

(2) Lists of representative rents may be produced for the area of one municipality or of more than one municipality or for parts of municipalities.

(3) Lists of representative rents should be adjusted for market trends at intervals of two years.

(4) Municipalities should produce lists of representative rents if there is a need for this and if this is possible at a reasonable cost. The lists of representative rents and the changes to them should be published.

(5) The Federal Government is authorised, by statutory order issued with the approval of the Federal Council [*Bundesrat*], to issue provisions on the detailed contents and on the procedure for drawing up and adjusting lists of representative rents.

## **Section 558d**

### **Expert list of representative rents**

(1) An expert list of representative rents is a list of representative rents produced according to recognised scientific principles and recognised by the municipality or by representatives of lessors and lessees.

(2) The expert list of representative rents is to be adjusted for market trends at intervals of two years. When this is done, a spot check or the trend of the price index for living standards of all private households in Germany computed by the Federal Statistical Office [*Statistisches Bundesamt*] may be used as a basis. After four years a new expert list of representative rents must be produced.

(3) If the provisions of subsection (2) are complied with, then it is assumed that the payment cited in the expert list of representative rents reflects the reference rent customary in the locality.

## **Section 558e**

### **Rent database**

A rent database is a collection of rents maintained on an ongoing basis to determine the reference rent customary in the locality; this database is jointly maintained or recognised by the municipality or by representatives of lessors and lessees, and information is issued on the basis of this database that makes it possible to come to a conclusion as to the reference rent customary in the locality with regard to individual dwellings.

## **Section 559**

### **Rent increase in case of modernisation**

(1) If the lessor has carried out construction measures that increase the utility value of the leased property with lasting effect, improve general living conditions permanently or lead to savings of energy or water with lasting effect (modernisation), or if he has carried out other construction measures due to circumstances for which he is not responsible, then he may increase the annual rent by 11 per cent of the costs spent on the dwelling.

(2) If the construction measures have been carried out for more than one dwelling, then the costs must be apportioned reasonably among the individual dwellings.

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

## **Section 559a**

### **Crediting of third-party funds**

(1) Costs assumed by the lessee or assumed by a third party for the lessee or covered by subsidies from public authorities do not form part of costs spent within the meaning of section 559.

(2) If the costs of the construction measures are covered in full or in part by low-interest or interest-free loans from public authorities, then the amount of the increase under section 559 is reduced by the annual amount of the interest reduction. The latter is calculated from the difference between the reduced rate of interest and the going market interest rate for the original amount of the loan. The

going market interest rate for first-priority mortgages at the date when the measures ended is conclusive. If subsidies or loans are used to cover ongoing outlays, then the amount of the increase is reduced by the annual amount of the subsidy or loan.

(3) A lessee loan, an advance rent payment or a service performed for the lessee by a third party for the construction measures are equivalent to a loan from public authorities. Funds from the financial institutions of the Federal Government or of a Land are deemed to be funds from public authorities.

(4) If it cannot be ascertained in what amount subsidies or loans have been granted for the individual dwellings, then they must be apportioned according to the ratio of costs spent on individual dwellings.

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

## **Section 559b**

### **Assertion of an increase; effect of declaration of increase**

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

(2) The lessee owes the increased rent from the beginning of the third month after receipt of the declaration. The period is extended by six months if the lessor has failed to notify the lessee of the expected increase in rent as required by section 554 (3) sentence 1 or if the de facto rent increase is more than ten per cent greater than the increase notified.

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

## **Section 560**

### **Changes in operating costs**

(1) In the case of a lump sum charge for operating costs, the lessor is entitled to apportion increases in operating costs proportionately to the lessee by a declaration in text form, to the extent that this has been agreed in the lease agreement. The declaration is only effective if the basis of the apportionment is referred to and explained in it.

(2) The lessee owes the part of the apportionment falling to him from the beginning of the second month following the month in which the declaration is made. To the extent that the declaration is based on the fact that operating costs have risen retroactively, it has a retroactive effect from the date when the operating costs rose, but at the earliest from the beginning of the calendar year preceding the year of the declaration, provided the lessor makes the declaration within three months after he first has knowledge of the increase.

(3) If operating costs are reduced, then the lump sum for operating costs must be reduced accordingly from the date of such reduction. The lessee must be informed of the reduction without undue delay.

(4) If advance payments of operating costs have been agreed, then, after a statement of operating costs, each of the parties to the contract may undertake an adjustment to a reasonable amount by a declaration in text form.

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

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

## **Section 561**

### **Special right of termination of the lessee following a rent increase**

(1) If the lessor asserts a right to a rent increase under sections 558 or 559, then, until the end of the second month after receipt of the declaration of the lessor, the lessee may terminate the lease for

cause by special notice to the end of the second month thereafter. If the lessee gives notice of termination, then the rent increase does not take effect.

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

## **Chapter 3**

### **Security right of the lessor**

#### **Section 562**

##### **Extent of the security right of the lessor**

(1) The lessor, for his claims under the lease, has a security right over things contributed by the lessee. It does not extend to the things that are not subject to attachment.

(2) The security right may not be asserted for future compensation claims and for rent for periods subsequent to the current and the following year of the lease.

#### **Section 562a**

##### **Extinction of the security right of the lessor**

The security right of the lessor is extinguished upon the removal of the things from the plot of land, except if this removal occurs without the knowledge of or despite the objection of the lessor. The lessor may not object if this is consistent with the ordinary circumstances of life or if things left behind evidently suffice to give the lessor security.

#### **Section 562b**

##### **Self-help; claim for return**

(1) The lessor may prevent the removal of the things that are subject to his security right, even without having recourse to the court, to the extent that he is entitled to object to removal. If the lessee moves out, the lessor may take possession of these things.

(2) If the things have been removed without the knowledge of or despite the objection of the lessor, then he may demand surrender of the items for the purpose of returning them to the plot of land and, if the lessee has moved out, surrender of possession. The security right is extinguished at the end of one month after the lessor has obtained knowledge of removal of the things, unless he has previously asserted this claim in court.

#### **Section 562c**

##### **Warding off the security right by provision of security**

The lessee may ward off assertion of the security right of the lessor by provision of security. He may release each individual thing from the security right by providing security in the amount of its value.

#### **Section 562d**

##### **Attachment by a third party**

If a thing subject to the security right of the lessor is attached for another creditor, then in relation to this other creditor the security right may not be asserted for rent from an earlier period than the last year prior to the attachment.

## **Chapter 4**

### **Change of parties to the contract**

#### **Section 563**

##### **Right of succession upon death of the lessee**

(1) A spouse who maintains a joint household with the lessee succeeds to the lease upon the death of the lessee. The same applies to a civil partner.

(2) If children of the lessee live in the joint household of the lessee, then these children succeed to the lease on the death of the lessee if the spouse does not succeed. The succession of the civil partner is not affected by the succession of the children of the lessee. Other family members who maintain a joint household with the lessee succeed to the lease on the death of the lessee if the spouse or the civil partner does not succeed. The same applies to persons who maintain a joint household of a permanent nature with the lessee.

(3) If persons who have succeeded to the lease within the meaning of subsection (1) or (2) declare to the lessor within one month of obtaining knowledge of the death of the lessee that they do not wish to continue the lease, the succession is deemed not to have occurred. For persons without capacity to contract or having limited capacity to contract, section 210 applies with the necessary modifications. If more than one person succeeds to the lease, then each may make the declaration on his own behalf.

(4) The lessor may terminate the lease for cause with the statutory notice period within one month after obtaining knowledge of the definitive succession to the lease if there is a compelling reason in the person of the successor.

(5) A deviating agreement to the disadvantage of the lessee or of such persons as are entitled to succeed under subsection (1) or (2) is ineffective.

#### **Section 563a**

##### **Continuation with surviving lessees**

(1) If more persons than one within the meaning of section 563 are joint lessees, then the lease is continued, after the death of one lessee, with the surviving persons.

(2) The surviving lessees may, within one month after obtaining knowledge of the death of the lessee, terminate the lease for cause with the statutory notice period.

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

#### **Section 563b**

##### **Liability in the case of succession or continuation**

(1) The persons who succeed to the lease under section 563 or with whom it is continued under section 563a are liable together with the heir as joint and several debtors for obligations incurred up to the death of the lessee. In relation to these persons, the heir has sole liability to the extent that nothing else has been specified.

(2) If the lessee paid rent in advance for a period of time subsequent to his death, the persons who succeed to the lease under section 563 or with whom it is continued under section 563a are obliged to surrender to the heir the sum that they save or gain due to such advance payment.

(3) The lessor may, if the deceased lessee did not provide any security, demand provision of security under section 551 from persons who succeed to the lease under section 563 or with whom it is continued under section 563a.

## **Section 564**

### **Continuation of the lease with the heir; termination for cause**

If, on the death of the lessee, no persons within the meaning of section 563 succeed to the lease or the lease is not continued with them under section 563a, then it is continued with the heir. In this case, both the heir and the lessor are entitled to terminate the lease for cause within one month with the statutory notice period after they obtain knowledge of the death of the lessee and of the fact that there has been no succession to the lease and no continuation thereof.

## **Section 565**

### **Commercial subletting**

(1) If under the lease agreement the lessee is to sublet the leased residential space to a third party on a commercial basis for residential purposes, then upon termination of the lease the lessor takes over the rights and duties under the lease agreement between the lessee and the third party. If the lessor enters into a new lease agreement for subletting on a commercial basis, then the lessee, in place of the previous party to the contract, takes over the rights and duties under the lease agreement with the third party.

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

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

## **Section 566**

### **Purchase is subject to existing leases**

(1) If, after the lessee is given use of the leased residential space, it is disposed of by the lessor to a third party, then the acquirer, in place of the lessor, takes over the rights and duties that arise under the lease agreement during the period of his ownership.

(2) If the acquirer does not perform his duties, then the lessor is liable in the same way as a surety who has waived the defence of unexhausted remedies for the damage to be compensated for by the acquirer. If the lessee obtains knowledge of the passing of ownership by notification from the lessor, then the lessor is released from liability unless the lessee terminates the lease to the earliest date at which termination is allowed.

## **Section 566a**

### **Rent security deposit**

If the lessee of the residential space disposed of has provided security to the lessor for the performance of his duties, then the acquirer takes over the rights and duties created by this. If, upon termination of the lease, the lessee is unable to obtain the security from the acquirer, then the lessor continues to be obliged to return it.

## **Section 566b**

### **Advance disposition of the rent**

(1) If the lessor, prior to the passing of ownership, disposes of the rent attributable to the period when the acquirer is entitled, then the disposition is effective to the extent that it relates to the rent for the calendar month current at the time when the ownership passes. If ownership passes after the fifteenth day of the month, then the disposition is also effective to the extent that it relates to the rent for the following calendar month.

(2) The acquirer must allow a disposition of the rent for a later period to be asserted against himself if he has knowledge of it at the time when ownership passes.

## **Section 566c**

### **Agreement between lessee and lessor on the rent**

A legal transaction entered into between lessee and lessor on the rent claim, including without limitation payment of rent, is effective in relation to the acquirer to the extent that it does not relate to rent for a period of time subsequent to the calendar month in which the lessee obtains knowledge of the passing of ownership. If the lessee obtains knowledge of this after the fifteenth day of the month, then the legal transaction is also effective to the extent that it relates to the rent for the next calendar month. A legal transaction undertaken after the passing of ownership is, however, ineffective if the lessee has knowledge of the passing of ownership when the legal transaction is entered into.

## **Section 566d**

### **Set-off by the lessee**

To the extent that payment of the rent to the lessor is effective in relation to the acquirer under section 566c, the lessee can set off against the claim to rent of the acquirer a claim to which he is entitled against the lessor. Set-off is excluded if the lessee acquires the counterclaim after obtaining knowledge of the passing of ownership, or if the counterclaim becomes due only after the lessee obtains knowledge and after the rent becomes due.

## **Section 566e**

### **Notification by the lessor of passing of ownership**

(1) If the lessor notifies the lessee that he has transferred ownership of the leased residential space to a third party, then he must, in regard to the rent claim, allow the notification of the transfer to be asserted against himself by the lessee even if it has not occurred or is not effective.

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

## **Section 567**

### **Encumbrance of the residential space by the lessor**

If, subsequent to permission of use to the lessee, the leased residential space is encumbered by the lessor with a third-party right, then sections 566 to 566e are to be applied with the necessary modifications if by exercise of the right the lessee is deprived of the use of it in conformity with the contract. If the lessee is restricted by the exercise of this right in his use in conformity with the contract, then the third party has a duty to the lessee to refrain from exercising the right to the extent that exercising the right would adversely affect use in conformity with the contract.

## **Section 567a**

### **Disposal or encumbrance prior to permission of use of residential space**

If, prior to transferring the use of the leased residential space to the lessee, the lessor disposes of the residential space to a third party or encumbers it with a right by the exercise of which the lessee is deprived of or restricted in the use of it in conformity with the contract, then the same applies as in the cases of sections 566 (1) and 567 if the acquirer has agreed with the lessor to take over the performance of the duties arising from the lease agreement.

## **Section 567b**

### **Further disposal or encumbrance by the acquirer**

If the leased residential space is further disposed of or encumbered by the acquirer, then sections 566 (1) and sections 566a to 567a are to be applied with the necessary modifications. If the new acquirer fails to perform the duties arising from the lease, then the lessor is liable to the lessee under section 566 (2).

## **Chapter 5**

### **Termination of the lease**

#### **Subchapter 1**

##### **General provisions**

## **Section 568**

### **Form and contents of the notice of termination**

- (1) The notice of termination of the lease must be in written form.
- (2) The lessor should, in good time, draw the attention of the lessee to the possibility of an objection and the form and period for the objection under sections 574 to 574b.

## **Section 569**

### **Termination for cause without notice for a compelling reason**

(1) A compelling reason within the meaning of section 543 (1) for the lessee also exists if the leased residential space is in such a condition that its use entails a significant endangerment of health. This also applies if the lessee knew of the hazardous condition when he entered into the lease agreement or waived his rights arising from this condition.

(2) A compelling reason within the meaning of section 543 (1) also exists if one party to the contract permanently disturbs the domestic peace in such a way that the party giving notice, taking all circumstances of the specific case into account, including without limitation fault of the parties to the contract, and weighing the interests of both parties, cannot reasonably be expected to continue the lease to the end of the notice period or until the lease is terminated in another way.

(3) In supplement to section 543 (2) sentence 1 no. 3, the rules are:

1. In the case of section 543 (2) sentence 1, no. 3, letter a, the part of the rent in arrears may only be deemed not to be insignificant if it exceeds the rent for one month. This does not apply if the residential space is leased only for temporary use.
2. The notice of termination also becomes ineffective if, at the latest by the end of two months after the eviction claim is pending, the lessor is satisfied or a public authority agrees to satisfy the lessor with regard to the rent due and the compensation due under section 546a (1). This does not apply if, no longer than two years earlier, the notice of termination was preceded by a notice of termination that became ineffective under sentence 1 above.
3. If the lessee has been finally and absolutely ordered to pay an increased rent under sections 558 to 560, then the lessor may not terminate the lease for default in payment of the lessee before the end of two months after the final and absolute order unless the requirements for termination for cause without notice have already been satisfied due to rent previously owed.

(4) The compelling reason leading to termination must be stated in the notice of termination.

(5) An agreement diverging from subsections (1) to (3) of this provision or from section 543 to the disadvantage of the lessee is ineffective. In addition, an agreement is also ineffective under which the lessor is to be entitled to terminate the lease for cause without notice for other reasons than those permitted by law.

## **Section 570**

### **Exclusion of the right of retention**

The lessee is not entitled to any right of retention against the claim to return of the lessor.

## **Section 571**

### **Further damages for late return of residential space**

(1) If the lessee fails to return the leased residential space upon termination of the lease, then the lessor may only assert further damages within the meaning of section 546a (2) if the return failed to occur for reasons for which the lessee is responsible. Damage is only to be compensated for to the extent that equity demands indemnification. This does not apply if the lessee has given notice of termination.

(2) If the lessee is granted a period of time before vacating the premises under section 721 or section 794a of the Code of Civil Procedure [*Zivilprozessordnung*], then he is not liable for compensation for further damage until the end of the period of time.

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

## **Section 572**

### **Agreement on right of withdrawal; lease subject to condition subsequent**

(1) The lessor may not invoke an agreement by which the lessor is intended to be entitled to withdraw from the lease agreement after he has permitted the lessee to use the residential space.

(2) In addition, the lessor may not invoke an agreement by which the lease is subject to a condition subsequent to the disadvantage of the lessee.

## **Subchapter 2**

### **Leases for an indefinite period of time**

## **Section 573**

### **Notice of termination by the lessor**

(1) The lessor may only give notice if he has a justified interest in the termination of the lease. Notice of termination for the purpose of increasing the rent is excluded.

(2) A justified interest of the lessor in the termination of the lease exists, without limitation, in cases where

1. the lessee has culpably and non-trivially violated his contractual duties,
2. the lessor needs the premises as a dwelling for himself, members of his family or members of his household, or
3. the lessor, by continuing the lease, would be prevented from making appropriate commercial use of the plot of land and would as a result suffer substantial disadvantages; the possibility of attaining a higher rent by leasing the residential space to others is disregarded; the lessor may

likewise not invoke the fact that he wishes to dispose of the residential premises in connection with an intention to create apartment ownership, or in connection with a creation of apartment ownership that took place after use of the residential space was granted to the lessee.

(3) The reasons for a justified interest of the lessor must be indicated in the notice of termination. Other reasons are taken into account only to the extent that they arose subsequently.

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

### **Section 573a**

#### **Simplified termination by the lessor**

(1) The lessor may also terminate a lease of a dwelling in a building inhabited by the lessor himself and having no more than two dwellings without the need for a justified interest within the meaning of section 573. The notice period is in this case extended by three months.

(2) Subsection (1) applies with the necessary modifications to residential space inside the dwelling inhabited by the lessor himself to the extent that the residential space is not exempted from lessee protection under section 549 (2) no. 2.

(3) In the letter containing notice of termination it must be stated that the termination is based on the requirements of subsection (1) or (2).

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

### **Section 573b**

#### **Partial termination by the lessor**

(1) The lessor may terminate the lease of side rooms or parts of a plot of land that are not intended as residential without a justified interest within the meaning of section 573 if he limits the notice of termination to these rooms or parts of the plot of land and if he wishes to use them

1. to create residential space for the purpose of leasing, or
2. to provide the intended or existing residential space with side rooms or parts of a plot of land.

(2) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter.

(3) If commencement of construction work is delayed, then the lessee may demand an extension of the lease by an equivalent period of time.

(4) The lessee may demand an appropriate reduction of the rent.

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

### **Section 573c**

#### **Termination notice periods**

(1) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter. The notice period for the lessor is extended, by three months in each case, five and eight years after the lessee is permitted to use the residential space.

(2) For residential space that is only leased for temporary use, a shorter notice period may be agreed.

(3) For residential space under section 549 (2) no. 2, notice of termination is allowed at the latest on the fifteenth day of a month to the end of that month.

(4) An agreement deviating from subsections (1) or (3) to the disadvantage of the lessee is ineffective.

## **Section 573d**

### **Termination for cause with the statutory notice period**

(1) If a lease may be terminated for cause with the statutory notice period, then sections 573 and 573a apply with the necessary modifications, with the exception of notice of termination to the heirs of the lessee under section 564.

(2) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter, and in the case of residential space under section 549 (2) no. 2 at the latest on the fifteenth day of the month to the end of that month (statutory period). Section 573a (1) sentence 2 does not apply.

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

## **Section 574**

### **Objection of lessee to termination**

(1) The lessee may object to the notice of termination of the lessor and demand continuation of the lease from the latter if termination of the lease would be, for the lessee, his family or another member of his household, a hardship that is not justifiable even considering the justified interests of the lessor. This does not apply if a reason exists that entitles the lessor to terminate the lease for cause without notice.

(2) Hardship also exists if appropriate substitute residential space cannot be procured on reasonable terms.

(3) When the justified interests of the lessor are considered, only the reasons given in the letter containing notice of termination under section 573 (3) are taken into account, except where the reasons arose subsequently.

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

## **Section 574a**

### **Continuation of lease after objection**

(1) In the case of section 574, the lessee may demand that the lease is continued as long as is appropriate if all circumstances are taken into consideration. If the lessor cannot reasonably be expected to continue the lease under the previously applicable contract terms, then the lessee may only demand that it is continued with an appropriate amendment of the terms.

(2) If no agreement is reached, then the continuation of the lease, its duration and the terms under which it is continued are determined by judicial decision. If it is uncertain when the circumstances can be expected to cease on the basis of which termination of the lease would be a hardship, then it may be specified that the lease is to be continued for an indefinite period of time.

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

## **Section 574b**

### **Form and period of objection**

(1) An objection of the lessee to termination must be declared in writing. Upon demand by the lessor, the lessee should without undue delay provide information on the reasons for the objection.

(2) The lessor may refuse continuation of the lease if the lessee does not declare the objection to him at the latest two months prior to termination of the lease. If the lessor has not referred to the possibility of objection and to its form and period in good time before the end of the period for filing an objection, then the lessee may declare his objection in the first hearing in the eviction proceedings.

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

### **Section 574c**

#### **Further continuation of lease in the case of unforeseen circumstances**

(1) If it has been determined on the basis of sections 574 to 574b by agreement or judicial decision that the lease is to be continued for a definite period of time, then the lessee may only demand its further continuation if this is justified by a material change in circumstances or if circumstances have not come about whose foreseen occurrence was decisive for the period of time the lease was to continue.

(2) If the lessor terminates a lease whose continuation for an indefinite period of time has been established by judicial decision, then the lessee may object to the termination and demand from the lessor continuation of the lease for an indefinite period of time. If the circumstances that were decisive for continuation have changed, then the lessee may demand continuation of the lease only under section 574; trivial changes are disregarded.

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

### **Subchapter 3**

#### **Leases for a definite period of time**

### **Section 575**

#### **Fixed-term lease**

(1) A lease may be entered into for a fixed period of time if the lessor upon termination of the lease period

1. wishes to use the premises as a dwelling for himself, members of his family or members of his household, or
2. wishes, admissibly, to eliminate the premises or change or repair them so substantially that the measures would be significantly more difficult as a result of a continuation of the lease, or
3. wishes to lease the premises to a person obliged to perform services

and he notifies the lessee in writing of the reasons for the fixed term when the agreement is entered into. Otherwise the lease is deemed to have been entered into for an indefinite period of time.

(2) The lessee may at the earliest four months prior to expiry of the fixed term demand of the lessor that the lessor notify him within one month whether the grounds for the fixed term still apply. If the notification occurs later, then the lessee may demand an extension of the lease by the period of time of the delay.

(3) If the reason for the fixed term occurs later, then the lessee may demand an extension of the lease by an equivalent period of time. If the reason ceases, then the lessee may demand an extension for an indefinite period of time. The burden of proof for the occurrence of a reason for setting a fixed term and for the duration of the delay is on the lessor.

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

## **Section 575a**

### **Termination for cause with the statutory notice period**

(1) If a lease entered into for a fixed term may be terminated for cause with the statutory notice period, then sections 573 and 573a apply with the necessary modifications, with the exception of notice of termination to the heirs of the lessee under section 564.

(2) Sections 574 to 574c apply with the necessary modifications subject to the proviso that the continuation of the lease may be demanded at most until the contractually specified date of termination.

(3) Notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter, and in the case of residential space under section 549 (2) no. 2 at the latest on the fifteenth day of the month to the end of the month (statutory period). Section 573a (1) sentence 2 does not apply.

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

## **Subchapter 4**

### **Tied dwellings**

## **Section 576**

### **Periods for notice of termination in the case of tied leased dwellings**

(1) If residential space is leased in view of the existence of a service relationship, then the lessor may upon termination of the employment and notwithstanding section 573c (1) sentence 2 terminate the lease with the following notice periods:

1. for residential space the lessee has been permitted to use for less than ten years, at the latest on the third working day of a calendar month to the end of the second month thereafter if the residential space is needed for another person obliged to perform services;
2. at the latest on the third working day of a calendar month to the end of that month if the service relationship by its nature requires permission to use residential space that is located in immediate relation to or in the immediate vicinity of the place of work and the residential space is needed for the same reason for another person obliged to perform services.

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

## **Section 576a**

### **Special features of the right of objection in the case of tied leased dwellings**

(1) When sections 574 to 574c are applied to tied leased dwellings, the interests of the person entitled to services must also be taken into account.

(2) Sections 574 to 574c do not apply if

1. the lessor has given notice under section 576 (1) no 2;
2. the lessee has terminated the service relationship without the person entitled to service giving him any legally justified reason for doing so, or the lessee, by his conduct, provided the person entitled to service with legally justified grounds for terminating the service relationship.

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

## **Section 576b**

### **Application of landlord and tenant law with the necessary modifications in connection with tied dwellings**

(1) If permission to use residential space has been given in connection with a service relationship, then the termination of the legal relationship with regard to the residential space is governed by the provisions on leases with the necessary modifications if the person obliged to perform services has predominantly supplied the residential space with furniture and fixtures or lives in the residential space with his family or persons with whom he maintains a joint household set up permanently.

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

## **Chapter 6**

### **Special features when creating apartment ownership of leased residences**

## **Section 577**

### **Right of preemption of the lessee**

(1) If leased residential premises, apartment ownership of which has been established or is to be established after the lessee has been permitted to use it, is sold to a third party, then the lessee has a right of preemption with regard to it. This does not apply if the lessor sells the residential premises to a member of his family or a member of his household. To the extent that the following subsections do not lead to a different conclusion, the right of preemption is governed by the provisions on preemption.

(2) The notification of the seller or of the third party on the contents of the purchase agreement is to be supplied together with information to the lessee on his right of preemption.

(3) The right of preemption is exercised by a written declaration of the lessee to the seller.

(4) If the lessee dies, then the purchase option passes to the persons who succeed to the lease under section 563 (1) or (2).

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

## **Section 577a**

### **Restriction on notice of termination in connection with conversion of the dwelling**

(1) If apartment ownership of leased residential premises has been established in the residential space after the lessee was permitted to use it and the apartment ownership has been disposed of, then an acquirer may only invoke a justified interest within the meaning of section 573 (2) nos. 2 or 3 after the end of three years after the disposal.

(2) The period under subsection (1) is up to ten years if adequate supply of leased dwellings to the population on reasonable conditions in a municipality or part of a municipality is particularly jeopardised and these areas are specified under sentence 2. The Land governments are authorised to specify these territories and the period of time under sentence 1 by statutory order for the duration of ten years at most in each case.

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

### **Subtitle 3**

#### **Leases of other things**

##### **Section 578**

###### **Leases of plots of land and premises**

(1) The provisions of sections 550, 562 to 562d, 566 to 567b as well as 570 are applicable to leases of plots of land with the necessary modifications.

(2) The provisions cited in subsection 1 as well as section 552 (1), section 554 (1) to (4) and section 569 (2) are applicable with the necessary modifications on leases for premises not constituting residential premises. If the premises are intended for the residence of human beings, section 569 (2) also applies with the necessary modifications.

##### **Section 578a**

###### **Lease of registered ships**

(1) The provisions of sections 566, 566a, 566e to 567d apply with the necessary modifications in the case of disposal or encumbrance of a ship registered in the ship register.

(2) A disposition of the rent made by the lessor prior to the passing of ownership and relating to the period of time when the acquirer is entitled is effective in relation to the acquirer. The same applies to a legal transaction that is entered into between the lessee and the lessor on the rent claim, in particular, without limitation, regarding the payment of the rent; a legal transaction entered into after the passing of ownership is, however, ineffective if the lessee, when entering into the transaction, has knowledge of the passing of ownership. Section 566d applies with the necessary modifications.

##### **Section 579**

###### **Due date of the rent**

(1) The rent for a plot of land, a ship registered in the ship register and for movable things is payable at the end of the lease period. If the rent is assessed according to time periods, then it is to be paid at the end of the individual time periods. Rent for a plot of land, unless assessed by shorter time periods, is in each case to be paid after the end of a calendar quarter on the first working day of the next month.

(2) Section 566b (1) applies with the necessary modifications to leases of premises.

##### **Section 580**

###### **Notice of termination for cause in the case of the death of the lessee**

If the lessee dies, then both his heir and the lessor are entitled, within a month of obtaining knowledge of the death of the lessee, to terminate the lease for cause with the statutory notice period.

##### **Section 580a**

###### **Notice periods**

(1) In the case of a lease of plots of land, of premises that are not business premises or of ships registered in the ship register, notice of termination is allowed

1. if the rent is assessed by days, on any day to the end of the following day;
2. if the rent is assessed by weeks, at the latest on the first working day of a week to the end of the following Saturday;

3. if the rent is assessed in months or longer periods of time, at the latest on the third working day of a calendar month to the end of the second month thereafter; in the case of a lease of commercially used undeveloped plots of land or ships registered in the ship register, however, only to the end of a calendar quarter.

(2) In the case of a lease of business premises, notice of termination is admissible at the latest on the third working day of a calendar quarter to the end of the next calendar quarter.

(3) In the case of a lease of movable things, notice of termination is admissible

1. if the rent is assessed by days, on any day to the end of the following day;

2. if the rent is assessed by longer periods of time, at the latest on the third day prior to the day at the end of which the lease is to terminate.

(4) Subsection (1) no. 3, subsections (2) and (3) no. 2 are also to be applied if a lease may be terminated for cause with the statutory notice period.

#### **Subtitle 4**

#### **Usufructuary lease**

#### **Section 581**

##### **Typical contractual duties in a usufructuary lease**

(1) A usufructuary lease imposes on the lessor the duty to allow the lessee, for the lease period, the use of the leased object and the enjoyment of its fruits to the extent that they are deemed to be income under the rules of proper management. The lessee is obliged to pay the lessor the agreed rent.

(2) The provisions on leases apply with the necessary modifications to usufructuary leases with the exception of farm leases, unless sections 582 to 584b lead to a different conclusion.

#### **Section 582**

##### **Maintenance of inventory**

(1) If a plot of land together with its inventory is leased under a usufructuary lease, then the lessee must maintain the individual inventory items.

(2) The lessor is obliged to replace inventory items disposed of due to a circumstance for which the lessee is not responsible. However, the usufructuary lessee must make up for the routine disposition of animals that are part of the inventory to the extent that this complies with proper management.

#### **Section 582a**

##### **Taking over inventory at its estimated value**

(1) If the usufructuary lessee of a plot of land takes over the inventory at its estimated value with the duty of returning it at its estimated value upon termination of the lease, then he bears the risk of accidental loss and accidental deterioration of such inventory. Within the limits of proper management, the lessee may dispose of the individual inventory items.

(2) The usufructuary lessee must maintain the inventory in a condition and replace it to an extent that complies with the rules of proper management. The items purchased by him become the property of the lessor when they are incorporated into the inventory.

(3) Upon the termination of the usufructuary lease, the lessee must return the existing inventory to the lessor. The lessor may refuse to take over those of the inventory items purchased by the lessee that

are superfluous or too expensive for the plot of land under the rules of proper management; upon rejection, the ownership of the rejected items passes to the lessee. If there is a difference between the total estimated value of the inventory taken over and that to be returned, then this difference is to be compensated for in money. The estimated values are to be based on the prices valid at the time of termination of the usufructuary lease.

## **Section 583**

### **Security right of usufructuary lessee over inventory**

(1) The usufructuary lessee of a plot of land has a security right over the inventory items in his possession for claims on the lessor that relate to inventory included in the usufructuary lease.

(2) The usufructuary lessor may ward off the assertion of the security right of the lessee by provision of security. He may release every single inventory item from the security right by providing security in the amount of the value.

## **Section 583a**

### **Restrictions on disposition of inventory**

Terms of the contract that oblige the usufructuary lessee of a business not to dispose of inventory items or not to dispose of them without prior consent by the lessor or to dispose of inventory items to the lessor are only effective if the lessor agrees to acquire the inventory at its estimated value upon termination of the lease.

## **Section 584**

### **Notice period**

(1) If, in the usufructuary lease of a plot of land or of a right, the lease period is not specified, then notice of termination is only allowed to the end of a lease year; it must occur at the latest on the third working day of the half-year at the end of which the usufructuary lease is to end.

(2) This also applies if the usufructuary lease may be terminated for cause with the statutory notice period.

## **Section 584a**

### **Exclusion of certain rights of termination under landlord and tenant law**

(1) The usufructuary lessee is not entitled to the right of notice of termination determined in section 540 (1).

(2) The usufructuary lessor is not entitled to terminate the usufructuary lease under section 580.

## **Section 584b**

### **Late return**

If the usufructuary lessee fails to return the leased property upon termination of the usufructuary lease, then the lessor may, for the duration of the retention, demand the agreed rent as compensation in the ratio of the emoluments which the lessee took or could have taken in this period to the emoluments of the whole lease year. Assertion of additional damage is not excluded.

## **Subtitle 5**

### **Farm lease**

#### **Section 585**

##### **Concept of farm lease**

(1) By means of a farm lease, a plot of land with the residential and utility buildings (business) that serve its cultivation, or a plot of land without such buildings, is leased largely for agriculture. Agriculture means the cultivation of the soil and the livestock breeding associated with the use of the soil in order to produce plant or animal products, and horticultural production.

(2) Section 581 (1) and sections 582 to 583a apply to farm leases, as do the special provisions below.

(3) The provisions on farm leases also apply to leases relating to forestry properties if the plots of land are leased for use in a predominantly agricultural business.

#### **Section 585a**

##### **Form of a farm lease**

If a farm lease is entered into for more than two years without written form, then it remains in effect for an indefinite period of time.

#### **Section 585b**

##### **Description of the leased property**

(1) The lessor and the lessee should at the beginning of the usufructuary lease jointly prepare a description of the leased property in which its extent and the condition in which it is when surrendered are established. This applies with the necessary modifications to the termination of the usufructuary lease. The description should state the date of its preparation and must be signed by both parties.

(2) If a party to the lease refuses to participate in the preparation of a description or if differences of opinion as to fact emerge during the preparation, then each party to the lease may demand that a description is prepared by an expert, unless more than nine months have passed since permitting use of the leased property or more than three months have passed since termination of lease; the expert is appointed by the Agricultural Court [*Landwirtschaftsgericht*] upon application. Costs incurred in this connection are borne by the parties to the lease at the rate of one-half each.

(3) If a description of this type has been prepared, then the presumption between the parties to the contract is that it is correct.

#### **Section 586**

##### **Typical contractual duties in a farm lease**

(1) The usufructuary lessor must surrender the leased property to the lessee in a condition suitable for use in conformity with the contract and must maintain it in this condition for the lease period. However, the lessee must carry out the customary improvements of the leased property at his own expense, including without limitation improvements of the residential and utility buildings, the paths, ditches, drains and fences. He is obliged to manage the leased property properly.

(2) The provisions of sections 536 (1) to (3) and of 536a to 536d apply to the liability of the usufructuary lessor for material and legal defects in the leased property as well as for the rights and duties of the lessee in relation to such defects.

## **Section 586a**

### **Encumbrances on the leased property**

The usufructuary lessor must bear the encumbrances imposed on the leased property.

## **Section 587**

### **Due date of rent; payment of rent where the usufructuary lessee is personally prevented**

(1) The rent is to be paid at the end of the lease period. If the lease period is assessed by time periods, then it is to be paid on the first working day after the end of the individual time periods.

(2) The usufructuary lessee is not released from payment of the rent due to the fact that he is unable to exercise the right of use to which he is entitled for a reason relating to him personally. Section 537 (1) sentence 2 and (2) apply with the necessary modifications.

## **Section 588**

### **Measures of maintenance or improvement**

(1) The usufructuary lessee must acquiesce in impacts on the leased property necessary to maintain it.

(2) Measures to improve the leased property must be tolerated by the usufructuary lessee, unless the measure would represent a hardship for him that is not justified even when the justified interests of the lessor are taken into account. The usufructuary lessor must compensate the lessee for expenses incurred and earnings lost as a result of the measure to an extent appropriate to the circumstances. On demand, the usufructuary lessor must make advance payment.

(3) To the extent that the usufructuary lessee, due to measures under subsection (2) sentence 1, earns higher income or could earn it with proper management, the lessor may demand that the lessee gives prior consent to a reasonable increase in rent unless the usufructuary lessee cannot reasonably be expected to accept an increase in rent in view of the circumstances of the business.

(4) Upon application, the Agricultural Court [*Landwirtschaftsgericht*] decides disputes under subsections (1) and (2). If the usufructuary lessee fails to give prior consent in the cases in subsection (3), then the Agricultural Court [*Landwirtschaftsgericht*] may give substitute consent on application by the lessor.

## **Section 589**

### **Surrender of use to third parties**

(1) Without the permission of the usufructuary lessor, the lessee is not entitled to

1. permit use of the leased property to a third party, including without limitation subletting the property,
2. permit use of the leased property, in whole or in part, to an agricultural association for the purpose of joint use.

(2) If the usufructuary lessee permits use of the leased property to a third party, then he is responsible for any fault of the third party in its use, even if the lessor has given permission for this use by the third party.

## **Section 590**

### **Change of agricultural purpose or of previous use**

(1) The usufructuary lessee may only change the agricultural purpose of the leased property with the prior permission of the lessor.

(2) For a change of the previous use of the leased property, the prior permission of the lessor is only required if the nature of the use will be influenced by the change after the lease period. The usufructuary lessee may only erect buildings with the prior permission of the lessor. If the usufructuary lessor refuses permission, then substitute permission may be given by the Agricultural Court [*Landwirtschaftsgericht*] upon application by the lessee to the extent that the change appears to be appropriate for the maintenance or permanent improvement of the profitability of the business and the lessor can reasonably be expected to accept it if his justified interests are taken into account. This does not apply if the lease has been terminated or the lease ends in less than three years. The Agricultural Court [*Landwirtschaftsgericht*] may give substitute permission subject to stipulations and conditions, including without limitation by ordering that security is provided, and may specify the nature and extent of the security. If the reason for providing security has ceased, then the Agricultural Court [*Landwirtschaftsgericht*], upon application, decides with regard to the return of the security; Section 109 of the Code of Civil Procedure [*Zivilprozessordnung*] applies with the necessary modifications.

(3) If, in connection with a change of use of the leased property, the usufructuary lessee has substantially reduced the inventory taken over under section 582a at its estimated value, then the lessor may demand compensation in money, applying section 582a (3) with the necessary modifications, even during the lease period, unless the proceeds of the inventory items disposed of have been used for an improvement of the leased property under section 591 that is in a reasonable ratio to the amount of the proceeds.

## **Section 590a**

### **Use in breach of contract**

If the usufructuary lessee makes use of the leased property in breach of contract, and if he continues the use in breach of contract notwithstanding a warning by the lessor, then the lessor may seek a prohibitory injunction.

## **Section 590b**

### **Necessary outlays**

The usufructuary lessor is obliged to compensate the lessee for necessary outlays on the leased property.

## **Section 591**

### **Outlays that increase value**

(1) The usufructuary lessor must reimburse the usufructuary lessee on the termination of the lease for outlays that are not necessary outlays for which he has given his approval, to the extent that the outlays increase the value of the leased property beyond the lease period (added value).

(2) If the usufructuary lessor refuses to approve the outlays, then substitute approval may be given by the Agricultural Court [*Landwirtschaftsgericht*] upon application by the usufructuary lessee to the extent that the outlays appear to be appropriate for the maintenance or permanent improvement of the profitability of the business and the usufructuary lessor can reasonably be expected to accept them when his justified interests are taken into account. This does not apply if the lease has been terminated or the lease ends in less than three years. The Agricultural Court [*Landwirtschaftsgericht*] may give substitute approval subject to stipulations and conditions.

(3) The Agricultural Court [*Landwirtschaftsgericht*] may upon application decide on provisions relating to the added value and may assess the latter. It may determine that the usufructuary lessor need only

reimburse the added value in instalments and may impose conditions for granting such instalments. If the usufructuary lessor cannot reasonably be expected to accept reimbursement of the added value upon the termination of the lease, even in instalments, then the lessee may only demand that the lease is continued on the previous conditions until the added value of the leased property has been paid for. If no agreement can be reached, then the Agricultural Court [*Landwirtschaftsgericht*] decides upon application as to the continuation of the lease.

## **Section 591a**

### **Removal of installations**

The usufructuary lessee is entitled to remove an installation with which he has furnished the thing. The usufructuary lessor may ward off exercise of the right of removal by paying appropriate compensation, unless the lessee has a justified interest in removal. Any agreement excluding the right of removal of the usufructuary lessee is only effective if it provides for appropriate compensation.

## **Section 591b**

### **Limitation of compensation claims**

(1) The compensation claims of the usufructuary lessor for change to or deterioration of the leased thing as well as the claims of the lessee for reimbursement of outlays or for permission to remove an installation are subject to a six-month limitation period.

(2) The limitation period for the compensation claims of the usufructuary lessor commences on the date when he receives the returned thing. The limitation period for the usufructuary lessee commences upon termination of the lease.

(3) Upon limitation of the claim of the usufructuary lessor to return of the thing, the compensation claims of the lessor are also statute-barred.

## **Section 592**

### **Security right of the usufructuary lessor**

For his claims under the usufructuary lease, the lessor has a security right over the things contributed by the lessee and over the fruits of the leased property. The security right may not be asserted with regard to future compensation claims. With the exception of the things cited in section 811 (1) no. 4 of the Code of Civil Procedure [*Zivilprozessordnung*], the security right does not extend to things that are not subject to attachment. The provisions of sections 562a to 562c apply with the necessary modifications.

## **Section 593**

### **Amendment of farm leases**

(1) If, after the usufructuary lease is entered into, the circumstances that were decisive for the determination of the performance under the lease change with lasting effect in such a way that the mutual duties are in a gross disparity to each other, then each party to the contract may demand an amendment of the lease, with the exception of the duration of the lease. If, as a result of the cultivation of the leased property by the lessee, its income improves or deteriorates, then, to the extent not otherwise agreed, an amendment of the lease may not be demanded.

(2) An amendment may be demanded at the earliest two years after the commencement of the lease or after the most recent amendment of the performance under the lease has become effective. This does not apply if devastating natural events against which insurance coverage is not customary have fundamentally and permanently changed the ratio of the acts of performance under the lease.

(3) Amendment may not be demanded for a period prior to the lease year in which the demand for amendment is declared.

(4) If one party to the lease refuses to consent to an amendment of the lease, then the other party may apply to the Agricultural Court [*Landwirtschaftsgericht*] for a decision.

(5) The right to demand an amendment of the lease under subsections (1) to (4) may not be waived. An agreement that one party to the lease is to enjoy special advantages or suffer special disadvantages if he exercises or fails to exercise the rights under subsections (1) to (4) is ineffective.

### **Section 593a**

#### **Transfer of a business**

If, on the transfer of a business by way of a lifetime transfer of property, a plot of land leased for the business that serves agricultural purposes is included, then the transferee succeeds to the usufructuary lease in place of the lessee. The usufructuary lessor must, however, be promptly notified of the transfer of business. If proper management of the leased property by the transferee is not guaranteed, then the usufructuary lessor is entitled to terminate the lease for cause with the statutory notice period.

### **Section 593b**

#### **Disposal or encumbrance of the leased property**

If the leased property is disposed of or encumbered with a third-party right, then sections 566 to 567b apply with the necessary modifications.

### **Section 594**

#### **Termination and extension of the lease**

The usufructuary lease ends at the end of the period for which the lease has been entered into. In the case of usufructuary leases entered into for at least three years it is extended for an indefinite period of time if, upon the inquiry of one of the parties to the lease as to whether the other party is willing to continue the lease, the latter does not refuse continuation within a period of three months. The enquiry and the refusal must be in writing. The inquiry is without effect if there is no explicit reference in it to the consequences of disregarding it and if it is not made within the third-but-last year of the lease.

### **Section 594a**

#### **Notice periods**

(1) If the lease period is not fixed, then each party to the lease may terminate the lease at the latest on the third working day of a lease year to the end of the next lease year. In case of doubt, the calendar year is deemed to be the lease year. Agreement on a shorter period must be in writing.

(2) In the cases where the lease may be terminated for cause with the statutory notice period, termination is only allowed to the end of a lease year; it must occur at the latest on the third working day of the half-year at the end of which the lease is to terminate.

### **Section 594b**

#### **Lease for more than thirty years**

If a usufructuary lease is entered into for a period of more than thirty years, then after thirty years each party to the lease may terminate the lease at the latest on the third working day of a lease year to the end of the next subsequent lease year. Termination is not allowed if the lease has been entered into for the lifetime of the lessor or the lessee.

## **Section 594c**

### **Termination in the case of occupational disability of the usufructuary lessee**

If the usufructuary lessee has become occupationally disabled within the meaning of the provisions of the statutory pension scheme, then he may terminate the lease for cause with the statutory notice period if the lessor objects to the transfer of the leased property for use to a third party who guarantees proper management. A deviating agreement is ineffective.

## **Section 594d**

### **Death of the usufructuary lessee**

(1) If the usufructuary lessee dies, then both his heirs and the lessor are entitled within a month after obtaining knowledge of the death of the lessee to terminate the lease with a notice period of six months to the end of a calendar quarter.

(2) The heirs may contest the notice of termination of the usufructuary lessor and demand continuation of the lease if proper management of the leased property appears to be guaranteed by them or by a co-heir commissioned by them or by a third party. The usufructuary lessor may refuse the continuation of the lease if the heirs have not declared their objection at the latest three months prior to expiry of the lease and informed of the circumstances by reason of which further proper management of the leased property appears ensured. The enquiry and the refusal must occur in writing. If no agreement can be reached then the Agricultural Court [*Landwirtschaftsgericht*] decides on application.

(3) In response to notice of termination by the usufructuary lessor under subsection (1), a continuation demand by the heir under section 595 is excluded.

## **Section 594e**

### **Termination for cause without notice for a compelling reason**

(1) Immediate termination of the lease for cause is allowed, applying sections 543, and 569 (1) and (2) with the necessary modifications.

(2) Notwithstanding section 543 (2) n. 3 letters a and b, just cause exists in particular, without limitation, if the usufructuary lessee is in default for more than three months of payment of the rent or of a portion of the rent that is not insignificant. If the lease is assessed by time periods of less than one year, then termination is only admissible if the usufructuary lessee is in default, for two successive dates, of payment of the rent or of a substantial portion of the rent.

## **Section 594f**

### **Written form of termination**

Notice of termination must be made in written form.

## **Section 595**

### **Continuation of the lease**

(1) The usufructuary lessee may demand continuation of the lease from the lessor if

1. in the case of a commercial usufructuary lease, the business constitutes the economic basis of his existence,
2. in the case of a usufructuary lease of a plot of land, the lessee is dependent on this plot of land to maintain his business, which is the economic basis of his existence,

and termination of the lease in conformity with the contract would be a hardship for the lessee or his family which would not be justifiable even if the justified interests of the lessor were taken into account. Subject to these requirements, continuation may be demanded repeatedly.

(2) In the case in subsection (1), the usufructuary lessee may demand that the lease is continued as long as is appropriate when all circumstances are taken into consideration. If the usufructuary lessor cannot reasonably be expected to continue the lease under the previously applicable contract terms, then the lessee may demand that it be continued with an appropriate amendment of the terms.

(3) The usufructuary lessee may not demand continuation of the lease from the usufructuary lessor if

1. he has terminated the lease,
2. the usufructuary lessor is entitled to terminate the lease for cause without notice, or in the case of section 593a to terminate the lease for cause with the statutory notice period,
3. the lease period in the case of a usufructuary lease of a business, the leasing of additional plots of land as a result of which a business is created, or in the case of the lease of marshland or wasteland that has been cultivated by the lessee has been agreed for at least eighteen years, or in the case of the lease of other plots of land for at least twelve years,
4. in the case of property leased only temporarily under a usufructuary lease, the lessor wishes to repossess it for his own use or to use it to perform statutory or other public tasks.

(4) The declaration of the usufructuary lessee demanding the continuation of the lease must be in writing. Upon demand by the usufructuary lessor, the lessee should without undue delay provide information on his reasons for demanding continuation.

(5) The usufructuary lessor may refuse continuation of the lease if the usufructuary lessee did not demand continuation from the lessor at least one year prior to termination of the lease or rejected continuation upon inquiry by the lessor under section 594. If a twelve-month notice period or less has been agreed, then it suffices if the demand is declared within a month of receipt of the notice of termination.

(6) If agreement is reached, then the Agricultural Court [*Landwirtschaftsgericht*] decides upon application on a continuation and on the lease period, and also on the conditions under which the lease will be continued. The court may order continuation of the lease, but only up to a date that, starting from the commencement of the current lease, does not exceed the periods stated in subsection (3) no. 3. Continuation may be limited to a part of the leased property.

(7) The usufructuary lessee must file the application for a court decision at the Agricultural Court [*Landwirtschaftsgericht*] at the latest nine months prior to termination of the lease and, in the case of a twelve-month notice period or less, two months after receipt of notice of termination. The court may admit the application at a later date if it appears called for to avoid undue hardship and the lease has not yet expired.

(8) The right to demand extension of the lease under subsections (1) to (7) may only be waived if the waiver is declared in settlement of a lease dispute heard in a court of law or by a professional lease conciliation board. An agreement that one party is to have particular advantages or particular disadvantages if the party exercises or does not exercise the rights under subsections (1) to (7) is ineffective.

## **Section 595a**

### **Early notice of termination of farm leases**

(1) To the extent that the parties to the contract are entitled to terminate a farm lease for cause with the statutory notice period, they are entitled to this even after the extension of the farm lease or the modification of the farm lease.

(2) Upon application by one of the parties to the lease, the Agricultural Court [*Landwirtschaftsgericht*] may make orders on the winding up of a farm lease terminated early or terminated in part. If the extension of a farm lease is limited to a portion of the leased property, then the Agricultural Court [*Landwirtschaftsgericht*] may determine the rent for this portion.

(3) The contents of Agricultural Court [*Landwirtschaftsgericht*] orders are deemed to be part of the lease agreement as between the parties to the lease. The Agricultural Court [*Landwirtschaftsgericht*] decides upon application on disputes relating to these contents of the contract.

## **Section 596**

### **Return of the leased property**

(1) The usufructuary lessee is obliged to return the leased property upon termination of the lease in a condition conforming with proper management continued up to its return.

(2) The usufructuary lessee has no right of retention of the plot of land for his claims on the lessor.

(3) If the usufructuary lessee has transferred use of the leased property to a third party, the lessor may also demand return of the leased property from that third party upon termination of the lease.

## **Section 596a**

### **Duty to compensate for early termination of lease**

(1) If the lease terminates in the course of a lease year, the usufructuary lessor must compensate the lessee for the value of any fruits not yet severed but to be severed prior to the end of the lease year under the rules of proper management. When this is done, the harvesting risks must be given appropriate consideration.

(2) If the value referred to in subsection (1) cannot be determined for seasonal reasons, then the usufructuary lessor must compensate the lessee for outlays on these fruits to the extent that they correspond to proper management.

(3) Subsection (1) also applies to timber intended for felling but not yet felled. If the usufructuary lessee has felled more timber than allowed in the case of proper use, then he must compensate the lessor for the quantity of timber that exceeds normal use. Assertion of additional damage is not excluded.

## **Section 596b**

### **Duty to leave behind**

(1) The usufructuary lessee of a business must prior to termination of the lease leave behind as much of the available agricultural produce as is needed for continuation of the farm until the next harvest, even if he did not take over such produce at commencement of the lease.

(2) To the extent that the usufructuary lessee is obliged under subsection (1) to leave produce behind in a greater quantity or of a better quality than he took over at commencement of the lease, then he may demand compensation of their value from the lessor.

## **Section 597**

### **Late return**

If the usufructuary lessee does not return the leased property upon termination of the lease, then the usufructuary lessor may for the duration of such withholding demand the agreed rent as compensation. Assertion of additional damage is not excluded.

## **Title 6**

### **Gratuitous loan**

#### **Section 598**

##### **Typical contractual duties in the case of a gratuitous loan**

By a gratuitous loan agreement, the lender of a thing is obliged to permit the borrower to use the item at no charge.

#### **Section 599**

##### **Liability of the lender**

The lender is only responsible for intent and gross negligence.

#### **Section 600**

##### **Liability for defects**

If the lender fraudulently conceals a legal defect or a defect in the thing lent, then he is liable to compensate the borrower for any damage arising from this.

#### **Section 601**

##### **Reimbursement of outlays**

(1) The borrower must bear the customary costs of maintaining the thing lent; in the case of the gratuitous loan of an animal, in particular, without limitation, the costs of feeding it.

(2) The duty of the lender to reimburse other outlays is governed by the provisions on agency without specific authorisation. The borrower is entitled to remove an installation which he attached to the thing.

#### **Section 602**

##### **Wear and tear on the thing**

The borrower is not responsible for changes to or deterioration of the thing lent that are caused by use in conformity with the contract.

#### **Section 603**

##### **Use in conformity with the contract**

The borrower may not make any other use of the thing lent than use in conformity with the contract. He is not entitled without permission from the lender to transfer the use of the thing to a third party.

#### **Section 604**

##### **Duty to return**

(1) The borrower is obliged to return the thing lent at the end of the period of time specified for the gratuitous loan.

(2) If no period of time is specified, then the thing must be returned after the borrower has made use of it as corresponds to the purpose of the loan. The lender may demand the thing back even earlier if so much time has passed that the borrower could have made use of it.

(3) If the duration of the loan neither has been specified nor is to be inferred from the purpose of the loan, then the lender may demand the thing back at any time.

(4) If the borrower transfers the use of the thing to a third party, the lender may demand it back from that third party as well, upon termination of the loan.

(5) Limitation of the claim to return of the thing commences upon termination of the loan.

## **Section 605**

### **Right of termination**

The lender may terminate a gratuitous loan:

1. if he requires the thing lent due to an unforeseen circumstance,
2. if the borrower makes use of the thing in breach of contract, in particular, without limitation, by transferring its use to a third party without authorisation, or jeopardises the thing by neglecting the care he owes,
3. if the borrower dies.

## **Section 606**

### **Short limitation period**

(1) The compensation claims of the lender for changes to or deterioration of the thing lent as well as the claims of the borrower for reimbursement of outlays or for permission to remove an installation are subject to a six-month limitation period. The provisions of section 548 (1) sentences 2 and 3 and (2) apply with the necessary modifications.

## **Title 7**

### **Contract for the loan of a thing**

## **Section 607**

### **Typical contractual duties in a contract for the loan of a thing**

(1) By a contract for the loan of a thing, the lender agrees to hand over to the borrower an agreed fungible thing. The borrower is obliged to make payment for the loan and, when the loan falls due, to return what he has received in things of the same kind, quality and amount.

(2) The provisions of this title do not apply when what is handed over is money.

## **Section 608**

### **Termination**

(1) If a time for the return of the thing handed over is not specified, the due date depends on the termination of the loan by the lender or the borrower.

(2) To the extent that nothing else has been agreed, a contract for the loan of a thing entered into for an indefinite period of time may be terminated in whole or in part by the lender or the borrower at any time.

## **Section 609**

### **Payment**

The borrower must make the payment at the latest upon return of the thing handed over.

## **Section 610**

(repealed)

## **Title 8**

### **Service contract \*)**

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\*) Official note:

This title serves to implement

1. Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, p. 40), and
2. Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61, p. 26).

## **Section 611**

### **Typical contractual duties in a service contract**

(1) By means of a service contract, a person who promises service is obliged to perform the services promised, and the other party is obliged to grant the agreed remuneration.

(2) Services of any type may be the subject matter of service contracts.

## **Sections 611a and 611b**

(repealed)

## **Section 612**

### **Remuneration**

(1) Remuneration is deemed to have been tacitly agreed if in the circumstances it is to be expected that the services are rendered only for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

(3) (repealed)

## **Section 612a**

### **Prohibition of victimisation**

The employer may not discriminate against an employee in an agreement or a measure because that employee exercises his rights in a permissible way.

## **Section 613**

### **Non-transferability**

The party under a duty of service must in case of doubt render the services in person. The claim to services is, in case of doubt, not transferable.

## **Section 613a**

### **Rights and duties in the case of transfer of business**

(1) If a business or part of a business passes to another owner by legal transaction, then the latter succeeds to the rights and duties under the employment relationships existing at the time of transfer. If these rights and duties are governed by the legal provisions of a collective agreement or by a works agreement, then they become part of the employment relationship between the new owner and the employee and may not be changed to the disadvantage of the employee before the end of the year after the date of transfer. Sentence 2 does not apply if the rights and duties with the new owner are governed by the legal provisions of another collective agreement or by another works agreement. Prior to expiry of the period of time under sentence 2, the rights and duties may be changed if the collective agreement or the works agreement no longer applies or, where it is not the case that both parties are bound by a collective agreement in the scope of applicability of another collective agreement, the application of that collective agreement is agreed between the new owner and the employee.

(2) The previous employer is jointly and severally liable with the new owner for duties under subsection (1) to the extent that they arose prior to the date of transfer and are due before the end of one year after that date. If such duties are due after the date of transfer, however, the previous employer is only liable for them to the extent that corresponds to the part of their assessment period that ended on the date of transfer.

(3) Subsection (2) does not apply if a legal person or a commercial partnership ceases to exist through conversion.

(4) The termination of the employment relationship of an employee by the previous employer or by the new owner due to transfer of a business or a part of a business is ineffective. The right to terminate the employment relationship for other reasons is unaffected.

(5) The previous employer or the new owner must notify employees affected by a transfer in text form prior to transfer:

1. of the date or planned date of transfer,
2. of the reason for the transfer,
3. of the legal, economic and social consequences of the transfer for the employees, and
4. of measures that are being considered with regard to employees.

(6) The employee may object in writing to the transfer of the employment relationship within one month of receipt of notification under subsection 5. The objection may be addressed to the previous employer or to the new owner.

## **Section 614**

### **Due date of remuneration**

Remuneration is to be paid after performance of the services. If remuneration is assessed by time periods, then it is to be paid at the end of the individual time periods.

## **Section 615**

### **Remuneration in the case of default in acceptance and business risk**

If the person entitled to services is in default in accepting the services, then the party owing the services may demand the agreed remuneration for the services not rendered as the result of the default without being obliged to provide cure. However, he must allow to be credited against him what he saves as a result of not performing the services or acquires or wilfully fails to acquire through use of his employment elsewhere. Sentences 1 and 2 apply with the necessary modifications in cases in which the employer bears the risk of loss of working hours.

## **Section 616**

### **Temporary prevention from performing services**

The person obliged to perform services is not deprived of his claim to remuneration by the fact that he is prevented from performing services for a relatively trivial period of time for a reason in his person without fault on his part. However, he must allow to be credited against him the amount he receives for the period when he is prevented under a health or accident insurance policy that exists on the basis of a statutory duty.

## **Section 617**

### **Duty of medical care**

(1) If, in a permanent service relationship that completely or mainly takes up the economic activity of the person obliged to perform services, the person obliged is integrated into the joint household, then the person entitled to services must, in the event of illness, grant him the necessary food and medical treatment up to a duration of six weeks, but not beyond termination of his service relationship, unless the illness was caused by the person obliged by intent or gross negligence. The provision of food and medical treatment may be granted by the admission of the person obliged to a hospital. The costs may be credited against the remuneration owed for the period of illness. If the service relationship is terminated by the person entitled to services under section 626 on the grounds of illness, then termination of the employment caused by this is not taken into account.

(2) The duty of the person entitled to services does not arise if provision has been made for the food and medical treatment by an insurance company or a public health institution.

## **Section 618**

### **Duty to undertake protective measures**

(1) The person entitled to services must furnish and maintain premises, devices and equipment that he must provide for performance of the services in such a way and must arrange services that must be undertaken on his order or under his supervision in such a way that the person obliged to perform services is protected against danger to life and limb to the extent that the nature of the services permits.

(2) If the person obliged has been integrated into the common household, then the person entitled to services must provide the installations and make the arrangements, with regard to the living and sleeping space, the provision of food and work and leisure time, that are required with a view to the health, morality and religion of the person obliged.

(3) If the person entitled to services fails to fulfil the duties it has with regard to the life and the health of the person obliged, then the provisions of sections 842 to 846 governing torts apply with the necessary modifications to his duty to provide damages.

## **Section 619**

### **Absolute nature of welfare duties**

The duties incumbent upon the person entitled to services under sections 617 and 618 may not be cancelled or restricted in advance by contract.

## **Section 619a**

### **Burden of proof when the employee is liable**

Notwithstanding section 280 (1), the employee must only provide the employer with compensation for damage arising from the breach of a duty under the employment relationship if he is responsible for the breach of duty.

## **Section 620**

### **Termination of services relationship**

(1) The service relationship ends at the end of the period of time for which it has been entered into.

(2) If the duration of the service relationship neither is specified nor may be inferred from the nature or the purpose of the services, then either party may terminate the service relationship under the provisions of sections 621 to 623.

(3) The Part-Time Work and Fixed-Term Employment Act [*Teilzeit- und Befristungsgesetz*] governs employment contracts entered into for a specified period of time.

## **Section 621**

### **Notice periods for service relationships**

In the case of a service relationship that is not an employment relationship within the meaning of section 622, termination is allowed

1. if the remuneration is assessed by days, on any day to the end of the following day;
2. if the remuneration is assessed by weeks, at the latest on the first working day of a week to the end of the following Saturday;
3. if the remuneration is assessed by months, at the latest by the fifteenth of one month to the end of the calendar month;
4. if the remuneration is assessed by quarters or longer periods of time, observing a notice period of six weeks, to the end of a calendar quarter;
5. if the remuneration is not assessed by time periods, at any time; in the case of a service relationship that completely or mainly takes up the economic activity of the person obliged; however, a notice period of two weeks must be observed.

## **Section 622**

### **Notice periods in the case of employment relationships**

(1) The employment relationship of a wage-earner or a salary-earner (employee) may be terminated with a notice period of four weeks to the fifteenth or to the end of a calendar month.

(2) For notice of termination by the employer, the notice period is as follows if the employment relationship in the business or the enterprise

1. has lasted for two years, one month to the end of a calendar month,
2. has lasted for five years, two months to the end of a calendar month,
3. has lasted for eight years, three months to the end of a calendar month,
4. has lasted for ten years, four months to the end of a calendar month,
5. has lasted for twelve years, five months to the end of a calendar month,
6. has lasted for fifteen years, six months to the end of a calendar month,
7. has lasted for twenty years, seven months to the end of a calendar month.

In calculating the duration of employment, time periods prior to completion of the twenty-fifth year of life of the employee are not taken into account.

(3) During an agreed probationary period, at most for the duration of six months, the employment relationship may be terminated with a notice period of two weeks.

(4) Provisions differing from subsections (1) to (3) may be agreed in collective agreements. Within the scope of applicability of such a collective agreement, the different collective agreement provisions between employers and employees who are not subject to collective agreements apply if the application of collective agreements has been agreed between them.

(5) In an individual contract, shorter notice periods than those cited in subsection (1) may be agreed only

1. if an employee is employed to help out on a temporary basis; this does not apply if the employment relationship is extended beyond a period of three months;
2. if the employer as a rule employs not more than 20 employees with the exception of those employed for their own training and the notice period does not fall short of four weeks.

When the number of employees employed is determined, part-time employees with regular weekly working hours of not more than 20 hours are counted as 0.5 employees and those working not more than 30 hours are counted as 0.75 employees. The agreement in an individual contract of longer notice periods than those stated in subsections (1) to (3) is unaffected by this.

(6) For notice of termination of employment by the employee, no longer notice period may be agreed than for notice of termination by the employer.

## **Section 623**

### **Written form of termination**

Termination of employment by notice of termination or separation agreement requires written form to be effective; electronic form is excluded.

## **Section 624**

### **Notice period in the case of contracts lasting more than five years**

If the service relationship is entered into for the lifetime of a person or for a longer period of time than five years, then it may be terminated by the person obliged at the end of five years. The notice period is six months.

## **Section 625**

### **Tacit extension**

If the service relationship is continued after the end of the service period by the person obliged with the knowledge of the other party, then it is deemed to be extended for an indefinite period of time unless the other party objects to it without undue delay.

## **Section 626**

### **Termination without notice for a compelling reason**

(1) The service relationship may be terminated by either party to the contract for a compelling reason without complying with a notice period if facts are present on the basis of which the party giving notice cannot reasonably be expected to continue the service relationship to the end of the notice period or to the agreed end of the service relationship, taking all circumstances of the individual case into account and weighing the interests of both parties to the contract.

(2) Notice of termination may only be given within two weeks. The notice period commences with the date on which the person entitled to give notice obtains knowledge of facts conclusive for the notice of termination. The party giving notice must notify the other party, on demand, of the reason for notice of termination without undue delay in writing.

## **Section 627**

### **Termination without notice in the case of a position of trust**

(1) In a service relationship that is not an employment relationship within the meaning of section 622, notice of termination is allowed, even without the requirement specified in section 626, if the person obliged to perform services, without being in a permanent service relationship with fixed earnings, must perform services of a higher nature with which people are customarily entrusted on the basis of special trust.

(2) The person obliged to perform services may only give notice in such a manner that the person entitled to services can obtain the services elsewhere, unless there is a compelling reason for untimely notice of termination. If he should give notice in untimely fashion without such cause, then he must compensate the person entitled to services for damage arising from this.

## **Section 628**

### **Partial remuneration and damages in case of termination without notice**

(1) If after commencement of performance of the service, the service relationship is terminated on the ground of section 626 or 627, then the person obliged to perform services may demand a part of his remuneration corresponding to his services performed thus far. If he gives notice without being prompted to do so by action of the other party in breach of contract, or if he should prompt termination by the other party by his own action in breach of contract, then he has no claim to the remuneration to the extent that his previous services are of no interest to the other party as a result of the notice of termination. If remuneration is paid in advance for a later period of time, then the person obliged must reimburse it under the provisions of section 346 or, if notice of termination is given by reason of a circumstance for which he is not responsible, under the provisions on the return of unjust enrichment.

(2) If notice of termination is prompted by the conduct of the other party in breach of contract, then the other party is obliged to compensate the damage arising from the dissolution of the service relationship.

## **Section 629**

### **Time off for search for employment**

After the termination of a permanent service relationship, the person entitled to services must grant the person obliged, on demand, reasonable time to seek another service relationship.

## **Section 630**

### **Duty to provide a reference**

Upon the termination of a permanent service relationship, the person obliged may demand from the other party a written reference on the service relationship and its duration. The reference must extend, on demand, to the services performed and conduct in service. The reference may not be provided in electronic form. If the person obliged is an employee, section 109 of the Trade Code [*Gewerbeordnung*] applies.

## **Title 9**

### **Contract to produce a work and similar contracts**

#### **Subtitle 1**

#### **Contract to produce a work**

### **Section 631**

#### **Typical contractual duties in a contract to produce a work**

(1) By a contract to produce a work, a contractor is obliged to produce the promised work and the customer is obliged to pay the agreed remuneration.

(2) The subject matter of a contract to produce a work may be either the production or alteration of a thing or another result to be achieved by work or by a service.

### **Section 632**

#### **Remuneration**

(1) Remuneration for work is deemed to be tacitly agreed if the production of the work, in the circumstances, is to be expected only in return for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff remuneration is deemed to be agreed; if no tariff exists, the usual remuneration is deemed to be agreed.

(3) In case of doubt, remuneration is not to be paid for a cost estimate.

### **Section 632a**

#### **Part payments**

The contractor may demand from the customer for coherently definable parts of the work part payments for performance rendered in conformity with the contract. This also applies to required materials or building components that are specially prepared or supplied. There is only a claim if ownership of the parts of the work, of the materials or of building components is transferred to the customer or security is provided for this.

## **Section 633**

### **Material defects and legal defects**

(1) The contractor must procure the work for the customer free of material defects and legal defects.

(2) The work is free of material defects if it is of the agreed quality. To the extent that the quality has not been agreed, the work is free from material defects

1. if it is suitable for the use envisaged in the contract, or else
2. if it is suitable for the customary use and is of a quality that is customary in works of the same type and that the customer may expect in view of the type of work.

It is equivalent to a material defect if the contractor produces a work that is different from the work ordered or too small an amount of the work.

(3) The work is free of legal defects if third parties, with regard to the work, either cannot assert any rights against the customer or can assert only such rights as are taken over under the contract.

## **Section 634**

### **Rights of the customer in the case of defects**

If the work is defective, the customer, if the requirements of the following provisions are met and to the extent not otherwise specified, may

1. under section 635, demand cure,
2. under section 637, remedy the defect himself and demand reimbursement for required expenses,
3. under sections 636, 323 and 326 (5), withdraw from the contract or under section 638, reduce payment, and
4. under sections 636, 280, 281, 283 and 311a, demand damages, or under section 284, demand reimbursement of futile expenditure.

## **Section 634a**

### **Limitation of claims for defects**

(1) The claims cited in section 634 nos. 1, 2 and 4 are statute-barred

1. subject to no. 2, in two years in the case of a work whose result consists in the manufacture, maintenance or alteration of a thing or in the rendering of planning or monitoring services for this purpose,
2. in five years in the case of a building and in the case of a work whose result consists in the rendering of planning or monitoring services for this purpose, and
3. apart from this, in the regular limitation period.

(2) In the cases of subsection (1) nos. 1 and 2, limitation begins on acceptance.

(3) Notwithstanding subsection (1) nos. 1 and 2, and subsection (2), claims are statute-barred in the standard limitation period if the contractor fraudulently concealed the defect. However, in the case of subsection (1) no. 2, claims are not statute-barred before the end of the period specified there.

(4) The right of withdrawal referred to in section 634 is governed by section 218. Notwithstanding the ineffectiveness of withdrawal under section 218 (1), the customer may refuse to pay the remuneration to the extent that he would be entitled to do so by reason of the withdrawal. If he uses this right, the contractor may withdraw from the contract.

(5) Section 218 and subsection (4) sentence 2 above apply with the necessary modifications to the right to reduce the price specified in section 634.

## **Section 635**

### **Cure**

(1) If the customer demands cure, then the contractor may, at his option, remedy the defect or produce a new work.

(2) The contractor must bear the expenditure necessary for cure, including, without limitation, transport, workmen's travel, work and materials costs.

(3) The contractor may refuse cure, without prejudice to section 275 (2) and (3), if it is only possible at disproportionate cost.

(4) If the contractor produces a new work, he may demand from the customer return of the defective work in accordance with sections 346 to 348.

## **Section 636**

### **Special provisions on withdrawal and damages**

Except in the cases of sections 281 (2) and 323 (2), there is no need for a period to be set even if the contractor refuses cure under section 635 (3) or if cure has failed or cannot be reasonably expected of the customer.

## **Section 637**

### **Self-help**

(1) If there is a defect in the work, the customer may, after the expiry without result of a reasonable period specified by him for cure, remedy the defect himself and demand reimbursement of the necessary expenses, unless the contractor rightly refuses cure.

(2) Section 323 (2) applies with the necessary modifications. A period of time need not be specified even if cure has failed or cannot reasonably be expected of the customer.

(3) The customer may demand from the contractor advance payment of the expenses necessary to remedy the defect.

## **Section 638**

### **Reduction of price**

(1) Instead of withdrawal from the contract, the customer may reduce the remuneration by declaration to the contractor. The ground for exclusion under section 323 (5) sentence 2 does not apply.

(2) If the customer or the contractor consists of more than one person, reduction of price may be declared only by or to all of them.

(3) In the case of reduction of price, the payment is to be reduced in the proportion which, at the time when the contract was entered into, the value of the work in a state free of defects would have had to the actual value. To the extent necessary, the price reduction is to be established by appraisal.

(4) If the customer has paid more than the reduced remuneration, the contractor must reimburse the surplus. Section 346 (1) and section 347 (1) apply with the necessary modifications.

## **Section 639**

### **Exclusion of liability**

The contractor may not rely on an agreement by which the rights of the customer with regard to a defect are excluded or restricted, insofar as the contractor fraudulently concealed the defect or gave a guarantee for the quality of the work.

## **Section 640**

### **Acceptance**

(1) The customer is obliged to accept the work produced in conformity with the contract, except to the extent that, in view of the quality of the work, acceptance is excluded. Acceptance may not be refused by reason of trivial defects. It is equivalent to acceptance if the customer does not accept the work within a reasonable period of time specified for him by the contractor, although he is under a duty to do so.

(2) If the customer accepts a defective work under subsection (1) sentence 1, even though he knows of the defect, he only has the rights designated in section 634 nos. 1 to 3 if he reserves his rights with regard to the defect when he accepts the work.

## **Section 641**

### **Due date of remuneration**

(1) The remuneration must be paid upon acceptance of the work. If the work is to be accepted in parts and the remuneration for the individual parts is specified, then the remuneration is to be paid for each part when it is accepted.

(2) The remuneration of the contractor for a work whose production the customer has promised to a third party is due at the latest when and to the extent that the customer has received from the third party his remuneration or parts of his remuneration for the production of the promised work. If the customer has given the third party security on account of possible defects of the work, this applies only if the contractor gives the customer security in an equivalent amount.

(3) If the customer may demand remedy of a defect, he may, after accepting the work, refuse to pay a reasonable portion of the remuneration, at least in the amount of three times the costs necessary to remedy the defect.

(4) If the remuneration is assessed in money, the customer must pay interest on it from the acceptance of the work on, except to the extent that remuneration is deferred.

## **Section 641a**

### **Certification of completion**

(1) It is equivalent to acceptance if the contractor is granted certification by an expert to the effect that

1. the work promised, including a part of it in the case cited in section 641 (1) sentence 2, has been produced, and
2. the work is free of defects which were notified by the customer to the expert or which can be determined by the expert in an inspection

(certification of completion). This does not apply if the procedure under subsections (2) and (4) has not been complied with or if the requirements of 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. It is presumed that measurement on site or a statement of an hourly rate on which the contractor bases his invoice are correct if the expert confirms this in the certification of completion.

(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 designated on the application of the contractor by a chamber of industry and commerce, a chamber of crafts, a chamber of architects or a chamber of engineers.

The expert is commissioned by the contractor. He is under a duty to the contractor and to the customer who ordered the work to be examined to issue certification impartially and to the best of his knowledge and belief.

(3) The expert must make an inspection on at least one occasion; an invitation to the inspection, stating the reason, must be received by the customer at least two weeks earlier. Whether the work is free of defects is determined by the expert under a written contract in writing which the contractor must submit to him. In the inspection, alterations to this contract are to be taken into account only if they are agreed in writing or presented to the expert in agreement with each other by the parties to the contract. If the contract does not contain information in this respect, the inspection is to be based on accepted standards of technology. Defects asserted by the customer are disregarded in the issuing of the certification if they are advanced only after the completion of the inspection.

(4) The customer is obliged to allow the expert to inspect the work or parts of it. If he refuses to allow inspection, it is presumed that the work to be inspected has been produced in conformity with the contract; certification under subsection (1) above is to be granted.

(5) The expert must give the customer a copy of the certification. In regard to periods of time, interest and the passing of risk, the effects of the certification apply only when it is received by the customer.

## **Section 642**

### **Collaboration by the customer**

(1) If, in the production of the work, an act by the customer is necessary, then the contractor may demand reasonable compensation if the customer, by failing to perform the act, is in default of acceptance.

(2) The amount of compensation is assessed on the one hand on the basis of the duration of the default and the amount of the agreed remuneration, and on the other hand on the basis of what expenses the contractor saves or what the contractor can earn by employing his working capacity elsewhere.

## **Section 643**

### **Termination for failure to collaborate**

In the case of section 642, the contractor is entitled to give the customer a reasonable period of time for making up for the act to be performed by declaring that he will terminate the contract if the act is not undertaken by the end of the period of time. The contract is deemed to be cancelled if the act is not made up for by the end of the period of time.

## **Section 644**

### **Allocation of risk**

(1) The contractor bears the risk until acceptance of the work. If the customer is in default of acceptance, then the risk passes to him. The contractor is not liable for any accidental destruction or accidental deterioration of the materials supplied by the customer.

(2) If, at the demand of the customer, the contractor ships the work to a place other than the place of performance, then the provisions of section 447 governing purchase apply with the necessary modifications.

## **Section 645**

### **Responsibility of the customer**

(1) If the work, before acceptance, is destroyed or deteriorates or becomes impracticable as the result of a defect in the materials supplied by the customer or as the result of an instruction given by the customer for the carrying out of the work, without a circumstance for which the contractor is responsible contributing to this, then the contractor may demand a part of the remuneration that corresponds to the work performed and reimbursement of those expenses not included in the remuneration. The same applies if the contract is cancelled under section 643.

(2) A more extensive liability of the customer for fault is unaffected.

## **Section 646**

### **Completion in lieu of acceptance**

If acceptance is excluded due to the quality of the work, then, in the cases of sections 634a (2) and 641, 644 and 645, completion of the work takes the place of acceptance.

## **Section 647**

### **Security right of the contractor**

For his claims under the contract, the contractor has a security right over the movable things of the customer that he has produced or repaired if they have come into his possession during the production or for the purpose of repair.

## **Section 648**

### **Mortgage of a building contractor**

(1) The contractor for a building or an individual part of a building may demand, for satisfaction of his claims under the contract, that a mortgage over the building plot of the customer is granted. If the work is not yet completed, then he may demand that a mortgage is granted for a portion of the remuneration corresponding to the work performed and for expenses not included in the remuneration.

(2) The owner of a shipyard, for his claims in relation to the building or repair of a ship, may demand to be granted a ship mortgage over the ship under construction or ship of the customer; subsection (1) sentence 2 applies with the necessary modifications. Section 647 does not apply.

## **Section 648a**

### **Builder's security**

(1) A contractor for a building, outdoor facilities or a part thereof may demand a security from the customer for advance performance the contractor is to make, including associated incidental claims, specifying a reasonable period of time for the customer to provide the security and stating that after the end of the period of time he will refuse performance. Security may be demanded up to the amount of the expected claim for remuneration, under the contract or under a subsequent additional contract, as well as for incidental claims; the incidental claims are to be estimated at ten per cent of the remuneration claim to be secured. It is to be deemed sufficient even if the provider of the security reserves the right to revoke his promise, in case of substantial deterioration of the financial circumstances of the customer, with effect for claims to remuneration for building work that the contractor has not yet performed when the declaration of revocation is received.

(2) The security may also be provided by means of a guarantee or other promise of payment by a banking institution or credit insurer authorised to conduct business operations within the area of application of this Code. The banking institution or credit insurer may only make payments to the contractor to the extent that the customer recognises the claim of the contractor to remuneration or

has been ordered by a provisionally enforceable judgment to pay the remuneration and the requirements are met under which execution of judgment may be commenced.

(3) The contractor must pay to the customer the customary costs of provision of security up to a maximum amount of two per cent per year. This does not apply to the extent that the security must be maintained because of objections of the customer to the remuneration claim of the contractor and the objections turn out to be unfounded.

(4) To the extent that the contractor has obtained a security for his claim to remuneration under subsections (1) and (2), the claim to be granted a mortgage under section 648 (1) is excluded.

(5) If the customer does not provide the security in good time, then the rights of the contractor are determined under sections 643 and 645 (1). If, under these provisions, the contract is deemed to have been cancelled, the contractor may also claim compensation for the loss which he suffers as a result of relying on the validity of the contract. The same applies if the customer gives notice of termination in temporal proximity to the demand for security under subsection (1), unless the termination is not made in order to avoid giving security. There is a presumption that the loss is 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 under public law or a special fund under public law or
2. is a natural person and is having the construction work done to build or repair a one-family house with or without a self-contained apartment attached; this does not apply if the construction project is looked after by a construction agent authorised to dispose of the financial resources of the customer.

(7) Any agreement deviating from the provisions of subsections (1) to (5) above is ineffective.

## **Section 649**

### **Right of termination of the customer**

The customer may terminate the contract at any time up to completion of the work. If the customer terminates the contract, then the contractor is entitled to demand the agreed remuneration; however, he must allow set-off of the expenses he saves as a result of cancelling the contract or acquires or wilfully fails to acquire from other use of his labour.

## **Section 650**

### **Cost estimate**

(1) If the contract is based on a cost estimate without the contractor guaranteeing the accuracy of the estimate and if it turns out that the work cannot be carried out without substantially exceeding the estimate, then the contractor is only entitled, if the customer terminates the contract for this reason, to the claim specified in section 645 (1).

(2) If such exceeding of the estimate is to be expected, then the contractor must notify the customer of this without undue delay.

## **Section 651**

### **Application of sale of goods law \*)**

The provisions of sale of goods law are applicable to a contract dealing with the supply of movable things to be produced or manufactured. Section 442 (1) sentence 1 also applies to these contracts if the defect is caused by the material supplied by the customer. To the extent that the movable things to be produced or manufactured are not fungible things, sections 642, 643, 645, 649 and 650 apply, subject to the proviso that the applicable point of time under sections 446 and 447 takes the place of acceptance.

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\*) Official note:

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

## **Subtitle 2**

### **Package travel contract \*)**

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\*) Official note:

This subtitle serves to implement Council Directive 90/314/EEC of the European Parliament and of the Council of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, p. 59).

## **Section 651a**

### **Typical contractual duties in a package travel contract**

(1) By a package travel contract, a travel organiser is obliged to render for the traveller a complete set of travel services (travel package) for the traveller. The traveller is obliged to pay the travel organiser the agreed price for the travel package.

(2) A declaration that the only contracts being arranged are contracts with the persons who are to carry out the individual travel services (service providers) will be disregarded if the other circumstances create the impression that the party making the declaration is performing the contractually provided travel services on his own responsibility.

(3) The travel organiser must provide the traveller with a document on the package travel contract (travel confirmation) when the contract is entered into or without undue delay after the contract is entered into. The travel confirmation and a brochure provided by the travel organiser must include the information specified in the statutory order made under Article 238 of the Introductory Act to the Civil Code [*Einführungsgesetz zum Bürgerlichen Gesetzbuch*].

(4) The travel organiser may only increase the travel price if this is provided for in the contract with precise information on the calculation of the new price and if in doing this he is taking into account an increase in transport costs, charges for specific services, port or airport fees or a change in the foreign exchange rates relating to the travel package in question. A price increase demanded after the twentieth day prior to the agreed date of departure is ineffective. Section 309 no. 1 remains unaffected.

(5) The travel organiser must declare a change in the travel price under subsection (4), an admissible change of an essential travel service or an admissible cancellation of the travel package to the traveller without undue delay after being informed of the reason for change or the cancellation. In the event of an increase in the travel package price by more than five per cent or of a substantial change of an essential travel service, the traveller may withdraw from the contract. He may instead, just as in the case of a cancellation of the travel package by the travel organiser, demand to be able to participate in another travel package of at least equivalent value if the travel organiser is in a position to offer such a travel package from his programme without any extra charge to the traveller. The traveller must assert these rights to the travel organiser without undue delay after the declaration by the travel organiser.

## **Section 651b**

### **Transfer of contract**

(1) Until the commencement of the travel package, the traveller may demand that a third party takes over the rights and duties under the package travel contract in his place. The travel organiser may object to such taking over of the contract by a third party if the third party does not satisfy the specific travel requirements or if the participation of the third party is contrary to statutory regulations or official orders.

(2) If a third party takes over the contract, then the third party and the traveller are liable to the travel organiser as joint and several debtors for the travel price and any extra charges incurred by the third party taking over the contract.

## **Section 651c**

### **Relief**

(1) The travel organiser is obliged to provide the travel package in such a way that it has the warranted characteristics and is not impaired by faults that cancel or reduce its value or its suitability for the customary use or the use assumed under the contract.

(2) If the travel package is not of this quality, then the traveller may demand relief. The travel organiser may refuse the relief if it requires disproportionate expense.

(3) If the travel organiser does not provide relief within a reasonable period of time set by the traveller, then the traveller may himself provide relief and demand reimbursement of the required expenses. A period of time need not be specified if the travel organiser refuses relief or if immediate relief is required by a particular interest of the traveller.

## **Section 651d**

### **Reduction of price**

(1) If the travel package is defective within the meaning of section 651c (1), then the travel package price is reduced for the duration of the defect subject to the provisions of section 638 (3). Section 638 (4) applies with the necessary modifications.

(2) The reduction of price is not made to the extent that the traveller culpably fails to make notification of the defect.

## **Section 651e**

### **Termination for defect**

(1) If the travel package is substantially impaired as a result of a defect of the type referred to in section 651c, the traveller may terminate the contract. The same applies if he cannot reasonably be expected to accept the travel package due to such a defect for a compelling reason discernible to the travel organiser.

(2) Termination is only admissible if the travel organiser has let a reasonable period of time set by the traveller pass without providing relief. A period of time need not be specified if the relief is impossible or is refused by the travel organiser or if immediate termination of the contract is required by a particular interest of the traveller.

(3) If the contract is terminated, then the travel organiser loses his claim to the agreed package price. However, he may demand compensation to be assessed under section 638 (3) for travel services already provided or yet to be provided in order to bring the travel package to an end. This does not apply to the extent that the traveller has no more interest in these services as the result of the cancellation of the contract.

(4) The travel organiser is obliged to take measures necessitated by cancellation of the contract, including without limitation, if the contract includes return transport, to transport the traveller back. Extra costs are borne by the travel organiser.

## **Section 651f**

### **Damages**

(1) Notwithstanding any reduction of price or notice of termination, the traveller may demand damages for nonperformance unless the defect in the travel package resulted from a circumstance for which the travel organiser is not responsible.

(2) If the travel package is made impossible or significantly impaired, then the traveller may also demand appropriate compensation in money for holiday leave spent to no avail.

## **Section 651g**

### **Cut-off period; limitation**

(1) Claims under sections 651c to 651f must be asserted by the traveller to the travel organiser within one month of the contractually provided end of the travel package. Section 174 is not applicable. After the end of the period of time, the traveller may only assert claims if he was prevented from complying with the period of time through no fault of his own.

(2) Claims by the traveller under sections 651c to 651f are subject to a two-year limitation period. The limitation period commences on the day on which the travel package was to end under the contract.

## **Section 651h**

### **Admissible limitation of liability**

(1) The travel organiser may, by agreement with the traveller, limit his liability for damage that does not constitute bodily injuries to three times the package price

1. to the extent that damage suffered by the traveller was caused neither intentionally nor with gross negligence or
2. to the extent that the travel organiser is responsible for damage suffered by the traveller merely due to the fault of a service provider.

(2) If international agreements or statutory provisions based on international agreements apply to travel services to be rendered by a service provider and provide that a claim for damages is incurred or may be asserted only under certain conditions or with certain restrictions or is barred under certain conditions, then the travel organiser may also invoke this in relation to the traveller.

## **Section 651i**

### **Withdrawal prior to commencement of travel**

(1) Prior to commencement of travel, the traveller may withdraw from the contract at any time.

(2) If the traveller withdraws from the contract, then the travel organiser loses his claim to the agreed package price. He may, however, demand appropriate compensation. The amount of such compensation is determined by the price of the travel package minus the value of the expenses saved by the travel organiser and what he can gain by alternative deployment of the travel services.

(3) In the contract, for each type of travel package, taking into account the customarily saved expenses and the customary potential savings from alternative deployment of the travel services, a percentage of the package price may be specified as compensation.

## **Section 651j**

### **Termination due to force majeure**

(1) If the travel package is substantially obstructed, jeopardised or impaired as the result of force majeure not foreseeable when the contract was entered into, then both the travel organiser and the traveller may terminate the contract merely under this provision.

(2) If the contract is terminated under subsection (1), then the provisions of section 651e (3) sentences 1 and 2 and 651e (4) sentence 1 apply. Extra costs for return transport are to be borne by the parties one-half each. Apart from this, extra costs are borne by the traveller.

## **Section 651k**

### **Guarantee; payment**

(1) The travel organiser must guarantee that the traveller is reimbursed

1. the price of the travel package paid to the extent that travel services fail to materialise due to insolvency or the commencement of insolvency proceedings relating to the assets of the travel organiser, and
2. necessary expenses incurred by the traveller for return travel due to insolvency or the commencement of insolvency proceedings relating to the assets of the travel organiser.

The duties under sentence 1 may only be performed by the travel organiser

1. by means of an insurance policy taken out with an insurance company authorised to conduct business operations within the area of application of this Code, or
2. by the promise of payment of a banking institution authorised for business operations within the area of application of this Code.

(2) The insurer or the banking institution (customer finance guarantor) may limit its liability for the total amounts to be reimbursed by it in one year to 110 million euros. If the total of the amounts to be reimbursed by a customer finance guarantor under this law in one year exceed the maximum amounts stated in sentence 1, then the individual reimbursement claims will be reduced in the ratio of their total amount to the maximum amount.

(3) To discharge his duty under subsection (1), the travel organiser must provide the traveller with a direct claim on the customer finance guarantor and must evidence it by handing over a confirmation (guarantee certificate) issued by the customer finance guarantor or at its behest. The customer finance guarantor may not invoke, in relation to a traveller to whom a guarantee certificate has been handed out, either objections under the customer finance guarantor contract or the fact that the guarantee certificate was only issued after termination of the customer finance guarantor contract. In the cases referred to in sentence 2, the claim of the traveller against the travel organiser passes to the customer finance guarantor to the extent that the latter satisfies the claim of the traveller. A travel agent is under a duty to the traveller to check the validity of the guarantee certificate when he hands it over to the traveller.

(4) The travel organiser and the travel agent may only demand or accept payments towards the package price from the traveller prior to the end of the travel package if a guarantee certificate has been given to the traveller. A travel agent is deemed to be authorised by the travel organiser to accept payments towards the package price if he hands over a guarantee certificate or if other circumstances attributable to the travel organiser show that he has been entrusted by the travel organiser to negotiate travel contracts on his behalf. This does not apply if acceptance of payments by the travel agent is excluded in relation to the traveller in a conspicuous form.

(5) If, at the time when the contract is entered into, the travel organiser has his principal place of business in another Member State of the European Communities or in another contracting state to the Agreement on the European Economic Area, then the travel organiser also discharges his duties under subsection (1) if he gives the traveller security in compliance with the provisions of the other state and if those provisions satisfy the requirements of subsection (1) sentence 1. Subsection (4) applies subject to the proviso that the provision of security must be evidenced to the traveller.

(6) Subsections (1) to (5) do not apply if

1. the travel organiser only organises travel occasionally and outside his commercial activities,
2. the travel package does not last longer than twenty-four hours, does not include an overnight stay and the package price does not exceed seventy-five euros,
3. the travel organiser is a legal person under public law whose assets may not be the object of insolvency proceedings.

## **Section 651l**

### **Exchange student stays**

(1) The provisions below apply to a package travel contract dealing with a stay of an exchange student with a host family in another state (host country), lasting at least three months and coupled with regular attendance at a school. They only apply to a package travel contract dealing with a shorter exchange student stay (sentence 1), or with a stay with a host family in the host country coupled with the organised conduct of a traineeship, if this has been agreed.

(2) The travel organiser is obliged

1. to ensure lodging, supervision and care for the exchange student in a host family that are appropriate according to the conditions in the guest country with the cooperation of the exchange student and
2. to create the necessary conditions for regular school attendance by the exchange student in the host country.

(3) If the traveller withdraws prior to the start of the travel package, section 651i (2) sentences 2 and 3 and (3) are not applicable if the travel organiser has not informed him at least two weeks prior to the start of the travel package at all events of

1. the name and address of the host family specified for the exchange student after his arrival, and
2. the name and accessibility of a contact person in the host country from whom assistance may also be demanded,

and appropriately prepared him for the stay.

(4) The traveller may terminate the contract at any time prior to the start of the travel package. If the traveller gives notice, then the travel organiser is entitled to demand the agreed package price minus the expenses saved. The travel organiser is obliged to take the measures necessitated by termination of the contract, in particular, without limitation, if the contract includes return transport, transporting the exchange student back home. Extra costs are borne by the traveller. The sentences above do not apply if the traveller may give notice in accordance with sections 651e or 651j.

## **Section 651m**

### **Deviating agreements**

Subject to sentence 2, no deviation may be made from the provisions of sections 651a to 651l to the disadvantage of the traveller. The limitation specified in section 651g (2) may be relaxed, but not, prior to notification to the travel organiser of a defect, if the agreement results in a limitation of less than one year from the beginning of the period of limitation set in section 651g (2) sentence 2.

## **Title 10**

### **Brokerage contract**

#### **Subtitle 1**

#### **General provisions**

#### **Section 652**

##### **Accrual of fee claim**

(1) A person who promises a brokerage fee for evidence of the opportunity to enter into a contract or for negotiating a contract is obliged to pay the fee only if the contract comes into existence as a result of the evidence or as a result of the negotiation of the broker. If the contract is entered into subject to a condition precedent, the brokerage fee may only be demanded if the condition is fulfilled.

(2) The broker is only to be reimbursed for expenses if this has been agreed. This also applies even if the contract does not come about.

#### **Section 653**

##### **Brokerage fee**

(1) A brokerage fee is deemed to have been tacitly agreed if in the circumstances the task entrusted to the broker can only be expected for remuneration.

(2) If the amount of remuneration is not specified, then if a tariff exists, the tariff rate of remuneration is deemed to have been agreed; if no tariff exists, the customary fee is deemed to have been agreed.

#### **Section 654**

##### **Forfeiture of the fee claim**

The claim to a brokerage fee and reimbursement of expenses are excluded if the broker, contrary to the contents of the contract, also worked for the other party.

#### **Section 655**

##### **Reduction of the brokerage fee**

If a disproportionately high brokerage fee has been agreed for the evidence of an opportunity to enter into a service contract or for negotiating such a contract, then it may, on the application of the party owing it, be reduced to the appropriate amount by court decision. Reduction of the fee is excluded after it has been paid.

## **Subtitle 2**

### **Loan brokerage contract between an entrepreneur and a consumer**

#### **Section 655a**

##### **Loan brokerage contract**

A contract by which an entrepreneur agrees for a fee to broker a consumer loan contract or to give the consumer evidence of an opportunity to enter into a consumer loan contract is governed, subject to sentence 2, by the following provisions. This does not apply to the extent specified in section 491 (2).

#### **Section 655b**

##### **Written form**

(1) The loan brokerage contract must be in writing. The contract, subject to other duties to provide information, must in particular, without limitation, state the fee of the loan broker as a percentage of the loan; if the loan broker has agreed remuneration with the entrepreneur too, this remuneration must also be stated. The contract may not be linked to the application for the loan to be granted. The loan broker must notify the consumer in text form of the contents of the contract.

(2) A loan brokerage contract that does not satisfy the requirements of subsection (1) sentences 1 to 3 is void.

#### **Section 655c**

##### **Remuneration**

The consumer is only obliged to pay the fee if as the result of the negotiation by or evidence from the loan broker the loan is granted to the consumer and the loan has been paid out to the consumer and revocation by the consumer under section 355 is no longer possible. To the extent that, with the knowledge of the loan broker, the consumer loan contract is intended for the early repayment of another loan (debt rescheduling), a claim to remuneration arises only if the effective annual rate of interest or the initial effective annual rate of interest is not increased; when the effective or initial effective annual rate of interest for the loan to be repaid is calculated, any possible brokerage costs are disregarded.

#### **Section 655d**

##### **Ancillary payment**

For services that are linked to negotiating the consumer loan contract or giving evidence of an opportunity to enter into a consumer loan contract, the loan broker may not agree any payment except for remuneration in accordance with section 655c sentence 1. However, it may be agreed that the loan broker is reimbursed necessary expenses that were incurred.

#### **Section 655e**

##### **Deviating agreements, application to founders of new businesses**

(1) Deviation from the provisions of this subtitle to the disadvantage of the consumer is not allowed. The provisions of this subtitle apply even if they are circumvented by other constructions.

(2) This subtitle also applies to loan brokerage contracts between an entrepreneur and a founder of a new business within the meaning of section 507.

### **Subtitle 3**

#### **Marriage broking**

##### **Section 656**

#### **Marriage broking**

(1) No obligation is established by promising a fee for giving evidence of an opportunity to contract a marriage or for acting as a broker in arranging a marriage. What has been paid on the basis of such a promise may not be claimed back on the grounds that there was no obligation.

(2) These provisions also apply to an agreement by which the other party has entered into an obligation in relation to the broker for the purpose of fulfilling the promise, including without limitation to an acknowledgement of a debt.

### **Title 11**

#### **Promise of a reward**

##### **Section 657**

#### **Binding promise**

Anyone offering by means of public announcement a reward for undertaking an act, including without limitation for producing an outcome, is obliged to pay the reward to the person who has undertaken the act, even if that person did not act with a view to the promise of a reward.

##### **Section 658**

#### **Revocation**

(1) The promise of a reward may be revoked until the act is undertaken. Revocation is only effective if it is announced in the same way as the promise of a reward was or if it occurs by means of a special announcement.

(2) Revocability may be waived in the promise of a reward; in cases of doubt, a waiver may be seen in the setting of a period of time for undertaking the act.

##### **Section 659**

#### **Act undertaken more than once**

(1) If an act for which a reward has been promised is undertaken more than once, then the reward is due to the person who undertook the act first.

(2) If the act has been undertaken simultaneously by more than one person, then each is entitled to an equal portion of the reward. Where the reward cannot be shared due to its quality, or if, according to the terms of the promise of a reward, only one person is to be given the reward, then the matter is decided by drawing lots.

##### **Section 660**

#### **Collaboration by more than one person**

(1) If more than one person has contributed to an outcome for which the reward is promised, then the person promising the reward must apportion the reward at his reasonably exercised discretion, taking

into account the contribution of each one to the outcome. The apportionment is not mandatory if it is evidently inequitable; in such a case the matter is decided by court decision.

(2) If the apportionment by the person promising the reward is not recognised as binding by one of those concerned, then the person promising the reward is entitled to refuse fulfilment until those concerned have settled the dispute on their entitlement among themselves; each of them may demand that the reward is deposited for all of them.

(3) The provision of section 659 (2) sentence 2 applies.

## **Section 661**

### **Prize competition**

(1) The promise of a reward relating to a prize competition is only valid if a period of time is set for submission of entries in the announcement.

(2) The decision on whether an entry submitted within the period of time meets the requirements of the promise of a reward or which entry among more than one is to be given preference, is to be made by the person designated in the promise of a reward or, where such a person is lacking, by the person promising the reward. The decision is binding on the participants.

(3) In the case of entries of equal merit, the provisions of section 659 (2) are applicable to awarding the prize.

(4) The person promising the reward may only transfer ownership of the work if he has stipulated in the promise of a reward that the transfer is to occur.

## **Section 661a**

### **Promises of prizes**

An entrepreneur who sends promises of prizes or comparable announcements to consumers and creates the impression through the design of such mailings that the consumer has won a prize must give the consumer that prize.

## **Title 12**

### **Mandate and contract for the management of the affairs of another**

#### **Subtitle 1**

##### **Mandate**

## **Section 662**

### **Typical contractual duties in a mandate**

By accepting a mandate, the mandatary agrees to carry out a transaction entrusted to him by the mandator for the mandator gratuitously.

## **Section 663**

### **Duty to notify when rejecting**

A person who is officially appointed to perform certain transactions or who has publicly offered to do so is obliged, when he does not accept a mandate to perform such transaction, to notify the mandator

of the refusal without undue delay. The same applies if someone has offered to perform certain transactions in regard to the mandator.

## **Section 664**

### **Non-transferability; liability for assistants**

(1) In case of doubt the mandatary may not transfer the performance of the mandate to a third party. If the transfer is permitted, then he is only liable for fault in connection with the transfer. He is liable under section 278 for fault on the part of an assistant.

(2) In case of doubt, a claim to the performance of the mandate is not transferable.

## **Section 665**

### **Deviation from instructions**

The mandatary is entitled to deviate from the instructions of the mandator if he may assume in the circumstances that the mandator would approve of such deviation if he were aware of the factual situation. The mandatary must make notification to the mandator prior to such deviation and must wait for the decision of the latter unless postponement entails danger.

## **Section 666**

### **Duty of information and duty to render account**

The mandatary is obliged to provide the mandator with the required reports, and on demand to provide information on the status of the transaction and after carrying out the mandate to render account for it.

## **Section 667**

### **Duty to return**

The mandatary is obliged to return to the mandator everything he receives to perform the mandate and what he obtains from carrying out the transaction.

## **Section 668**

### **Interest on money spent**

If the mandatary spends money for himself that he must return to the mandator or spend for the mandator, then he is obliged to pay interest on it from the time of spending onwards.

## **Section 669**

### **Duty of advance payment**

For expenses necessary to perform the mandate, the mandator must upon demand make advance payment to the mandatary.

## **Section 670**

### **Reimbursement of expenses**

If the mandatary, for the purpose of performing the mandate, incurs expenses that he may consider to be necessary in the circumstances, then the mandator is obliged to make reimbursement.

## **Section 671**

### **Revocation; termination**

(1) The mandate may be revoked by the mandator at any time and may be terminated by the mandatary at any time.

(2) The mandatary may only give notice in such a manner that the mandator can make other arrangements for the transaction to be carried out, unless there is a compelling reason for premature termination. If he gives premature notice of termination without such a compelling reason, then he must compensate the mandator for the damage thus incurred.

(3) If there is a compelling reason, then the mandatary is entitled to terminate the mandate even if he has waived the right of termination.

## **Section 672**

### **Death or incapacity to contract of the mandator**

In case of doubt, a mandate is not extinguished by the death or incapacity to contract of the mandator. If the mandate is extinguished, then, if postponement entails danger, the mandatary must continue to carry out the transaction transferred until the heir or the legal representative of the mandator can make other arrangements for the transaction to be carried out; to this extent, the mandate is deemed to continue.

## **Section 673**

### **Death of the mandatary**

In case of doubt, the mandate is extinguished on the death of the mandatary. If the mandate is extinguished, then the heir of the mandatary must notify the mandator of the death without undue delay and, if postponement entails danger, must continue carrying out the transaction entrusted to him until the mandator can make other arrangements for the agency business; in this respect, the mandate is deemed to continue.

## **Section 674**

### **Legal fiction of continuation**

If the mandate is extinguished in any other way than by revocation, then it is still deemed to continue for the benefit of the mandatary until the mandatary obtains knowledge of the extinction or ought to have knowledge.

## **Subtitle 2**

### **Contract for the management of the affairs of another**

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\*) Official note:

This subtitle serves to implement

1. Directive 97/7/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers (OJ L 43 of 14 February 1997, p. 25),
2. Articles 3 to 5 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166 of 11 June 1998, p. 45).

## Chapter 1

### General provisions

#### Section 675

##### Nongratuitous management of the affairs of another

(1) The provisions of sections 663, 665 to 670 and 672 to 674 apply to a service contract or a contract to produce a work dealing with the management of the affairs of another to the extent that nothing else is provided in this subtitle and, if the person obliged is entitled to terminate without complying with a notice period, the provisions of section 671 (2) also apply with the necessary modifications.

(2) A person who gives another person advice or a recommendation, notwithstanding the responsibility that arises from a contractual relationship, a tort or another statutory provision, is not obliged to pay compensation for the damage arising from following the advice or the recommendation.

#### Section 675a

##### Duties to provide information

(1) A person who is officially appointed to manage the affairs of others or publicly offers to do so provides, for regularly occurring standardised business transactions (standard transactions), in writing, or in appropriate cases also electronically, and gratuitously, information on fees and expenses for such transactions, to the extent that a price is not determined in accordance with section 315 or the fees and expenses are subject to binding statutory provisions. Banking institutions (section 1 (1) of the German Banking Act [*Gesetz über das Kreditwesen*]) must additionally provide information on transaction periods, value dates, reference rates for bank transfers and additional details specified in the statutory order under Article 239 of the Introductory Act to the Civil Code [*Einführungsgesetz zum Bürgerlichen Gesetzbuch*], in the form provided for there; this does not apply to bank transfers of the type designated in section 676c (3).

(2) The following are equivalent to banking institutions within the meaning of this title:

1. the Deutsche Bundesbank,
2. other enterprises that carry out bank transfers on a commercial basis, and
3. domestic branch offices of banking institutions and other enterprises with their seat abroad that carry out bank transfers on a commercial basis.

#### Section 676

##### Termination of transfer contracts

The termination of a contract for the management of the affairs of another whose subject matter is the forwarding of securities or of claims to the delivery of securities by way of booking or by other means (transfer contract) is only effective if it is notified to the custodian enterprise of the beneficiary in such good time that the notice of termination, if the appropriate care is exercised, can be taken into account prior to booking to the securities account of the beneficiary. The securities or the claims to delivery of securities are in this case to be returned to the enterprise originally entrusted with them. In connection with securities delivery and clearing systems, a transfer contract may, notwithstanding sentence 1, no longer be terminated after the time specified in the rules of the system.

## Chapter 2

### Bank transfer contract

#### Section 676a

##### Typical contractual duties; notice of termination

(1) By a bank transfer contract, the banking institution (transferring banking institution) is put under a duty to the person who orders the transfer (transferor) to make a specified amount of money available to the beneficiary for credit to the account of the beneficiary at the transferring banking institution (bank transfer) and to supply information on the identity of the transferor and a purpose of the transfer, to the customary extent. If the credit is to be made by another banking institution, the transferring banking institution is obliged to transfer the bank transfer amount in good time and, to the extent that nothing else has been agreed, without deduction to the banking institution of the beneficiary directly or with the participation of intermediate banking institutions for this purpose and to forward the information specified in sentence 1. The transferor may, to the extent agreed, alternatively provide the banking institution with the monetary amount to be transferred in cash.

(2) To the extent that no other periods of time are agreed, bank transfers are to be executed as soon as possible. The following:

1. cross-border bank transfers in Member States of the European Union and in contracting states to the Agreement on the European Economic Area that are denominated in the currency or currency unit of those states or in euros, to the extent that nothing else has been agreed, within five working days on which all concerned banking institutions are customarily open for business, with the exception of Saturdays (banking days) to the account of the banking institution of the beneficiary,
2. bank transfers within the country in domestic currency at the latest within three banking days to the account of the banking institution of the beneficiary, and
3. bank transfers in domestic currency within a main office or branch office of a banking institution at the latest within one banking day, other intra-bank transfers at the latest within two banking days to the account of the beneficiary

are to be executed (transaction period). The period commences, to the extent not otherwise agreed, at the end of the day on which the name of the beneficiary, his account, his banking institution and other information required for carrying out the bank transfer are available to the transferring banking institution and a credit balance sufficient to carry out the bank transfer is available or sufficient credit has been granted.

(3) After this, the transferring banking institution may only terminate the bank transfer contract without indicating any reasons as long as the transaction period has not yet begun if insolvency proceedings have been commenced in relation to the assets of the transferor or if a credit required to carry out the bank transfer has been terminated. In connection with payment systems, a bank transfer may, notwithstanding sentence 1, no longer be terminated after the time determined in the rules of the system.

(4) The transferor may terminate the bank transfer contract at any time prior to commencement of the transaction period, but after this he may only give notice if the banking institution of the beneficiary is notified of the termination by the time at which the transfer amount is finally made available to this banking institution for credit to the account of the beneficiary. In connection with payment systems, a bank transfer may, notwithstanding sentence 1, no longer be terminated after the time determined in the rules of the system. The transferring banking institution must arrange for the banking institution of the beneficiary to be informed of a termination without delay.

## **Section 676b**

### **Liability for late execution; money-back guarantee**

(1) If the bank transfer is not executed until after the end of the transaction period, then the transferring banking institution must pay interest to the transferor on the bank transfer amount for the duration of the delay unless the transferor or the beneficiary is responsible for the delay. The rate of interest is five percentage points per annum above the basic rate of interest.

(2) The transferring banking institution must without additional charges and expenses and at the option of the transferor either return to the transferor or transfer to the beneficiary any amounts retained by itself or by one of the intermediate banking institutions contrary to the transfer contract.

(3) The transferor may demand the return of the transfer amount up to an amount of 12,500 euros (guarantee amount) plus fees and expenses already paid for the transfer if the transfer has been executed neither by the end of the transaction period nor within an additional period of time of fourteen banking days from the demand of the transferor for return on. The transfer amount is in this case to bear interest from the commencement of the transaction period up to crediting of the guarantee amount to the account of the transferor at the rate of interest specified in subsection (1) sentence 2. Upon demand for return by the transferor and the end of the additional period of time the bank transfer contract is deemed to be terminated. The banking institution is entitled to terminate the contract if the banking institution cannot reasonably be expected to continue the contract, weighing the interests of both parties, provided it has paid the guarantee amount or pays it simultaneously. The transferor need not, in the cases cited in sentences 3 and 4, pay the agreed fees and expenses. Claims under this subsection do not exist if the bank transfer has not been executed because the transferor has given the transferring banking institution erroneous or incomplete instructions or if an intermediate bank expressly specified by the transferor has failed to execute the bank transfer. In the second case of sentence 6, the banking institution expressly specified by the transferor is liable to the transferor in the place of the transferring banking institution.

(4) Claims under subsections (1) to (3) are excluded if force majeure is the cause of the error in the processing of the bank transfer.

## **Section 676c**

### **No-fault liability; other claims**

(1) Claims under section 676b do not require fault. Other claims that require fault and claims for unjust enrichment are unaffected. The transferring banking institution must be responsible for any fault on the part of an intermediate banking institution as it would be for its own fault, unless the essential cause lies with an intermediate banking institution specified by the transferor. Liability under sentence 3 may be limited to 25,000 euros for bank transfers to an account abroad. Liability for damage arising from delay in or non-execution of the bank transfer may be limited to 12,500 euros; this does not apply to intent and gross negligence, to loss of interest receipts and risks specifically assumed by the banking institution.

(2) In the cases cited in subsection (1) sentence 3 half-sentence 2, the intermediate banking institution specified by the transferor is liable instead of the transferring banking institution.

(3) To the extent not otherwise stipulated, there may be no provisions deviating to the disadvantage of the transferor from those of sections 675 (1), 676a and 676b and subsection (1)

1. whose transferor is a banking institution,
2. that exceed the amount of 75,000 euros, or
3. that are to be credited to an account at a banking institution with its seat outside the European Union and the European Economic Area.

## **Chapter 3**

### **Interbank payment contract**

#### **Section 676d**

##### **Typical contractual duties in an interbank payment contract**

(1) By an interbank payment contract, an intermediate banking institution puts itself under a duty to another banking institution to forward a bank transfer amount, using credit transfer operations, to another banking institution or to the banking institution of the beneficiary.

(2) The banking institution of the beneficiary is obliged to return the bank transfer amount to the transferring banking institution if it receives a notification to this effect from the transferring banking institution prior to receipt of the amount. In payment settlement systems, notice of termination need not be heeded from the point of time stipulated in the rules of the system on.

#### **Section 676e**

##### **Equalisation claims**

(1) If the cause for a late execution of a bank transfer lies in the area of responsibility of an intermediate banking institution, then the intermediate banking institution must compensate for the damage incurred by the transferring banking institution in fulfilment of the claims of the transferor under section 676b (1).

(2) The intermediate banking institution must with no additional charges and expenses, at the option of the transferring banking institution, either return to the transferring banking institution or transfer to the beneficiary the amounts retained by itself contrary to the transfer contract.

(3) The banking institution that entered into an interbank payment contract with the transferring banking institution is obliged to return to the transferring banking institution the payments made that the transferring banking institution was obliged to make to the transferor under section 676b (3). Each intermediate banking institution is obliged to return the payments made under sentence 1 or under this provision to the banking institution with which it entered into an interbank payment contract to forward the bank transfer. If the bank transfer is not executed because a banking institution has issued erroneous or incomplete instructions to the intermediate banking institution it instructed, then the claim of the former banking institution to reimbursement is excluded under sentences 1 and 2. The banking institution responsible for the error must compensate the transferring banking institution for the more extensive loss incurred by it in fulfilment of its duties under section 676c (1).

(4) Banking institutions involved in forwarding a transfer amount and not liable for compensation must independently research the whereabouts of the transfer amount and return the transfer amount they trace to the person entitled to the claim, less reasonable compensation for their research.

(5) Where claims fail because the transferor specified the banking institution commissioned with forwarding, then the banking institution must put the transferor in the same position he would be in if section 676b (3) applied. Apart from this, section 676b (4) applies with the necessary modifications.

## **Chapter 4**

### **Current account contract**

#### **Section 676f**

##### **Typical contractual duties in a current account contract**

By a current account contract, the banking institution is put under a duty to open an account for the customer, to credit incoming payments to the account and to process completed bank transfer contracts to the debit of this account. The banking institution must notify the customer of any

information relating to the person of the transferor and of the purpose of the bank transfer that is forwarded.

## **Section 676g**

### **Credit claim of the customer**

(1) If a transfer amount has been received by the banking institution of the customer, the banking institution must credit this amount to the customer within the agreed period of time or, if there is no agreement on a period of time, within one banking day after the day on which the amount was credited to the banking institution, unless prior to receipt of the transfer amount it received notification under section 676d (2) sentence 1. If the amount transferred is not credited to the account of the customer in good time, then the banking institution must pay the customer interest on the transfer amount for the duration of the delay, unless the transferor or the customer is responsible for the delay. Section 676b (1) sentence 2 applies. The credit, even if it is made subsequently, must be undertaken in such a way that value dating of the incoming amount on the customer's account, to the extent not otherwise agreed with entrepreneurs, coincides with the date on which the amount is made available to the banking institution.

(2) If the banking institution, when it credits the amount to the account of the customer, has in breach of contract reduced the transfer amount, then it must credit the deficit to the beneficiary free of fees and expenses. The claim of the banking institution to a fee agreed in the current account contract for the crediting of incoming payments remains unaffected.

(3) If an interbank payment contract is not executed by a banking institution that has been instructed to receive it by the banking institution of the beneficiary, then the latter must credit its customer with the transfer amount up to an amount of 12,500 euros without additional fees and charges.

(4) Claims under subsections (1) to (3) do not require fault. More extensive claims that require fault are unaffected. The banking institution of the customer must in this context assume the same responsibility for fault on the part of an intermediate banks it instructed as for its own fault. Liability under sentence 3 may be limited to 25,000 euros for bank transfers to an account abroad. Liability for damage arising from delay in or non-execution of the bank transfer may be limited to 12,500 euros; this does not apply to intent and gross negligence, to loss of interest receipts and risks specifically assumed by the banking institution. The claims are excluded to the extent that the error in execution of the contract is due to force majeure.

(5) To the extent not otherwise provided there, deviation from the provisions of subsection (1) to (4) to the disadvantage of the beneficiary is only allowed in the case of bank transfers of the type specified in section 676c (3).

## **Section 676h**

### **Abuse of payment cards \*)**

The banking institution may only demand reimbursement of expenses for use of payment cards or of their data if the latter have not been abused by a third party. If the payment card is not based on a current account contract but another contract for the management of the affairs of another, sentence 1 applies with the necessary modifications to the issuer of the card.

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\*) Official note:

This provision serves to implement Article 8 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, p. 19).

## **Title 13**

### **Agency without specific authorisation**

#### **Section 677**

##### **Duties of the voluntary agent**

A person who conducts a transaction for another person without being instructed by him or otherwise entitled towards him must conduct the business in such a way as the interests of the principal require in view of the real or presumed will of the principal.

#### **Section 678**

##### **Agency contrary to the will of the principal**

If the assumption of agency is at variance with the real or presumed will of the principal and if the voluntary agent should have realised this, then he is liable to compensate the principal for damage arising from the agency even if he is not otherwise at fault.

#### **Section 679**

##### **Irrelevance of the contrary will of the principal**

A will of the principal contrary to the agency is disregarded if without the agency a duty of the principal whose fulfilment is in the public interest or a statutory maintenance duty of the principal would not have been fulfilled in good time.

#### **Section 680**

##### **Agency to ward off danger**

If the voluntary agency is intended to ward off danger threatening the principal, then the voluntary agent is only responsible for deliberate intent and gross negligence.

#### **Section 681**

##### **Ancillary duties of the voluntary agent**

The voluntary agent must notify the principal, as soon as feasible, of his assumption of the agency and, if postponement does not entail danger, wait for the decision of the principal. Apart from this, the provisions relating to a mandatary in sections 666 to 668 apply to the duties of the voluntary agent with the necessary modifications.

#### **Section 682**

##### **Lack of capacity to contract on the part of the voluntary agent**

If the voluntary agent lacks capacity to contract or is limited in his capacity to contract, then he is only responsible under the provisions on damages for torts and on the return of unjust enrichment.

#### **Section 683**

##### **Reimbursement of expenses**

If the assumption of agency corresponds to the interest and the real or presumed will of the principal, then the voluntary agent may demand reimbursement of expenses like a mandatary. In the cases of

section 679, the voluntary agent is entitled to this claim, even if the assumption of agency is at variance with the will of the principal.

## **Section 684**

### **Return of enrichment**

If the requirements of section 683 do not apply, then the principal is obliged to return everything that he obtains as a result of the voluntary agency under the provisions on the return of unjust enrichment. If the principal ratifies the agency, then the voluntary agent is entitled to the claim specified in section 683.

## **Section 685**

### **Intention to donate**

(1) The voluntary agent has no claim if he did not intend to demand reimbursement from the principal.

(2) If parents or forebears grant their descendants maintenance, or vice versa, then in case of doubt it is to be assumed that there is no intention to demand reimbursement from the receiver.

## **Section 686**

### **Error as to the identity of the principal**

If the voluntary agent is in error with regard to the identity of the principal, then the real principal is entitled and obliged as the result of agency.

## **Section 687**

### **False agency without specific authorisation**

(1) The provisions of sections 677 to 686 do not apply if a person conducts the transaction of another person in the belief that it is his own.

(2) If a person treats the business of another person as his own although he knows that he is not entitled to do so, then the principal can assert claims resulting from sections 677, 678, 681 and 682. If he asserts them, then he is under a duty to the voluntary agent under section 684 (1).

## **Title 14**

### **Safekeeping**

## **Section 688**

### **Typical contractual duties in safekeeping**

By a safekeeping contract, the depositary is obliged to store a movable thing delivered to him by a depositor.

## **Section 689**

### **Remuneration**

Remuneration for safekeeping is deemed to have been tacitly agreed if in the circumstances it is to be expected that safekeeping is to be performed only for remuneration.

## **Section 690**

### **Liability for gratuitous safekeeping**

If safekeeping is assumed gratuitously, then the depositary is only liable for the care that he customarily exercises in his own affairs.

## **Section 691**

### **Deposit with third parties**

In case of doubt, the depositary is not entitled to deposit the deposited thing with a third party. If deposit with a third party is permitted, then the depositary is only responsible for his own fault in making this deposit. He is liable under section 278 for fault on the part of an assistant.

## **Section 692**

### **Change of safekeeping**

The depositary is entitled to change the agreed type of safekeeping if he may assume in the circumstances that the depositor would approve of the change if he were aware of the factual situation. The depositary must make notification to the depositor prior to such a change and must wait for the decision of the depositor unless postponement entails danger.

## **Section 693**

### **Reimbursement of expenses**

If the depositary, for the purpose of safekeeping, incurs expenses that he may regard as necessary in the circumstances, then the depositor is obliged to make reimbursement.

## **Section 694**

### **Liability in damages of the depositor**

The depositor must compensate the depositary for damage incurred by the depositary due to the quality of the thing deposited, unless he neither knows of the dangerous quality of the thing when depositing it nor should have known of it, or he notified the depositary of it or the depositary knew of it without notification.

## **Section 695**

### **Right of the depositor to demand return**

The depositor may at any time demand that the thing deposited is returned, even if a period for safekeeping has been specified. Limitation of the claim to return of the thing commences on the claim for return.

## **Section 696**

### **Claim of depositary for repossession of the thing deposited**

The depositary may, if no safekeeping period has been specified, demand repossession of the thing deposited at any time. If a period has been specified, then he may only demand early repossession if there is a compelling reason to do so. The limitation of the claim commences upon the demand for repossession.

## **Section 697**

### **Place for return**

Return of the thing deposited must be made at the place where the thing was to be stored; the depositary is not obliged to take the thing to the depositor.

## **Section 698**

### **Interest on money spent**

If the depositary spends deposited money for himself, then he is obliged to pay interest on it from the time of spending onwards.

## **Section 699**

### **Due date of remuneration**

(1) The depositor must pay the agreed remuneration upon termination of safekeeping. If remuneration is assessed by time periods, then it is to be paid at the end of the individual time periods.

(2) If safekeeping ends prior to expiry of the time specified for it, then the depositary may demand a portion of his remuneration corresponding to his performance to date unless the agreement on remuneration leads to a different conclusion.

## **Section 700**

### **Irregular safekeeping contract**

(1) If fungible things are deposited in such a way that ownership is to pass to the depositary and the depositary is to be obliged to return things of the same type, quality and quantity, then in the case of money the provisions on loan contracts apply, and in the case of other things the provisions on contracts for the loan of things apply. If the depositor permits the depositary to consume fungible things, then in the case of money the provisions on loan contracts apply and in the case of other things the provisions on contracts for the loan of a thing apply from the point of time when the depositary appropriates the things on. In both cases, the time and place for return are, in case of doubt, determined under the provisions of the safekeeping contract.

(2) In the case of deposit of securities, an agreement of the type cited in subsection (1) is only valid if it is made expressly.

## **Title 15**

### **Bringing things onto the premises of innkeepers**

## **Section 701**

### **Liability of the innkeeper**

(1) An innkeeper who accommodates strangers commercially must make compensation for the damage incurred by the loss of, destruction of or damage to things brought in by a guest accommodated in the course of operating such a business.

(2) The following are deemed to have been brought in:

1. things that during the time when the guest was accommodated were brought into the inn or to a place indicated by the innkeeper or the helpers of the innkeeper or to a place generally intended for this purpose by the innkeeper outside the inn, or otherwise taken into safekeeping outside the inn by the innkeeper or his helpers,

2. things that within a reasonable period of time prior to or after the time when the guest was first accommodated were taken into custody by the innkeeper or his helpers.

In the case of an instruction or assumption of custody by helpers of the innkeeper, however, this only applies if they were ordered or must be considered to have been ordered to do this in the circumstances.

(3) Liability in damages is not incurred if the loss, destruction or damage is caused by the guest, a person accompanying the guest or a person that the guest has taken in, or by the quality of the things or by force majeure.

(4) Liability in damages does not extend to vehicles, to things left in a vehicle, or to live animals.

## **Section 702**

### **Limitation of liability; valuables**

(1) The innkeeper is only liable by reason of section 701 up to an amount corresponding to one-hundred times the cost of accommodation for one day, but at least up to the amount of 600 euros and at most up to an amount of 3,500 euros; for money, securities and valuables the amount of 800 euros takes the place of the amount of 3,500 euros.

(2) The innkeeper's liability is unlimited

1. if the loss, destruction or damage has been culpably caused by him or his helpers,
2. if the things brought in are things that he assumed for safekeeping or which he refused to assume contrary to the provision of subsection (3).

(3) The innkeeper is obliged to accept money, securities, valuables and other valuable items for safekeeping unless they are excessively valuable or sizeable in view of the size or status of the inn or if they are hazardous. He may demand that they be delivered in a closed or sealed container.

## **Section 702a**

### **Release from liability**

(1) The innkeeper may only be released from liability in advance to the extent that the sum involved exceeds the applicable maximum amount under section 702 (1). Nor may the innkeeper be released from liability even to this extent in the case that the loss, destruction or damage was caused intentionally or with gross negligence by the innkeeper or the helpers of the innkeeper or that it involves things whose acceptance for safekeeping the innkeeper refused contrary to the provisions of section 702 (3).

(2) The release is only effective if the declaration of the guest has been issued in writing and if it does not include any other provisions.

## **Section 703**

### **Extinction of the claim for damages**

The claim to which the guest is entitled under sections 701 and 702 lapses if the guest fails to notify the innkeeper without undue delay after obtaining knowledge of the loss, destruction or damage. This does not apply if the things were accepted by the innkeeper for safekeeping or if the loss, destruction or damage was culpably caused by him or his helpers.

## **Section 704**

### **Security right of the innkeeper**

For his claims for providing living space and other services to satisfy the needs of the guest, including his expenses, the innkeeper has a security right over the things brought in by the guest. The provisions relating to the security right of the lessor in sections 562 (1) sentence 2 and 562a to 562d apply with the necessary modifications.

## **Title 16**

### **Partnership**

## **Section 705**

### **Contents of partnership agreement**

By a partnership agreement, the partners mutually put themselves under a duty to promote the achievement of a common purpose in the manner stipulated by the contract, in particular, without limitation, to make the agreed contributions.

## **Section 706**

### **Contributions of the partners**

(1) Unless otherwise agreed, the partners must make equal contributions.

(2) If fungible or consumable things are to be contributed, then in case of doubt it is to be assumed that they are to be the joint property of the partners. The same applies to non-fungible and non-consumable things if they are to be contributed according to an appraisal that is not merely intended for the profit distribution.

(3) The contribution of a partner may also consist in the performance of services.

## **Section 707**

### **Increase of the agreed contribution**

A partner is not obliged to increase the agreed contribution or to supplement a capital contribution reduced by losses.

## **Section 708**

### **Liability of the partners**

A partner is only liable, in discharging the duties incumbent upon him, for the care he customarily exercises in his own affairs.

## **Section 709**

### **Joint management**

(1) The partners are jointly entitled to manage the business of the partnership; for each transaction the approval of all partners is required.

(2) If, under the partnership agreement, the majority of votes decides, then in case of doubt a majority is calculated in relation to the number of partners.

## **Section 710**

### **Transfer of management**

If, in the partnership agreement, the conduct of business is transferred to one partner or more than one partner, then the remaining partners are excluded from management. Where management has been transferred to more than one partner, the provisions of section 709 apply with the necessary modifications.

## **Section 711**

### **Right to object**

If the partnership agreement entitles all partners or more than one partner to conduct business in such a way that each is authorised to act on his own, then each may object to the undertaking of a transaction by another partner. In the case of objection the business must be forgone.

## **Section 712**

### **Withdrawal and dismissal of management**

(1) The authority to manage that is conferred on a partner by the partnership agreement may be withdrawn from that partner by a unanimous resolution or, if under the partnership agreement a majority of votes decides, by a majority resolution of the remaining partners if there is a compelling reason; such a reason includes without limitation gross breach of duty or incapacity for proper management.

(2) The partner may also in turn dismiss the management if there is a compelling reason; the provisions of section 671 (2) and (3) applicable to mandates apply with the necessary modifications.

## **Section 713**

### **Rights and duties of managing partners**

The rights and duties of the managing partners are determined by the provisions in sections 664 to 670 applicable to mandates to the extent that the partnership relationship does not lead to a different conclusion.

## **Section 714**

### **Power of agency**

To the extent that, under the partnership agreement, a partner has the authority to manage, then in case of doubt he is also authorised to represent the other partners in relation to third parties.

## **Section 715**

### **Withdrawal of the power of agency**

If one partner is authorised in the partnership agreement to represent the other partners in relation to third parties, then the power of agency may only be withdrawn under the provisions of section 712 (1) and, if it has been granted in connection with the authority to manage, may only be withdrawn together with the latter.

## **Section 716**

### **Right of control of the partners**

(1) A partner may, even if excluded from management, inform himself personally of the affairs of the partnership, inspect the accounts and documents of the partnership and provide himself with a survey of the state of the assets of the partnership.

(2) An agreement that excludes or limits this right does not prevent its being asserted if there are grounds for assuming dishonest management.

## **Section 717**

### **Non-transferability of partner rights**

The claims to which the partners are entitled against each other under the partnership relationship are not transferable. Excepted are the claims to which a partner is entitled in his management to the extent that their satisfaction may be demanded prior to the winding-up of the partnership, and the claims to profit sharing or to what the partner is owed on the winding-up.

## **Section 718**

### **Partnership assets**

(1) The contributions of the partners and the items acquired for the partnership as a result of management are the joint assets of the partners (partnership assets).

(2) Partnership assets also include anything acquired due to a right belonging to the partnership assets or as compensation for destruction, damage or removal of an item belonging to the partnership assets.

## **Section 719**

### **Joint property**

(1) A partner may not dispose of his share in partnership assets and in the individual items that are part of partnership assets; he is not entitled to demand division.

(2) A debtor may not set off a claim he has against an individual partner against a claim that is part of the partnership assets.

## **Section 720**

### **Protection of good faith debtor**

A debtor need only allow it to be asserted against himself that a claim acquired under section 718 (1) is part of the partnership assets if he has obtained knowledge that it comprises such a part; the provisions of sections 406 to 408 apply with the necessary modifications.

## **Section 721**

### **Distribution of profits and losses**

(1) A partner may only demand the statement of accounts and distribution of profits and losses after dissolution of the partnership.

(2) If the partnership is intended to exist for a protracted period of time, then the statement of accounts and the distribution of profits must in case of doubt occur at the end of every business year.

## **Section 722**

### **Shares in profit and loss**

- (1) If the shares in profits and losses of the partners are not specified, then each partner, without regard to the nature and size of his contribution, has an equal share in profit and loss.
- (2) If only the share in profit or in loss has been determined, then in case of doubt the determination applies to profits and losses.

## **Section 723**

### **Termination by partner**

(1) If the partnership has not been set up for a definite period of time, then each partner may terminate it at any time. If a period of time has been determined, then notice of termination prior to the expiry of that period is admissible if there is a compelling reason. A compelling reason includes without limitation

1. if another partner has intentionally or with gross negligence violated a fundamental duty incumbent upon him under the partnership agreement or if the discharge of such a duty becomes impossible,
2. if the partner has reached the age of eighteen.

The partner who has reached the age of majority may only give notice of termination under no. 2 within three months from the time when he knew of or should have known of his position as a partner. There is no right to give notice if the partner was authorised in regard to the object of the partnership to independently operate a trade or business under section 112 or if the object of the partnership served solely to satisfy his personal needs. Under the same conditions, if a notice period has been specified, termination is admissible without complying with the notice period.

(2) Notice of termination may not be premature unless there is a compelling reason for the premature termination. If a partner gives premature notice of termination without such a reason, then he must compensate the remaining partners for the damage thus incurred.

(3) An agreement by which the right to give notice is excluded or is limited contrary to these provisions is void.

## **Section 724**

### **Notice of termination in the case of a partnership for life or a continuing partnership**

If a partnership has been entered into for the lifetime of a partner, then it may be terminated in the same way as a partnership set up for an indefinite period of time. The same applies if a partnership is tacitly carried on after expiry of a stipulated period of time.

## **Section 725**

### **Termination by attachment creditors**

- (1) If the creditor of a partner has obtained attachment of the share of the partner in partnership assets, then he may terminate the partnership without complying with a notice period provided the instrument of indebtedness is not merely provisionally enforceable.
- (2) As long as the partnership exists, the creditor may not assert the rights of the partner under the partnership relationship with the exception of the claim to a share in profits.

## **Section 726**

### **Dissolution due to achievement or impossibility of its object**

The partnership comes to an end when the agreed object is achieved or its achievement has become impossible.

## **Section 727**

### **Dissolution due to the death of a partner**

(1) The partnership is dissolved by the death of one of its partners unless its partnership agreement leads to a different conclusion.

(2) In the case of dissolution, the heir of the deceased partner must inform the remaining partners of the death without undue delay and, where postponement entails danger, must carry on the business transferred to the deceased by the partnership agreement until the remaining partners can reach another arrangement jointly with him. The remaining partners are in like manner obliged to continue temporarily the business transferred to them. The partnership is deemed to continue in existence in this respect.

## **Section 728**

### **Dissolution due to insolvency of the partnership or one of its partners**

(1) The partnership is dissolved by the commencement of insolvency proceedings relating to the assets of the partnership. If the proceedings are discontinued on the application of the debtor or cancelled after the confirmation of an insolvency plan that provides for the partnership to continue in existence, then the partners may resolve to carry on the partnership.

(2) The partnership is dissolved by the commencement of insolvency proceedings relating to the assets of a partner. The provisions of section 727 (2) sentences 2 and 3 apply.

## **Section 729**

### **Continuation of authority to manage**

If the partnership is dissolved, then the authority of a partner to manage is likewise deemed to continue in existence to his benefit until he obtains knowledge of the dissolution or should have knowledge of it. The same applies to the authority to manage of a partner leaving the partnership when the partnership is carried on or for the loss of the authority in another way.

## **Section 730**

### **Winding-up of the partnership; management**

(1) After the dissolution of the partnership, winding-up takes place between the partners with regard to the assets of the partnership unless insolvency proceedings have been opened in relation to the assets of the partnership.

(2) For the termination of transactions in progress, for the entering into of new business required for this purpose and for the maintenance and administration of the assets of the partnership, the partnership is deemed to be carried on to the extent the purpose of the winding-up so requires. However, the authority to manage to which a partner is entitled under the partnership agreement is extinguished, unless the contract leads to a different conclusion, upon dissolution of the partnership; from dissolution onwards all partners are entitled to jointly manage its business.

## **Section 731**

### **Procedure for winding-up of the partnership**

In the absence of an agreement to the contrary, winding-up is carried out in accordance with sections 732 to 735. In other respects, the provisions on co-ownership apply to division.

## **Section 732**

### **Return of objects**

Objects that a partner has handed over to the partnership for use must be returned to him. He may not demand compensation for an object that is accidentally lost or has accidentally deteriorated.

## **Section 733**

### **Discharge of partnership debts; reimbursement of capital contributions**

(1) From the assets of the partnership, the first debts to be discharged are the joint debts, including those divided among the partners in relation to the creditors or for which the remaining partners are liable as debtors to one partner. If a debt is not yet due for repayment or is contested, then the amount required for discharge must be retained.

(2) From the assets of the partnership remaining after discharge of debts, the capital contributions are to be repaid. For capital contributions that did not consist of money, the value that they had at the time when they were contributed must be reimbursed. Compensation may not be demanded for capital contributions consisting in the performance of services or in permission of the use of an object.

(3) For discharge of debts and repayment of capital contributions, the assets of the partnership must be converted into money to the extent necessary.

## **Section 734**

### **Distribution of the surplus**

If a surplus remains after discharge of the joint debts and repayment of the capital contributions, then it is owed to the partners in the ratio of their shares in profit.

## **Section 735**

### **Duty to make subsequent contributions in case of loss**

If the assets of the partnership do not suffice to discharge the joint debts and to reimburse the capital contributions, then the partners must make up the deficit in the ratio in which they must bear losses. If an amount attributable to a partner cannot be obtained from him, then the remaining partners must bear the deficit in the same ratio.

## **Section 736**

### **Retirement of a partner; continuing liability**

(1) If the partnership agreement stipulates that if a partner gives notice or dies or if insolvency proceedings are opened in relation to his assets, the partnership will be carried on by the remaining partners, then upon the occurrence of such an event the partner personally so affected retires from the partnership.

(2) The provisions on the limitation of continuing liability relating to commercial partnerships apply with the necessary modifications.

## **Section 737**

### **Exclusion of a partner**

If the partnership agreement stipulates that if a partner gives notice, the partnership will be carried on by the remaining partners, then a partner in whose person a circumstance occurs which entitles the remaining partners to give notice under section 723 (1) sentence 2 may be excluded from the partnership. The remaining partners are jointly entitled to the right of exclusion. Exclusion occurs by declaration to the partner to be excluded.

## **Section 738**

### **Winding-up of the partnership on retirement**

(1) If a partner retires from the partnership, then his share in the assets of the partnership accrues to the remaining partners. The latter are obliged to return to the retiring partner under the provisions of section 732 the items he transferred to the partnership for use and to exempt him from joint debts and to pay him what he would receive in case of winding-up if the partnership had been dissolved at the time of his retirement. If joint debts are not yet due for repayment, then the remaining partners may provide the retiring partner with security instead of exempting him.

(2) The value of the assets of the partnership is, to the extent necessary, to be determined by means of an appraisal.

## **Section 739**

### **Liability for deficit**

If the assets of the partnership do not suffice to cover the joint debts and the capital contributions, then the retiring partner is liable to the remaining partners for deficit in the ratio of his share in the loss.

## **Section 740**

### **Sharing in the financial results of transactions in progress**

(1) The retiring partner shares in profits and losses resulting from transactions in progress at the time of his retirement. The remaining partners are entitled to terminate such transactions in the way that appears most advantageous to them.

(2) The retiring partner may at the end of each business year demand accounting for transactions terminated in the meanwhile, disbursement of the amount due to him and information on the status of transactions still in progress.

## **Title 17**

### **Co-ownership**

## **Section 741**

### **Co-ownership by defined shares**

Where more than one person is jointly entitled to a right, then, unless the law leads to a different conclusion, the provisions of sections 742 to 758 apply (co-ownership by defined shares).

## **Section 742**

### **Equal shares**

In case of doubt it is to be assumed that the part owners are entitled to equal shares.

## **Section 743**

### **Share in the fruits; authority to use**

- (1) A fraction of the fruits corresponding to his share is owed to each part owner.
- (2) Each part owner is authorised to use the joint object to the extent that joint use by other part owners is not impaired.

## **Section 744**

### **Joint administration**

- (1) The part owners are jointly entitled to administration of the joint object.
- (2) Each part owner is entitled to take the measures required to maintain the object without approval by the other part owners; he may demand that the latter grant their consent to such a measure in advance.

## **Section 745**

### **Administration and use by resolution**

- (1) By a majority of votes it may be resolved that there is to be proper administration and use appropriate to the quality of the joint item. The majority of votes is to be calculated according to the size of the shares.
- (2) Each part owner may, where administration and use is not regulated by agreement or by a majority vote, demand administration corresponding to the interests of all part owners according to their reasonably exercised discretion.
- (3) No substantial change to the object may be resolved or demanded. The right of each part owner to a fraction of the emoluments corresponding to his share may not be impaired without his approval.

## **Section 746**

### **Effect in relation to successors in interest**

If the part owners have made arrangements for the administration and use of the joint object, the determination reached also takes effect for and against the successors in interest.

## **Section 747**

### **Disposal of a share and joint objects**

Each part owner may control his own share. The part owners may control the joint object in its entirety only jointly.

## **Section 748**

### **Bearing of charges and costs**

Each part owner is obliged to the other part owners to bear the charges of the joint object as well as costs of maintenance, administration and joint use according to the proportion of his share.

## **Section 749**

### **Cancellation claim**

(1) Each part owner may at any time demand cancellation of the co-ownership.

(2) If the right to demand cancellation is excluded by agreement permanently or for a period of time, then cancellation may still be demanded if there is a compelling reason to do so. Subject to the same requirement, if a notice period has been specified, cancellation is admissible without complying with the notice period.

(3) An agreement by which the right to demand cancellation is excluded or limited contrary to these provisions is void.

## **Section 750**

### **Exclusion of cancellation in case of death**

If the part owners have temporarily excluded entitlement to demand cancellation of co-ownership, then in case of doubt the agreement loses its effect upon the death of a part owner.

## **Section 751**

### **Exclusion of cancellation and successors in interest**

If the part owners have excluded entitlement to demand cancellation of co-ownership permanently or temporarily or have specified a notice period, then the agreement is effective for or against successors in interest as well. If a creditor has had the share of a part owner attached, then he may demand cancellation of co-ownership notwithstanding the agreement if the instrument of indebtedness is not merely provisionally enforceable.

## **Section 752**

### **Division in kind**

Cancellation of co-ownership occurs by division in kind if the joint object is or, if there are more than one object held jointly, the joint objects are capable of being divided into identical parts corresponding to the shares of the part owners without reducing their value. The distribution of identical parts among the part owners is effected by drawing lots.

## **Section 753**

### **Division by sale**

(1) If division in kind is excluded, then the cancellation of co-ownership occurs by sale of the joint object according to the regulations on sale of a pledge, or in the case of a plot of land by compulsory auction, and by division of the proceeds. If disposal to a third party is inadmissible, then the object must be auctioned off among the part owners.

(2) If the attempt to sell the object is unsuccessful, then each part owner may demand a repeated attempt but must bear the costs if a repeated attempt fails.

## **Section 754**

### **Sale of joint claims**

The sale of a joint claim is only allowed if it cannot yet be collected. If collection is possible, then each part owner may demand joint collection.

## **Section 755**

### **Discharge of a joint debt**

(1) If the part owners are jointly and severally liable for an obligation that they will have to discharge in the proportion of their shares in accordance with section 748 or that they have entered into for the purpose of discharging such an obligation, then each part owner may demand upon cancellation of the co-ownership that the debt is discharged out of the joint object.

(2) The claim may also be asserted against successors in interest.

(3) To the extent that sale of the joint object is required for discharge of the debt, sale must occur in accordance with section 753.

## **Section 756**

### **Discharge of the debt of a part owner**

If one part owner has a debt to another part owner that is based on the co-ownership, then when the co-ownership is cancelled he may demand discharge of his claim from the part of the joint object attributable to the debtor. The provisions of section 755 (2) and (3) apply.

## **Section 757**

### **Warranty upon allocation to a part owner**

If, upon the cancellation of co-ownership, a joint object is allocated to one of the part owners, then each of the remaining part owners must give a warranty in the proportion of his share for a legal defect or a material defect in the same manner as a seller.

## **Section 758**

### **Right of cancellation not subject to the statute of limitations**

The claim to cancellation of co-ownership is not subject to the statute of limitations.

## **Title 18**

### **Life annuity**

## **Section 759**

### **Duration and amount of the annuity**

(1) A person who is obliged to provide a life annuity must in case of doubt pay the annuity for the duration of the lifetime of the creditor.

(2) The amount intended for the annuity is in case of doubt the annual amount of the annuity.

## **Section 760**

### **Advance payment**

(1) The life annuity is payable in advance.

(2) An annuity in money is payable for three months in advance; in the case of another kind of annuity, the period of time for which it must be paid in advance is determined according to the quality and purpose of the annuity.

(3) If the creditor is alive at the beginning of the period of time for which the annuity is payable in advance, then he is entitled to the entire amount attributable to that period of time.

## **Section 761**

### **Form of life annuity commitment**

For a contract which promises a life annuity to be valid, the promise must be made in writing, unless another form is specified. The life annuity commitment may not be issued in electronic form to the extent that the commitment serves to provide maintenance in family law.

## **Title 19**

### **Imperfect obligations**

## **Section 762**

### **Gaming, betting**

(1) No obligation is established by gaming and betting. What has been paid due to such gaming or betting may not be demanded back on the basis that no obligation existed.

(2) These provisions also apply to an agreement by which the losing party, for the purpose of meeting a gaming or betting debt, enters into an obligation in relation to the winning party, including without limitation the acknowledgement of a debt.

## **Section 763**

### **Lottery contracts and gaming contracts**

A lottery contract or a gaming contract is binding if the lottery or the gaming has state approval. Apart from this, the provisions of section 762 apply.

## **Section 764**

(repealed)

## **Title 20**

### **Suretyship**

## **Section 765**

### **Typical contractual duties in suretyship**

(1) By a contract of suretyship the surety puts himself under a duty to the creditor of a third party to be responsible for discharging that third party's obligation.

(2) Suretyship may also be assumed for a future or contingent obligation.

## **Section 766**

### **Written form of the declaration of suretyship**

For the contract of suretyship to be valid, the declaration of suretyship must be issued in writing. The declaration of suretyship may not be made in electronic form. If the surety discharges the main obligation, the defect of form is remedied.

## **Section 767**

### **Extent of the suretyship debt**

(1) The currently applicable amount of the main obligation determines the duty of the surety. This applies in particular, without limitation, if the main obligation has been changed through no fault of or default by the principal debtor. The duty of the surety is not extended by a legal transaction that the principal debtor undertakes after assumption of the suretyship.

(2) The surety is liable for the costs of termination and prosecution of rights that are reimbursable by the principal debtor to the creditor.

## **Section 768**

### **Defences of surety**

(1) The surety may assert the defences to which the principal debtor is entitled. If the principal debtor dies, then the surety may not invoke the fact that the heir has only limited liability for the obligation.

(2) The surety is not deprived of a defence by the fact that the principal debtor waives it.

## **Section 769**

### **Co-suretyship**

Where more than one person enters a suretyship commitment for the same obligation, they are jointly and severally liable even if they do not assume suretyship jointly.

## **Section 770**

### **Defences of voidability and set-off**

(1) The surety may refuse to satisfy the creditor as long as the principal debtor is entitled to avoid the legal transaction on which the obligation is based.

(2) The surety has the same authority as long as the creditor can obtain satisfaction by set-off against a claim of the principal debtor that is due.

## **Section 771**

### **Defence of unexhausted remedies**

The surety may refuse to satisfy the creditor as long as the creditor has not attempted without success to obtain execution of judgment against the principal debtor (defence of unexhausted remedies). If the surety raises the defence of unexhausted remedies, the limitation of the claim of the creditor against the surety is suspended until the creditor has attempted without success to obtain execution of judgment against the principal debtor.

## **Section 772**

### **Duty of creditor of enforcement and realisation**

(1) If the suretyship applies to a monetary claim, then enforcement of judgment must be attempted against the movable things of the principal debtor at his residence and, if the principal debtor has a business establishment in another locality, at the latter as well, and, in the absence of a residence and a business establishment, at his place of abode.

(2) If the creditor has a pledge over or right of retention to a movable thing of the principal debtor, then he must attempt to satisfy his claim from this thing too. If the creditor has such a right to the thing for another claim as well, then this only applies if both claims are covered by the value of the thing.

## **Section 773**

### **Exclusion of defence of unexhausted remedies**

(1) The defence of unexhausted remedies is excluded:

1. if the surety waives the defence, including without limitation if he has assumed suretyship as principal debtor,
2. if pursuit of rights against the principal debtor is made appreciably more difficult due to a change of residence, of business establishment or of place of abode occurring after assumption of suretyship,
3. if insolvency proceedings have been opened in relation to the assets of the principal debtor,
4. if it must be assumed that enforcement of judgment against the assets of the principal debtor will not result in satisfaction of the claim of the creditor.

(2) In the cases cited in nos. 3 and 4, the defence is admissible to the extent that the creditor may satisfy his claim out of a movable thing of the principal debtor over which he has a security right or of which he has a right of retention; the provisions of section 772 (2) sentence 2 apply.

## **Section 774**

### **Statutory passing of claims**

(1) To the extent that the surety satisfies the claims of the creditor, the claim of the creditor against the principal debtor passes to him. The passing of ownership may not be asserted to the disadvantage of the creditor. Objections by the principal debtor under a legal relationship existing between himself and the surety are unaffected.

(2) Co-sureties are only liable to each other under section 426.

## **Section 775**

### **Claim to release of the surety**

(1) If the surety has provided suretyship on the instructions of the principal debtor, or if he is entitled under the provisions on agency without specific authorisation, as a result of assuming the suretyship, to the rights of a voluntary agent against the principal debtor, then he may demand that the principal debtor releases him from the suretyship

1. if the financial situation of the principal debtor has substantially deteriorated,
2. if pursuit of rights against the principal debtor is made appreciably more difficult due to a change of residence, of business establishment or of place of abode occurring after assumption of suretyship,
3. if the principal debtor is in default of discharging his obligation,

4. if the creditor has obtained an enforceable judgment for discharge against the surety.

(2) If the main obligation has not yet fallen due, then the principal debtor may provide security to the surety instead of releasing him.

## **Section 776**

### **Waiver of a security**

If the creditor waives a preferential right connected with the claim, a mortgage or ship mortgage, a pledge existing for the claim or a right against a co-surety, then the surety is released to the extent that he would have been able to obtain compensation under section 774 from the right waived. This also applies if the right waived only arose after assumption of the suretyship.

## **Section 777**

### **Temporary suretyship**

(1) If the surety has provided suretyship for an existing obligation for a specified period of time, then at the end of the specified period of time he is released, unless the creditor effects collection of the claim without undue delay under the provisions of section 772, continues the proceedings without any substantial delay and without undue delay after the end of the proceedings notifies the surety that he is claiming payment from him. If the surety is not entitled to the defence of unexhausted remedies, then he is released at the end of a specified period of time, unless the creditor makes this notification to him without undue delay.

(2) If notification has been made in good time, then the liability of the surety in the case of subsection (1) sentence 1 is limited to the scope the main obligation has at the time when the proceedings ended, or in the case cited in subsection (1) sentence 2 to the scope the main obligation has at the end of the specified period of time.

## **Section 778**

### **Credit mandate**

A person who instructs another person to grant a third party a loan or financing assistance in his own name and for his own account is liable as surety to the mandatary for the obligation of the third party arising from the loan or the financing assistance.

## **Title 21**

### **Settlement**

## **Section 779**

### **Concept of settlement; mistake as to the basis of the settlement**

(1) A contract by which a dispute or uncertainty of the parties with regard to a legal relationship is removed by way of mutual concession (settlement) is ineffective if the fact situation used as a basis according to the contents of the contract does not correspond to reality and the dispute or uncertainty would not have occurred if the facts had been known.

(2) It is equivalent to uncertainty about a legal relationship if the realisation of a claim is uncertain.

## **Title 22**

### **Promise to fulfil an obligation; acknowledgement of debt**

#### **Section 780**

##### **Promise to fulfil an obligation**

For a contract by means of which performance is promised in such a way that the mere promise is intended to establish the duty (promise to fulfil an obligation) to be valid, to the extent that no other form is specified, it is necessary for the commitment to be made in writing. The commitment may not be made in electronic form.

#### **Section 781**

##### **Acknowledgement of a debt**

For a contract by which the existence of an obligation is acknowledged (acknowledgement of debt) to be valid, the declaration of acknowledgement must be made in writing. The declaration of acknowledgement may not be made in electronic form. If another form is prescribed to create the obligation whose existence is being acknowledged, then the acknowledgement contract requires this form.

#### **Section 782**

##### **No formal requirements for settlement**

If a promise to fulfil an obligation or an acknowledgement of a debt is made on the basis of a statement of account or by way of a settlement, then observance of the written form specified in sections 780 and 781 is not required.

## **Title 23**

### **Order**

#### **Section 783**

##### **Rights derived from an order**

If a person delivers to a third party a document in which he instructs another person to furnish money, securities or other fungible things to that third party, then the third party is authorised to collect payment from the drawee in his own name; the drawee is authorised to pay to the payee for the account of the drawer.

#### **Section 784**

##### **Acceptance of the order**

(1) If the drawee accepts the order, then he is obliged to pay to the payee; he may only raise against him such objections as relate to the validity of the acceptance or as follow from the contents of the order or the contents of the acceptance or as the drawee is entitled to rely on directly against the payee.

(2) Acceptance is made by a written notation on the order. If the notation is placed on the order prior to its delivery to the payee, then acceptance only becomes effective in relation to the payee upon delivery.

## **Section 785**

### **Delivery of the order**

The drawee is only obliged to pay in return for delivery of the order.

## **Section 786**

(repealed)

## **Section 787**

### **Order to assume debt**

(1) In the case of an order to assume a debt, the drawee is released from the debt by the payment to the extent of its amount.

(2) The drawee is not under a duty to the drawer to accept the order or to perform by paying the payee merely because the drawee is the debtor of the drawer.

## **Section 788**

### **Underlying debt relationship**

If the drawer issues the order for the purpose of in turn effecting payment to the payee, then the payment, even if the drawee accepts the order, is only effected upon payment by the drawee to the payee.

## **Section 789**

### **Duty of payee to notify**

If the drawee refuses acceptance of the order prior to the time for payment or if he refuses to make payment, then the payee must notify the drawer without undue delay. The same applies if the payee cannot or will not assert the order.

## **Section 790**

### **Revocation of the order**

The drawer may revoke the order in relation to the drawee as long as the drawee has neither accepted it in relation to the payee nor has made payment. This also applies if the drawer by the revocation contravenes a duty incumbent upon him in relation to the payee.

## **Section 791**

### **Death or incapacity to contract of a participant**

The order does not lapse as a result of the death or of one of the participants becoming incapable of contracting.

## **Section 792**

### **Transfer of the order**

(1) The payee may transfer the order to a third party by contract with that third party, even if the order has not yet been accepted. The declaration of transfer requires written form. For transfer, delivery of the order to the third party is required.

(2) The drawer may exclude transfer. Exclusion is only effective in relation to the drawee if such exclusion can be derived from the order or if it is notified by the drawer to the drawee before the latter accepts the order or effects payment.

(3) If the drawee accepts the order in relation to the acquirer, then he may not derive objections from the legal relationship existing between him and the payee. Apart from this, provisions applying to assignment of a claim apply with the necessary modifications to transfer of the order.

## **Title 24**

### **Bearer bond**

## **Section 793**

### **Rights under a bearer bond**

(1) If a person has issued a document in which he promises payment to the bearer (bearer bond), then the holder may demand from him the act of performance in accordance with the promise, unless he is not entitled to dispose of the document. However, the issuer is also released by payment to a non-entitled bearer.

(2) The validity of the signature may be made dependent upon a provision included in the document requiring the observance of a specific form. For signature, a name signature produced by means of mechanical reproduction suffices.

## **Section 794**

### **Liability of the issuer**

(1) The issuer is obliged under a bearer bond even if it has been stolen from him or is lost or if it otherwise comes into circulation against his will.

(2) It has no bearing on the effectiveness of a bearer bond if the document is issued after the issuer has died or becomes incapable of contracting.

## **Section 795**

(repealed)

## **Section 796**

### **Objections of the issuer**

The issuer may only raise against the bearer of the bond such objections as relate to the validity of the issuing or as follow from the document or as the issuer is directly entitled to in relation to the bearer.

## **Section 797**

### **Duty to pay only in return for delivery**

The issuer is only obliged to pay in return for delivery of the bearer bond. Upon delivery, he acquires ownership of the document even if the bearer is not entitled to make use of it.

## **Section 798**

### **Replacement document**

If a bearer bond is no longer suitable for circulation due to damage or disfigurement, then the bearer, as long as its essential contents and its distinguishing features can still be recognised with certainty, may demand from the issuer the issue of a new bearer bond in return for delivery of the damaged or disfigured one. He must himself bear and advance the costs.

## **Section 799**

### **Declaration of invalidity**

(1) A lost or destroyed bearer bond may, if the opposite is not specified in the document, be declared invalid by way of public notice procedure. Excepted from this are interest coupons, annuity coupons and profit share coupons as well as interest-free bearer bonds payable on sight.

(2) The issuer is obliged to provide the previous bearer, when requested, with information necessary for the public notice procedure or stoppage of payment and to issue the required certificates. The costs of the certificates must be borne and advanced by the previous bearer.

## **Section 800**

### **Effect of the declaration of invalidity**

If a bearer bond has been declared invalid, the party that obtained the exclusory judgment may, without prejudice to the authority to assert the claim under the document, demand issue of a new bearer bond instead of the invalidated one. He must himself bear and advance the costs.

## **Section 801**

### **Extinction; limitation**

(1) The claim under a bearer bond is extinguished at the end of thirty years after the occurrence of the time stipulated for payment if the document has not been presented to the issuer for redemption prior to the end of thirty years. If presentation occurs, then the claim is statute-barred in two years from the end of the submission period. Presentation is equivalent to judicial assertion of the claims under the document.

(2) For interest coupons, annuity coupons and profit share coupons, the period for presentation period is four years. The period of time commences at the close of the year in which the time stipulated for payment occurred.

(3) Duration and commencement of the presentation period may be determined differently by the issuer in the document.

## **Section 802**

### **Stoppage of payment**

The commencement and running of the period for presentation, and also limitation, are suspended for the benefit of the applicant by the stoppage of payment. Suspension commences upon the lodging of

the application for stoppage of payment; it ends upon the completion of the public notice procedure and, if the stoppage of payment is ordered before the initiation of the procedure, even if, since the removal of the obstacle to initiation, six months have passed and the application was not made previously. The provisions of sections 206, 210 and 211 apply to this period with the necessary modifications.

## **Section 803**

### **Interest coupons**

(1) If interest coupons are issued for a bearer bond, then the coupons, unless they contain a stipulation to the contrary, remain in effect even if the main claim lapses or if the duty to pay interest is cancelled or modified.

(2) If such interest coupons are not returned when the main bearer bond is redeemed, then the issuer is entitled to retain the amount he is obliged to pay for the coupons under subsection (1).

## **Section 804**

### **Loss of interest coupons or similar coupons**

(1) If an interest coupon, annuity coupon or profit share coupon is lost or destroyed and if the previous bearer notifies the issuer of the loss prior to the end of the submission period, then the previous bearer may demand payment from the issuer after the period of time has ended. The claim is excluded if the lost coupon is presented to the issuer for redemption or if the claim from the coupons is asserted by court action, unless the presentation or assertion by court action occurs after the period of time has passed. The claim is statute-barred after four years.

(2) The claim referred to in subsection (1) can be excluded in the interest coupon, annuity coupon or profit share coupon.

## **Section 805**

### **New interest coupons and annuity coupons**

New interest coupons and annuity coupons for a bearer bond may not be issued to the bearer of the document authorising receipt of the coupons (renewal coupon) if the bearer of the bond has objected to the issuing. In this case, the coupons are to be delivered to the bearer of the bond if he presents the bond.

## **Section 806**

### **Reregistration under name**

The reregistration of a bearer bond as a bond registered in the name of a specified owner may only be done by the issuer. The issuer is not obliged to effect reregistration.

## **Section 807**

### **Bearer tickets and stamps**

If tickets, stamps or similar documents in which a creditor is not identified are issued by the issuer in circumstances from which it can be seen that the issuer intends to be obliged to an act of performance for the bearer, then the provisions of sections 793 (1) and 794, 796 and 797 apply with the necessary modifications.

## **Section 808**

### **Registered securities with bearer clause**

(1) If a document in which the creditor is named is issued with the stipulation that the act of performance promised in the document can be made to any bearer, then the debtor is released from obligation by performance to the bearer of the document. The bearer is not entitled to demand performance.

(2) The debtor is obliged to pay only in return for presentation of the document. If the document has been lost or destroyed, then if not otherwise provided, it may be declared invalid by way of public notice procedure. The provisions of section 802 on limitation apply.

## **Title 25**

### **Presentation of things**

## **Section 809**

### **Inspection of a thing**

A person who has a claim in respect of a thing against its possessor or wishes to obtain certainty as to whether he has such a claim may, if inspection of the thing is of interest to him for this reason, demand that the possessor presents the thing to him for inspection or permits inspection.

## **Section 810**

### **Right to inspect documents**

A person who has a legal interest in inspecting a document in the possession of another person may demand from its possessor permission to inspect it if the document was drawn up in his interests or if in the document a legal relationship existing between himself and another is documented or if the document contains negotiations on a legal transaction that were engaged in between him and another person or between one of the two of them and a joint intermediary.

## **Section 811**

### **Place of presentation, risk and costs**

(1) Presentation must, in the cases of sections 809 and 810, be made at the place where the thing to be presented is located. Each party may demand to have it presented at another place if there is a compelling reason for doing so.

(2) Risk and costs must be borne by the person demanding presentation. The possessor may refuse presentation until the other party advances the costs and provides security for the risk.

## **Title 26**

### **Unjust enrichment**

## **Section 812**

### **Claim for restitution**

(1) A person who obtains something as a result of the performance of another person or otherwise at his expense without legal grounds for doing so is under a duty to make restitution to him. This duty

also exists if the legal grounds later lapse or if the result intended to be achieved by those efforts in accordance with the contents of the legal transaction does not occur.

(2) Performance also includes the acknowledgement of the existence or non-existence of an obligation.

### **Section 813**

#### **Performance notwithstanding defence**

(1) Restitution of performance rendered to perform an obligation may also be demanded if the claim was subject to a defence by means of which assertion of the claim has been permanently excluded. The provisions of section 214 (2) are unaffected.

(2) If an obligation due on a specific date is performed early, then the claim for return is excluded and reimbursement of interim interest may not be demanded.

### **Section 814**

#### **Knowledge that debt is not owed**

Restitution of performance rendered for the purpose of performing an obligation may not be demanded if the person who rendered the performance knew that he was not obliged to do so or if the performance complied with a moral duty or consideration of decency.

### **Section 815**

#### **Non-occurrence of result**

A claim for return for the non-occurrence of a result intended by an act of performance is excluded if the occurrence of the result was impossible from the outset and the person who rendered the performance prevented the result from occurring in bad faith.

### **Section 816**

#### **Disposition by an unauthorised person**

(1) If an unauthorised person disposes of an object and the decision is effective against the authorised person, then he is obliged to make restitution to the authorised person of what he gains by the disposal. If the disposition is gratuitous, then the same duty applies to a person who as a result of the disposition directly gains a legal advantage.

(2) If performance is rendered to an unauthorised person that is effective in relation to the authorised person, then the unauthorised person is under a duty to make restitution of the performance.

### **Section 817**

#### **Breach of law or public policy**

If the purpose of performance was determined in such a way that that the receiver, in accepting it, was violating a statutory prohibition or public policy, then the receiver is obliged to make restitution. A claim for return is excluded if the person who rendered performance was likewise guilty of such a breach, unless the performance consisted in entering into an obligation; restitution may not be demanded of any performance rendered in fulfilment of such an obligation.

## **Section 818**

### **Scope of the claim to enrichment**

(1) The duty to make restitution extends to emoluments taken as well as to whatever the receiver acquires by reason of a right acquired or in compensation for destruction, damage or deprivation of the object obtained.

(2) If restitution is not possible due to the quality of the benefit obtained, or if the receiver is for another reason unable to make restitution, then he must compensate for its value.

(3) The liability to undertake restitution or to reimburse the value is excluded to the extent that the receiver is no longer enriched.

(4) From the time when the action is pending onwards, the receiver is liable under the general provisions of law.

## **Section 819**

### **Increased liability in case of knowledge and breaches of law or public policy**

(1) If the receiver, at the time of receipt, knows of the defect in the legal basis or if he learns of it later, then he is obliged to make restitution from the moment of receipt or of obtaining knowledge of the defect to make restitution as if the claim for restitution had been pending from this time on.

(2) If the receiver, in accepting the performance, violates a statutory prohibition or public policy, then he is likewise under the same obligation from receipt of payment onwards.

## **Section 820**

### **Increased liability where the result is uncertain**

(1) If the performance was intended to produce a result whose occurrence, according to the contents of the legal transaction, was regarded as uncertain, then, if the result does not occur, the receiver is under a duty of restitution in the same way as if the claim for restitution had been pending at the time of receipt. The same applies if the performance has been rendered for a legal reason which according to the contents of the legal transaction was regarded as likely to lapse and the legal reason ceases to exist.

(2) The receiver must only pay interest from the time when he learns that the result has not occurred or that the legal reason has ceased to exist; he is not obliged to make restitution of emoluments to the extent that he is no longer enriched at this time.

## **Section 821**

### **Enrichment defence**

A person who enters into an obligation without legal grounds to do so may also refuse fulfilment if the claim to release from the obligation is statute-barred.

## **Section 822**

### **Restitution duty of third parties**

If the receiver bestows the gains on a third person at no charge, then that third person is obliged to make restitution as if he had received the disposition from the creditor without legal grounds, to the extent that as a result of the bestowal the duty of the receiver to make restitution of the enrichment is excluded.

## **Title 27**

### **Torts**

#### **Section 823**

##### **Liability in damages**

(1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.

(2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

#### **Section 824**

##### **Endangering credit**

(1) A person who untruthfully states or disseminates a fact that is qualified to endanger the credit of another person or to cause other disadvantages to his livelihood or advancement must compensate the other for the damage caused by this even if, although he does not know that the fact is untrue, he should have known.

(2) A person who makes a communication and is unaware that it is untrue is not obliged to pay damages if he or the receiver of the communication has a justified interest in the communication.

#### **Section 825**

##### **Inducing others to sexual acts**

A person who induces another person to undertake or acquiesce in sexual acts by cunning, duress or abuse of a dependency relationship is liable to him for the resulting damage incurred.

#### **Section 826**

##### **Intentional damage contrary to public policy**

A person who, in a manner contrary to public policy, intentionally inflicts damage on another person is liable to the other person to make compensation for the damage.

#### **Section 827**

##### **Exclusion and reduction of responsibility**

A person who, in a state of unconsciousness or in a state of pathological mental disturbance precluding free exercise of will, inflicts damage on another person is not responsible for such damage. If he has temporarily induced such a state in himself with alcoholic beverages or similar means, he is then responsible for damage that he unlawfully causes in this state as if he were responsible because of negligence; responsibility does not ensue if he came into this state without fault.

#### **Section 828**

##### **Minors**

(1) A person who has not reached the age of seven is not responsible for damage caused to another person.

(2) A person who has reached the age of seven but not the age of ten is not responsible for damage that he inflicts on another party in an accident involving a motor vehicle, a railway or a suspension railway. This does not apply if he intentionally caused the injury.

(3) A person who has not yet reached the age of eighteen is, to the extent that his responsibility is not excluded under subsection (1) or (2), not responsible for damage he inflicts on another person if, when committing the damaging act, he does not have the insight required to recognise his responsibility.

## **Section 829**

### **Liability in damages for reasons of equity**

A person who, for reasons cited in sections 827 and 828, is not responsible for damage he caused in the instances specified in sections 823 to 826 must nonetheless make compensation for the damage, unless damage compensation can be obtained from a third party with a duty of supervision, to the extent that in the circumstances, including without limitation the circumstances of the parties involved, equity requires indemnification and he is not deprived of the resources needed for reasonable maintenance and to discharge his statutory maintenance duties.

## **Section 830**

### **Joint tortfeasors and persons involved**

(1) If more than one person has caused damage by a jointly committed tort, then each of them is responsible for the damage. The same applies if it cannot be established which of several persons involved caused the damage by his act.

(2) Instigators and accessories are equivalent to joint tortfeasors.

## **Section 831**

### **Liability for vicarious agents**

(1) A person who uses another person to perform a task is liable to make compensation for the damage that the other unlawfully inflicts on a third party when carrying out the task. Liability in damages does not apply if the principal exercises reasonable care when selecting the person deployed and, to the extent that he is to procure devices or equipment or to manage the business activity, in the procurement or management, or if the damage would have occurred even if this care had been exercised.

(2) The same responsibility is borne by a person who assumes the performance of one of the transactions specified in subsection (1) sentence 2 for the principal by contract.

## **Section 832**

### **Liability of a person with a duty of supervision**

(1) A person who is obliged by operation of law to supervise a person who requires supervision because he is a minor or because of his mental or physical condition is liable to make compensation for the damage that this person unlawfully causes to a third party. Liability in damages does not apply if he fulfils the requirements of his duty to supervise or if the damage would likewise have been caused in the case of proper conduct of supervision.

(2) The same responsibility applies to any person who assumes the task of supervision by contract.

## **Section 833**

### **Liability of animal keeper**

If a human being is killed by an animal or if the body or the health of a human being is injured by an animal or a thing is damaged by an animal, then the person who keeps the animal is liable to compensate the injured person for the damage arising from this. Liability in damages does not apply if the damage is caused by a domestic animal intended to serve the occupation, economic activity or subsistence of the keeper of the animal and either the keeper of the animal in supervising the animal has exercised reasonable care or the damage would also have occurred even if this care had been exercised.

## **Section 834**

### **Liability of animal minder**

A person who by contract assumes the supervision of an animal for the keeper of the animal is responsible for the damage inflicted by the animal on a third party in the manner specified in section 833. The responsibility does not apply if he exercises reasonable care in supervision or if the damage would also have occurred even if such care had been exercised.

## **Section 835**

(repealed)

## **Section 836**

### **Liability of the owner of a plot of land**

(1) If a human being is killed or if the body or the health of a human being is injured or a thing is damaged by the collapse of a building or any other structure attached to a plot of land or by parts of the building or structure breaking off, then the possessor of the plot of land is liable to make compensation to the injured person for damage resulting from this, to the extent that the collapse or severing is a consequence of defective construction or inadequate upkeep. Liability in damages does not apply if the possessor has observed reasonable care for the purpose of avoiding danger.

(2) A previous possessor of the plot of land is responsible for the damage if the collapse or breaking off occurs within one year after he vacated possession, unless during his period of possession he exercised reasonable care or a later possessor would have been able to avoid the danger by observing this care.

(3) The possessor within the meaning of these provisions is the owner-occupier.

## **Section 837**

### **Liability of building possessor**

If anyone, in exercise of a right, possesses a building or another structure on the plot of land of another person, then the responsibility specified in section 836 applies to him instead of the possessor of the plot of land.

## **Section 838**

### **Liability of the person with a duty of maintenance of a building**

A person who assumes the maintenance of a building or of a structure attached to a plot of land for the possessor or has to maintain the building or the other structure by virtue of a right of use to which he is entitled is responsible in the same way as the possessor for the damage caused by the collapse or the breaking off of parts of the building.

## **Section 839**

### **Liability in case of breach of official duty**

(1) If an official intentionally or negligently breaches the official duty incumbent upon him in relation to a third party, then he must compensate the third party for damage arising from this. If the official is only responsible because of negligence, then he may only be held liable if the injured person is not able to obtain compensation in another way.

(2) If an official breaches his official duties in a judgment in a legal matter, then he is only responsible for any damage arising from this if the breach of duty consists in a criminal offence. This provision is not applicable to refusal or delay that is in breach of duty in exercising a public function.

(3) Liability for damage does not arise if the injured person has intentionally or negligently failed to avert the damage by having recourse to appeal.

## **Section 839a**

### **Liability of court-appointed expert**

(1) If an expert appointed by the court intentionally or by gross negligence submits a false expert opinion, then he is liable to make compensation for the damage incurred by a party to the proceedings as a result of a court decision based on this expert opinion.

(2) Section 839 (3) applies with the necessary modifications.

## **Section 840**

### **Liability of more than one person**

(1) If more than one person is responsible for damage arising from a tort, then they are jointly and severally liable.

(2) If besides the person who is obliged to make compensation for damage caused by another person under sections 831 and 832 the other person is also responsible for the damage, then in their internal relationship the other is obliged alone, and in the case specified in section 829 the person with a duty of supervision is obliged alone.

(3) If besides the person who is obliged to make compensation for damage under sections 833 to 838 a third party is responsible, then the third party is solely obliged in their internal relationship.

## **Section 841**

### **Compensation for liability of a public official**

If an official who by virtue of his official duty must appoint another person for management for a third party or must supervise such management or participate in it by ratifying legal transactions is responsible together with the other person, as a result of violating these duties, for the damage caused by the other, then the other person is solely liable in their internal relationship.

## **Section 842**

### **Extent of liability in damages when a person is injured**

Liability to compensate for damage resulting from a tort directed against the person extends to the disadvantages the tort produces for the livelihood or advancement of the injured person.

## **Section 843**

### **Annuity in money or lump sum settlement**

(1) If the earning capacity of the injured person is eliminated or reduced as the result of an injury to body or health or if his needs are increased, then the injured person is to be given damages by payment of an annuity.

(2) The provisions of section 760 apply to the annuity. Whether the person liable in damages must provide security and in what kind and in what amount is determined by the circumstances.

(3) In lieu of the annuity, the injured person may demand a lump sum settlement if there is a compelling reason for doing so.

(4) The claim is not excluded by the fact that another person must provide the injured person with maintenance.

## **Section 844**

### **Third-party compensation claims in the case of death**

(1) In cases where death is caused, the person liable in damages must reimburse the costs of a funeral to the person under a duty to bear these costs.

(2) If the person killed, at the time of the injury, stood in a relationship to a third party on the basis of which he was obliged or might become obliged by operation of law to provide maintenance for that person and if the third party has as a result of the death been deprived of his right to maintenance, then the person liable in damages must give the third party damages by payment of an annuity to the extent that the person killed would have been obliged to provide maintenance for the presumed duration of his life; the provisions of section 843 (2) to (4) apply with the necessary modifications. Liability in damages also arises where the third party at the time of injury had been conceived but not yet born.

## **Section 845**

### **Compensation claims for lost services**

In the case of death or injury to body or health, or in the case of deprivation of liberty, the person liable in damages must give a third party compensation for loss of services by payment of an annuity if the injured person by operation of law was under a duty to the third party to render services in the household or business of the latter. The provisions of section 843 (2) to (4) apply with the necessary modifications.

## **Section 846**

### **Contributory negligence of the injured person**

In the cases of sections 844 and 845, if fault on the part of the injured person contributed to the genesis of the damage suffered by the third party, then the provisions of section 254 are applicable to the claim of the third party.

## **Section 847**

(repealed)

## **Section 848**

### **Liability for chance in connection with deprivation of a thing**

A person who is obliged to return a thing of which he has deprived another person by a tort is also responsible for accidental loss, for a chance impossibility of restitution for another reason or for accidental deterioration of the thing, unless such loss, other impossibility of restitution or deterioration would have occurred even without the deprivation.

## **Section 849**

### **Interest on the compensation sum**

If compensation is to be paid for the value of a thing of which a person has been deprived, or if compensation is to be paid for the decrease in value of a thing as a result of damage, then the injured person may demand interest on the amount to be paid in compensation from the date on which the determination of the value is based.

## **Section 850**

### **Reimbursement of outlays**

If the person liable for restitution of a thing another person has been deprived of makes outlays on the thing, then in relation to the injured person he has the rights that a possessor has against the owner for outlays.

## **Section 851**

### **Compensation payment to unauthorised parties**

If the person liable to pay damages for the deprivation of a person or for damage to a movable thing pays compensation to the person in whose possession the thing was at the time when the deprivation or damage occurred, then by this payment of compensation he is released, even if a third party was the owner of the thing or had another right in the thing, unless he knows of the right of the third party or his lack of knowledge results from gross negligence.

## **Section 852**

### **Claim for restitution after end of limitation period**

If by a tort the person liable to pay compensation obtains something at the cost of the injured person, then even after the claim to compensation for the damage arising from a tort is statute-barred he is obliged to make restitution under the provisions on the return of unjust enrichment. This claim is statute-barred ten years after it arises, or, notwithstanding the date on which it arises, thirty years after the date on which the act causing the injury was committed or after the other event that triggered the loss.

## **Section 853**

### **Defence of bad faith**

If someone obtains a claim against the injured person by a tort committed by him, the injured person may refuse performance even if the claim to cancellation of the claim is by then statute-barred.